

NOTES

שָׁעָבֵר – What is the purpose of mentioning the past – מאי עבדיתייהו: According to Rashi and most commentaries, the Gemara is asking what the precise definition of the past is in this context. The problem is that the wording of the Gemara does not quite suit this interpretation. The Rivash explains the question as follows: What cause is there for an oath here? If she was exempt during his lifetime, and immediately after his death she went to her father's house, what reason could there be to administer an oath to her?

Between her husband's death and his burial, they cannot administer an oath to her – בין מיתה לקבורה: Rashi explains that they cannot force her to take an oath that she did not sell the property at too low a price. Since she was acting under time constraints and duress, she undoubtedly had to do so. *Tosafot* reject this interpretation. They explain that the heirs cannot force her to take an oath that she did not appropriate anything for herself, as if they have this option she will refuse to arrange her husband's funeral. This is the explanation offered in the Jerusalem Talmud. The Rid cites both opinions.

HALAKHA

Between her husband's death and his burial, they cannot administer an oath to her – בין מיתה לקבורה: A man's heirs cannot administer an oath to his wife with regard to property of the deceased that she sold between his death and his burial for the sake of his funeral, not even by means of extension, in accordance with the opinion of Rav Mattana (Rambam *Sefer Kinyan, Hilkhot Sheluhin VeShutafin* 9:4; *Shulhan Arukh, Even HaEzer* 98:5).

For head tax, and for sustenance, and for burial – לכתא: No announcement is required when land is sold in order to pay for the expenses of the burial of its former owner, the sustenance of his wife and daughters, or the head tax, as these matters are necessary and pressing (Rambam *Sefer Mishpatim, Hilkhot Malve VeLoveh* 12:11; *Shulhan Arukh, Even HaEzer* 104:3).

LANGUAGE

Tax [*karga*] – כַּרְגָּא: Related to the Middle Persian word *harg*, meaning tribute. This tax was a fixed sum levied on each inhabitant of the country.

על אפטרופיא שנעשית בחיי בעלה. רב נחמן אמר רבה בר אבוה: על הפוגמת כתובתה.

אָוּל רב מִרְדְּכַי אָמְרָה לְשִׁמְעֵתָא קַמֵּיהּ דְּרַב אָשִׁי: בְּשִׁלְמָא לְמָאן דְּאָמַר עַל הַפּוּגְמַת כְּתוּבָתָהּ – דְּמִסְקָא אֲדַעְתָּהּ: דְּלָמָּא מִצְטָרְכִי לִי זְוִי, וְשִׁקְיִלְנָא מִכְּתוּבַתְאִי, וְאָמְרָה לִיהּ "כְּתוּב לִי דְלָא מְשַׁבְּעַת לִי". אֵלָּא לְמָאן דְּאָמַר עַל אֲפּוֹטְרוֹפִיא שְׁנַעֲשִׂית בְּחַיֵּי בַּעֲלָהּ – אֵיְהִי מִי הוּת יִדְעָה דְּמוֹתֵיב לֵהּ אֲפּוֹטְרוֹפִיא, דְּאָמְרָה לִיהּ "כְּתוּב לִי דְלָא מְשַׁבְּעַת לִי"?

אָמַר לִיהּ: אַתּוּן אַהָּא מִתְּנִיתוּ לָהּ אֲנִי אַהָּא מִתְּנִינִי לָהּ: הֲלִכְהּ מִקְבֵּר בַּעֲלָהּ לְבֵית אָבִיהָ אוֹ שְׁחֹרָה לְבֵית חֲמִיהָ וְלֹא נַעֲשִׂית אֲפּוֹטְרוֹפִיא – אֵין הִירָשִׁין מְשַׁבְּעִין אוֹתָהּ, וְאִם נַעֲשִׂית אֲפּוֹטְרוֹפִיא – יוֹרְשִׁין מְשַׁבְּעִין אוֹתָהּ עַל הָעֵתִיד לְבָא, וְאֵין מְשַׁבְּעִין אוֹתָהּ עַל שְׁעָבֵר.

שָׁעָבֵר מֵאֵי עֲבִידְתִּיהָ? אָמַר רַב יְהוּדָה אָמַר רַב: עַל אֲפּוֹטְרוֹפִיא שְׁנַעֲשִׂית בְּחַיֵּי הַבַּעַל.

אָבַל בֵּין מִיתָה לְקַבּוּרָה מְשַׁבְּעִין לָהּ, וְרַב מִתְּנָא אָמַר: אֲפִילוּ בֵּין מִיתָה לְקַבּוּרָה לֹא מְשַׁבְּעִין לָהּ. דְּאָמְרִי נַהֲרַדְעִי: לְכַרְגָּא וְלְמוֹזִי וְלְקַבּוּרָה מְזַבְּנִין בְּלֹא אַכְרֹזְתָּא.

It is referring to a woman who became a steward during her husband's lifetime, as it was common for a man to leave his wife in charge of his property while exempting her from taking an oath. Rav Nahman said that Rabba bar Avuh said: It is referring to a woman who claims that she received partial payment of her marriage contract, who must take an oath that she received no more than the amount she admits to. The mishna is referring to a husband who exempted his wife from this oath.

Rav Mordekhai went and said this *halakha* before Rav Ashi and asked him the following question: Granted, according to the one who says that it is referring to a woman who claims that she received partial payment of her marriage contract, it makes sense that it enters her mind that this might happen, as she thinks: Perhaps I will require money, and I will take what I need from my marriage contract up front. And she therefore says to him before their marriage: Write for me that you will not administer an oath to me when I come to collect the rest of my marriage contract. However, according to the one who says that it is referring to a woman who became a steward during her husband's lifetime, did she know beforehand that her husband would establish her as a steward, to know to say to him: Write for me that you will not administer an oath to me?

Rav Ashi said to him: You teach this *halakha* of Rav Yehuda with regard to that part of the mishna, and therefore you find it difficult. We, however, teach it with regard to this part of the mishna: If she went from her husband's grave to her father's house without handling her late husband's property, or in a case where she returned to her father-in-law's house and did not become a steward over the property at all throughout this period, then the heirs cannot administer an oath to her with regard to her actions in their father's lifetime, as the husband exempted her from an oath to the heirs. And if she became a steward, the heirs may administer an oath to her about the future, i.e., anything she did with the property after the death of her husband, but they cannot administer an oath to her with regard to what took place in the past, during her husband's lifetime.

It was with regard to this statement that the Gemara asked: What is the purpose of mentioning the past?^N What oath would they have wanted her to take with regard to the past? And it was in response to this question that Rav Yehuda said that Rav said: It is referring to a woman who became a steward during her husband's lifetime.

The Gemara presents a dispute as to what is considered the past, first continuing the quote from Rav Yehuda: But they can administer an oath to her with regard to her conduct between her husband's death and his burial. And Rav Mattana said: Even concerning her actions between her husband's death and his burial, they cannot administer an oath to her,^{NH} as the Sages of Neharde'a say: For the purpose of paying head tax [*karga*],¹ and for payment to provide for children's sustenance, and for burial,² we sell property inherited by orphans without an announcement. In these urgent matters, the court is not particular about a possible loss incurred by the heirs. Similarly, the woman need not take an oath with regard to how she conducted her affairs for her husband's funeral, because in such a time of stress she cannot manage her accounts in a precise manner.

One who comes to collect from the property of orphans, etc. – **הָבָא לִפְרַע מִנְכָסֵי יְתוּמִים וְכוּ'** – The *ge'onim* write that a general exemption from an oath does not apply to the oath that has to be taken by one coming to collect payment from the property of orphans. However, if the husband said before his death that he is exempting her from an oath, she can collect her marriage contract without an oath. It is explained by the Meiri that the husband's statement at the time of marriage is a general exemption that does not override the enactment of the Sages that one must take an oath when making a claim from property inherited by orphans. If, however, the deceased stated his wishes upon his deathbed, he clearly accepted her claim, and the orphans cannot administer an oath from which she has been exempted by their father.

The Rif and the Rambam likewise rule that if he expressly wrote that she is exempt from an oath to his heirs, even Abba Shaul agrees that she is not obligated to take an oath. Conversely, Rabbeinu Hananel, Rabbeinu Tam, and the Sages of Narbonne disagree, claiming that his exemption is not effective. The Ra'ah explains that there is a ruling of the Sages that even one who is legally exempt from an oath must take an oath before he can collect a debt from orphans, and the exemption provided by the father does not override the decree of the Sages.

אָמַר רַבָּה אָמַר רַבִּי חִיָּיא: "דְּלֵא נְדָר וְדִלֵא שְׁבוּעָה" – הוּא אֵינוּ יְכוּל לְהִשְׁבִּיעָה, אָבֵל יוֹרְשֵׁין מְשַׁבְּעִין אוֹתָהּ. "נְקִי נְדָר נְקִי שְׁבוּעָה" – בֵּין הוּא וּבֵין יוֹרְשֵׁין אֵין מְשַׁבְּעִין אוֹתָהּ, הִכִּי קָאָמַר לָהּ: מְנַקֵּית מְשַׁבְּעָתָא.

וְרַב יוֹסֵף אָמַר רַבִּי חִיָּיא: "דְּלֵא נְדָר וְדִלֵא שְׁבוּעָה" – הוּא אֵינוּ יְכוּל לְהִשְׁבִּיעָה, אָבֵל יוֹרְשֵׁין מְשַׁבְּעִין אוֹתָהּ. "נְקִי נְדָר נְקִי שְׁבוּעָה" – בֵּין הוּא וּבֵין יוֹרְשֵׁין מְשַׁבְּעִין אוֹתָהּ, הִכִּי קָאָמַר לָהּ: נְקִי נִפְשָׁךְ בְּשַׁבְּעָתָא.

שֶׁלַח רַבִּי זְכַּאי לְמַר עוֹקְבָא: בֵּין "דְּלֵא שְׁבוּעָה" בֵּין "דְּנָקִי שְׁבוּעָה" בֵּין "דְּלֵא נְדָר" וּבֵין "דְּנָקִי נְדָר", "בְּנִכְסֵי" – הוּא אֵינוּ יְכוּל לְהִשְׁבִּיעָה, אָבֵל יוֹרְשֵׁין מְשַׁבְּעִין אוֹתָהּ: "מְנַכְסֵי אֵילִין" – בֵּין הוּא וּבֵין יוֹרְשֵׁין אֵין מְשַׁבְּעִין אוֹתָהּ.

אָמַר רַב נַחֲמָן אָמַר שְׁמוּאֵל מִשּׁוּם אָבָא שְׁאֹל בֶּן אִימָא מִרְיָם: בֵּין "דְּלֵא שְׁבוּעָה" בֵּין "דְּנָקִי שְׁבוּעָה" בֵּין "דְּלֵא נְדָר" וּבֵין "דְּנָקִי נְדָר" בֵּין "מְנַכְסֵי" וּבֵין "מְנַכְסֵי אֵילִין" – בֵּין הוּא וּבֵין יוֹרְשֵׁין אֵין מְשַׁבְּעִין אוֹתָהּ, אָבֵל מָה אַעֲשֶׂה, שְׁהָרִי אָמְרוּ חֲכָמִים: הָבָא לִפְרַע מִנְכָסֵי יְתוּמִים לֹא יִפְרַע אֶלָּא בְּשַׁבְּעָה.

וְאִיכָא דְאָמְרִי לָהּ מִתְנִיתָא: אָבָא שְׁאֹל בֶּן אִימָא מִרְיָם אָמַר: בֵּין "דְּלֵא שְׁבוּעָה" בֵּין "דְּנָקִי שְׁבוּעָה" בֵּין "דְּלֵא נְדָר" וּבֵין "נְקִי נְדָר" בֵּין "מְנַכְסֵי" וּבֵין "מְנַכְסֵי אֵילִין" – בֵּין הוּא וּבֵין יוֹרְשֵׁין אֵין מְשַׁבְּעִין אוֹתָהּ, אָבֵל מָה אַעֲשֶׂה שְׁהָרִי אָמְרוּ חֲכָמִים הָבָא לִפְרַע מִנְכָסֵי יְתוּמִים לֹא יִפְרַע אֶלָּא בְּשַׁבְּעָה. אָמַר רַב נַחֲמָן אָמַר שְׁמוּאֵל: הִלְכָה כְּבֵן אִימָא מִרְיָם.

§ Rabba said that Rabbi Hiyya said: If a husband wrote: **Not a vow and not an oath**, this means that **he cannot administer an oath to her, but his heirs can administer an oath to her**. If he wrote: **She is clear**, i.e., exempt, from a vow and clear from an oath, **neither he nor his heirs can administer an oath to her**. This is because in effect **this is what he is saying to her: You are clear from the oath**, no matter who seeks to administer it to you.

But Rav Yosef said that Rabbi Hiyya said the opposite ruling with regard to the second clause: If he wrote: **Not a vow and not an oath**, he cannot administer an oath to her, but his heirs can administer an oath to her. If he wrote: **She is clear from a vow and clear from an oath**, either he or his heirs can administer an oath to her. This is because in effect **this is what he is saying to her: Clear yourself from any suspicion by means of an oath**.

Rabbi Zakkai sent the following ruling to Mar Ukva from Eretz Yisrael: **Whether he wrote: Not an oath**, or **whether he wrote: Clear from an oath**, and **whether he wrote: Not a vow**, or **whether he wrote: Clear from a vow**, if he added the phrase: **With regard to my property**, he cannot administer an oath to her, but his heirs can administer an oath to her. However, if he added the phrase: **From these properties**, neither he nor his heirs can administer an oath to her.

Rav Nahman said that Shmuel said in the name of Abba Shaul ben Imma Miriam:^p **Whether he wrote: Not an oath**, or **whether he wrote: Clear from an oath**, and **whether he wrote: Not a vow**, or **whether he wrote: Clear from a vow**, and **whether he added: From my property**, or **whether he added: From these properties**, neither he nor his heirs can administer an oath to her according to the letter of the law. **However, what can I do**, as the Sages said that **one who comes to collect a debt from the property of orphansⁿ may collect it only by means of an oath?** Therefore, she is compelled to take an oath in any case involving a claim from the orphans.

And some say this *halakha* in the form of a *baraita*, not as a quote from an *amora*: **Abba Shaul ben Imma Miriam said: Whether he wrote: Not an oath**, or **whether he wrote: Clear from an oath**, and **whether he wrote: Not a vow**, or **whether he wrote: Clear from a vow**, and **whether he added: From my property**, or **whether he added: From these properties**, neither he nor his heirs can administer an oath to her according to the letter of the law. **However, what can I do**, as the Sages said that **one who comes to collect a debt from the property of orphans may collect it only by means of an oath?** The Gemara comments: **Rav Nahman said that Shmuel said: The practical halakha is in accordance with the opinion of ben Imma Miriam.**^h

PERSONALITIES

Abba Shaul ben Imma Miriam – **אָבָא שְׁאֹל בֶּן אִימָא מִרְיָם**: The identity and time of this Sage are unknown. The honorary title Abba, meaning father, is an early title that may predate the usage of the title Rabbi. He may have been called by his mother's name in order to distinguish him from other Sages of the same name, such as Abba Shaul, who appears elsewhere

together with him (see 88b), or Abba Shaul ben Botnit. His mother's appellation, Imma, or mother, was likewise an honorary title for an important woman. There are several Sages called after their mothers, who were women of importance in their generation or who had famous lineage.

HALAKHA

The *halakha* is in accordance with ben Imma Miriam – **הִלְכָה** – **כְּבֵן אִימָא מִרְיָם**: If a widow comes to claim sustenance from her late husband's heirs, she must take an oath first, as one may collect from the property of orphans only by means of a vow. The only exception is if the husband explicitly exempted her

from having to take an oath to the orphans. The *halakha* is in accordance with the opinion of Abba Shaul ben Imma Miriam (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:19; *Shulhan Arukh*, *Even HaEzer* 98:6).

One who collects when not in her husband's presence – הנפרעת שלא בפניו – The *ge'onim* write that even if the husband granted her credibility, she must take an oath if he is absent. This is because he granted her credibility only in his presence, as he assumed that if she had received the marriage contract she would not dare lie to his face. Furthermore, if he is not present, there is no way of knowing whether he already paid the marriage contract and received a receipt.

From liened property – מנכסים משועבדים: Virtually all the commentaries agree that in this case the husband cannot empower her to collect her marriage contract without an oath, for the simple reason that he cannot compel those who purchased the liened property to trust her. This case is different from that of the heirs, who replace their father and assume his rights and obligations. The *Rid* disagrees, claiming that he can grant her credibility even with regard to the purchasers, and it is as though their purchase was conducted with the stipulation that they must trust her.

מתני' הפוגמת כתובתה – לא תפרע אלא בשבועה, עד אחד מעידה שהיא פרועה – לא תפרע אלא בשבועה, מנכסי יתומים, ומנכסים משועבדים, ושללא בפניו – לא תפרע אלא בשבועה.

הפוגמת כתובתה ביצד? היתה כתובתה אלף זון, ואמר לה: התקבלת כתובתך, והיא אומרת: לא התקבלתי אלא מנה – לא תפרע אלא בשבועה.

עד אחד מעידה שהיא פרועה ביצד? היתה כתובתה אלף זון, ואמר לה: התקבלת כתובתך, והיא אומרת: לא התקבלתי, ועד אחד מעידה שהיא פרועה – לא תפרע אלא בשבועה.

מנכסים משועבדים ביצד? מכר נכסיו לאחרים, והיא נפרעת מן הלוקחות – לא תפרע אלא בשבועה.

מנכסי יתומים ביצד? מת והניח נכסיו ליתומים, והיא נפרעת מן היתומים – לא תפרע אלא בשבועה.

ושללא בפניו ביצד? הלך לו למדינת הים, והיא נפרעת שלא בפניו – אינה נפרעת אלא בשבועה.

MISHNA A woman who vitiates her marriage contract^H by acknowledging that she has received partial payment can collect the rest of her marriage contract only by means of an oath. Similarly, if one witness testifies that her marriage contract is paid,^H she can collect it only by means of an oath. In any case where she seeks to claim her marriage contract from the property of orphans,^H or from liened property^H that has been sold to a third party, or when not in her husband's presence,^{NH} she can collect it only by means of an oath.

The mishna elaborates: With regard to a woman who vitiates her marriage contract, how so, how does this situation arise? If her marriage contract was a thousand dinars, and her husband said to her: You already received your marriage contract, and she says: I received only one hundred dinars, she has made a partial admission and can collect her marriage contract only by means of an oath.

If one witness testifies that her marriage contract is paid, how so? If her marriage contract was a thousand dinars, and her husband said to her: You already received your marriage contract, and she says: I did not receive payment, and one witness testifies about the marriage contract that it is paid, she can collect it only by means of an oath.

From liened property,^N how so? If while they were married the husband sold his property to others, and she comes to collect her marriage contract from the purchasers, she can collect it only by means of an oath. She may seize property from the purchasers because her husband's obligation undertaken in the marriage contract predates his obligation in the document of sale.

From the property of orphans, how so? If the husband died and left his property to orphans, and she comes to collect her marriage contract from the orphans, she can collect it only by means of an oath.

Or when not in his presence, how so? If he went to a country overseas and sent her a bill of divorce, so that she collects her marriage contract when not in his presence, she can collect it only by means of an oath.

HALAKHA

הפוגמת כתובתה – הפוגמת כתובתה: If the husband claims that he has already paid his wife her marriage contract, and she admits that she has received a partial payment, she must take an oath in order to collect the remainder (Rambam *Sefer Nashim, Hilkhhot Ishut* 16:14; *Shulhan Arukh, Even HaEzer* 96:7).

עד אחד מעידה שהיא פרועה – One witness testifies that it is paid – In a case where the husband claims that he has already paid his wife her marriage contract, and she claims that she received nothing, if one witness testifies that she has collected all or part of her marriage contract, she can claim her entire marriage contract only by means of an oath (Rambam *Sefer Nashim, Hilkhhot Ishut* 16:15; *Shulhan Arukh, Even HaEzer* 96:8).

מנכסי יתומים – From the property of orphans – A woman who seeks to collect her marriage contract from the property of

orphans must take an oath before she can do so (Rambam *Sefer Nashim, Hilkhhot Ishut* 16:19; *Shulhan Arukh, Even HaEzer* 96:1).

מנכסים משועבדים – From liened property – A woman who comes to seize property that was liened to her marriage contract from those who purchased it from her husband, for the payment of her marriage contract, must take an oath before she does so (Rambam *Sefer Nashim, Hilkhhot Ishut* 16:20; *Shulhan Arukh, Even HaEzer* 96:9).

שלא בפניו – Not in his presence – If a woman comes to collect her marriage contract from her ex-husband who had traveled to a distant place, she must first take an oath. If the ex-husband is close enough that a messenger can go there and back within thirty days, the court informs him, and if he fails to arrive, she may take an oath and receive the sum of her marriage contract (Rambam *Sefer Nashim, Hilkhhot Ishut* 16:16; *Shulhan Arukh, Even HaEzer* 96:10).

רבי שמעון אומר: כל זמן שהיא תובעת כתובתה – היורשין משביעין אותה, ואם אינה תובעת כתובתה – אין היורשין משביעין אותה.

גמ' סבר רמי בר חמא למימר: שבועה דאורייתא, דקא טעין מאתים וקא מודה ליה במאה, הווא ליה הודאה במקצת הטענה, וכל המודה במקצת הטענה – ישבע.

אמר רבא: שתי תשובות בדבר; חדא: דכל הנשבעין שבתורה – נשבעין ולא משלמין, והיא – נשבעת ונטלת. ועוד: אין נשבעין על כפירת שטענה קרקעות.

אלא אמר רבא: מדרבנן; דפרע – דייק, דמיפרע – לא דייק, ורמו רבנן שבועה עלה כי היכי דתידיק.

איבעיא להו: פוגמת כתובתה בעדים מהו? אם איתא דפרעה – בעדים הוה פרע לה, או דלמא – איתרמוי איתרמי ליה?

Rabbi Shimon says: Whenever she claims payment of her marriage contract, the heirs administer an oath to her. And if she does not claim payment of her marriage contract, the heirs do not administer an oath to her.

GEMARA Rami bar Hama thought to say that the oath of a woman who vitiates her marriage contract is an oath required by Torah law, which is the oath of one who makes a partial admission, as the husband claims that he paid her two hundred and she concedes to him with regard to one hundred. This is a partial admission of the claim, and the principle is that whoever admits to part of a claim must take an oath^{BH} according to Torah law to receive the remaining amount.

Rava said: There are two answers in the matter, in refutation of your argument: One response is that anyone who is obligated to take an oath that is enumerated in the Torah takes an oath and does not pay. By Torah law, one takes an oath only to exempt himself from payment, and in this case she takes an oath and takes her money. And furthermore, there is a principle that one does not take an oath with regard to a denial of a lien on land.^H The oaths of the Torah apply only to moveable property, not land. This means that if a claim involves a lien on land of any form, the oath of a partial admission does not apply, and a marriage contract includes a lien on land.

Rather, Rava said: This oath is by rabbinic law. It was instituted because the one who pays is precise and recalls that he paid his debt, whereas the one who was paid is not precise.^H When the husband claims to have paid her, he remembers clearly what happened, and therefore the Sages imposed the obligation of an oath upon her, so that she should be precise and remember exactly what occurred.

S A dilemma was raised before the Sages: In a case where a woman vitiates her marriage contract by accepting partial payment in the presence of witnesses,^H what is the *halakha*? Do we say that if it is so that he has paid her the rest of the marriage contract, he would have paid her in the presence of witnesses, and since he has no such witnesses, this is proof that she never received the rest of the money, and she is exempt from an oath? Or perhaps he simply happened to have witnesses for part of the payment, and he gave her the rest without witnesses, and she must take an oath with regard to the remainder of the sum?

HALAKHA

המודה – במקצת הטענה ישבע: One who makes a partial admission to a claim involving moveable property must pay the amount he concedes he owes and take an oath by Torah law concerning the rest (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 11:5; *Shulhan Arukh, Hoshen Mishpat* 87:1).

One does not take an oath with regard to a denial of a lien on land – אין נשבעין על כפירת שטענה קרקעות – If one issues a claim that involves land against another person, then even if the latter made a partial admission he is not obligated to take an oath by Torah law. However, the Sages decreed that he must take an oath of inducement (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 5:1; *Shulhan Arukh, Hoshen Mishpat* 95:1).

One who was paid is not precise – דמיפרע לא דייק – One who vitiates his document can collect the remainder only by means

of an oath. For example, in a case where a lender demanded to be paid back for his loan, and the borrower said that he had returned the entire sum, if the lender admitted that part of it had been paid, he can collect the remainder only by taking an oath in a similar manner to an oath by Torah law (Rambam *Sefer Mishpatim, Hilkhot Malve VeLoveh* 14:1; *Shulhan Arukh, Hoshen Mishpat* 84:1).

A woman vitiates her marriage contract in the presence of witnesses – פוגמת כתובתה בעדים – If a man tells his ex-wife who comes to collect her marriage contract that he has already paid it, and she admits that she has received part of it, then even if she has witnesses with regard to the amount she had received, she must take an oath in order to collect the remainder (Rambam *Sefer Nashim, Hilkhot Ishut* 16:14; *Shulhan Arukh, Even HaEzer* 96:7).

BACKGROUND

Whoever admits to part of a claim must take an oath – כל המודה במקצת הטענה ישבע: In contrast to common law, oaths in a Jewish courtroom are not taken by witnesses. Rather, they are taken by one of the litigants in a case. By Torah law, a defendant is required to take an oath only if a single witness testifies against the defendant or if the defendant makes a partial admission of liability. In such cases, the purpose of the oath is to bolster his claim, and it frees him from payment. The Sages decreed that in a number of cases, several of which are enumerated in the continuation of the Gemara, the claimant is required to take an oath, based upon which the court will require the defendant to pay.

Notebook [*pinkas*] – פנקס: From the Greek *πιναξ*, *pinax*, primarily meaning a tablet used for writing. Over time, this *pinax* developed into a group of several tablets that were connected to form a small book. Although writing tablets in talmudic times varied in shape and were made from various materials, it seems that the most popular kind was a wooden board covered with wax, so that the writing could be easily etched and then erased after each use.

תא שמע: כל הנשבעין שבתורה – נשבעין ולא משלמין. ואלו נשבעין ונוטלין: השכיר, והנגול, והנחבל, ושכנגדו חשוד על השבועה, והנוני על פנקסו, והפוגם שטרו שלא בעדים. שלא בעדים – אין, בעדים – לא!

The Gemara suggests: **Come and hear proof from a mishna (*Shevuot* 44b): Anyone who is obligated to take an oath that is enumerated in the Torah^H takes an oath and does not pay. And these take an oath and take their payment: The hired worker^H who demands his wages from his employer; and one who was robbed;^H and one who was injured,^H who claims compensation from the one who caused him damage; and if the one opposing him, the other litigant in a case, was supposed to take an oath but he is suspected with regard to oaths;^H and a storekeeper who makes a claim on the basis of what is written in his notebook [*pinkaso*];^{LH} and one who receives partial payment of his document not in the presence of witnesses. Conclude from this last clause that if one received partial payment of a document not in the presence of witnesses, then yes, he is obligated to take an oath, but if he received the payment in the presence of witnesses, then no, he is not obligated to take an oath.**

לא מיבעיא קאמר: לא מיבעיא בעדים – דודאי צריכה שבועה, אבל שלא בעדים – אימא תיהוי כמשיב אבידה ותשקול בלא שבועה, קא משמע לן.

The Gemara refutes this argument: The mishna is speaking utilizing the style of: **It is not necessary: It is not necessary** to state that if part of the marriage contract was paid in the presence of witnesses, she certainly requires an oath. However, if a partial payment was made not in the presence of witnesses, one might say that her partial admission should be like one who restores lost property. Since there are no witnesses that the husband paid anything, when she concedes to part of the claim it is as though she has restored to him a lost item. **And she should therefore take the rest of the money without an oath**, in accordance with the *halakha* that one who returns lost property does not have to take an oath that he did not appropriate part of what he found for himself. The *tanna* therefore teaches us that even in this case an oath is required.

איבעיא להו: הפוגמת בתובתה פחות פחות משה פרוטה, מהו? מי אמרינן: בין דקא דייקא כולי האי – קושטא קא אמרה, או דלמא איערומי קא מערמא? תיקו.

A dilemma was raised before the Sages: With regard to a woman who vitiates her marriage contract and details with precision every sum of money that she received, specifying not only large sums of money but also sums so small that they amounted to less than the value of a *peruta*, what is the *halakha*? Do we say that since she is precise to such an extent she must be telling the truth, or perhaps she is deceiving us? This question shall stand unresolved.

HALAKHA

Anyone who is obligated to take an oath that is enumerated in the Torah – כל הנשבעין שבתורה: All obligations of oaths from the Torah serve to exempt the person in question from a claim against him. That is, he takes an oath and does not have to pay. However, in certain cases the Sages decreed that one may take an oath and collect money (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 1:2; *Shulhan Arukh, Hoshen Mishpat* 89:1).

The hired worker – השכיר: If a hired worker has witnesses that he was employed by his employer, and when he claims his wages the employer says he has paid them all or in part, the hired worker must take an oath in a similar manner to an oath by Torah law, after which he may collect his wages (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 1:2; *Shulhan Arukh, Hoshen Mishpat* 89:2).

One who was robbed – הנגול: If one entered the house of another, and witnesses saw that he entered empty-handed and left with items hidden under his clothes, then, with certain limitations, the owner of the house takes an oath and claims from him everything he stole (Rambam *Sefer Nezikin, Hilkhot Gezeila* 4:1,2; *Shulhan Arukh, Hoshen Mishpat* 90:1).

One who was injured – הנחבל: In a case where witnesses saw a

person approach another unharmed and leave with injuries, but they did not observe the attack itself, if the victim claims that the other person injured him he may collect damages by means of an oath (Rambam *Sefer Nezikin, Hilkhot Hovel* 5:4; *Shulhan Arukh, Hoshen Mishpat* 90:16).

The one opposing him is suspected with regard to oaths – שכנגדו חשוד על השבועה: If one is obligated to take an oath by Torah law but is not trusted to do so, then the opposing litigant takes an oath and claims the money (Rambam *Sefer Mishpatim, Hilkhot To'en VeNitan* 2:5; *Shulhan Arukh, Hoshen Mishpat* 92:7).

A storekeeper on the basis of his notebook – הנוני על פנקסו: If an employer instructed a storekeeper to pay his, the employer's, employees, and the employees claim that they did not receive their wages while the storekeeper claims he paid them, then the employees and the storekeeper all take an oath with regard to the truth of their claims, and the employer is obligated to pay what he had owed. There are many details with regard to the conditions under which the storekeeper has the credibility to take such an oath (Rambam *Sefer Mishpatim, Hilkhot Malve VeLoveh* 16:5; *Shulhan Arukh, Hoshen Mishpat* 91:1; see 91:2–9).

איבעיא להו: פוחתת בתובתה מהו?
מי אמרינן – היינו פוגמת, או דלמא:
פוגמת – מודיא במקצת, הא – לא קא
מודיא במקצת?

Another dilemma was raised before the Sages: In the case of a woman who reduces her marriage contract by saying that its sum was less than the usual amount, or less than the figure specified in the document, what is the *halakha*?^N Do we say that this is like the case of a woman who vitiates her marriage contract, and the *halakha* is the same in both instances? Or perhaps there is a difference between the two cases because a woman who vitiates her marriage contract admits to part of the claim, whereas this one does not admit to part of the claim. Here, she claims that she has received nothing at all, but that she is owed less than what was initially thought.

תא שמע: פוחתת – תפרע שלא בשבועה.
ביצוד? היתה בתובתה אלף זוז, ואמר לה:
התקבלת בתובתיך, והיא אומרת: לא
התקבלתי, ואינה אלא מנה – נפרעת שלא
בשבועה.

The Gemara suggests: Come and hear a resolution from a *baraita*: One who reduces her marriage contract^H can collect it without an oath. How so? If her marriage contract was a thousand dinars, and her husband said to her: You have received your marriage contract, and she says: I have not received my marriage contract, but it is only one hundred dinars, she may collect it without an oath.

במאי גביא – בהאי שטרא? האי שטרא
חספא בעלמא הוא! אמר רבא בריה דרבה:
באומרת "אמנה היתה לי ביני לבינו".

The Gemara asks: If her claim is accepted, with what does she in fact collect payment? With this marriage contract document? This document is merely a shard of earthenware, as she herself admits that the document is not a valid document because it records a fictitious sum. Rava, son of Rabba, said: It is referring to one who says: There was an agreement of trust between him and me that although the marriage contract records a large sum, I will claim only part of it, but the document itself is genuine.

"עד אחד מעידה שהיא פרועה" סבר רבא
בר חמא למימר: שבועה דאורייתא, דכתיב
"לא יקום עד אחד באיש לכל עון ולכל
חטאת", לכל עון ולכל חטאת – הוא דאינו
קם, אבל קם הוא לשבועה. ואמר מר: כל
מקום שהשנים מחייבין אותו ממון – אחד
מחייבו שבועה.

§ The mishna teaches that if one witness testifies that the marriage contract was paid she must take an oath. Rami bar Hama thought to say that this is an oath required by Torah law, as it is written: "One witness shall not rise up against a man for any iniquity, or for any sin" (Deuteronomy 19:15). From here it is inferred: It is for any iniquity or for any sin that he may not rise up, i.e., the testimony of one witness is not enough for these purposes, but he may rise up for an oath. And the Master said: In any place, i.e., situation, where two witnesses are able to deem one liable to pay money, the testimony of one witness obligates him to take an oath.^H

אמר רבא: שתי תשובות בדבר; חדא – דכל
הנשבעין שבתורה נשבעין ולא משלמין,
והיא נשבעת ונוטלת. ועוד: אין נשבעין
על כפירת שיעבוד קרקעות.

Rava said: There are two answers in the matter, in refutation of your argument: One response is that anyone who is obligated to take an oath that is enumerated in the Torah takes an oath and does not pay. By Torah law, one takes an oath only to exempt himself from payment, and in this case she takes an oath and takes her money. And furthermore, there is a principle that one does not take an oath with regard to a denial of a lien on land.

אלא אמר רבא: מדרבנן, כדי להפסי דעתו
של בעל.

Rather, Rava said: That oath was instituted by rabbinic law, in order to put the husband's mind at ease. Since a witness contradicts her claim, the Sages imposed an oath upon her so that the husband would be sure that he is not giving away his money for no reason.

אמר רב פפא: Rav Pappa said:

HALAKHA

One who reduces her marriage contract – פוחתת בתובתה – If a woman produces a marriage contract, her former husband claims that he already paid it, and she responds that she received nothing from him but is in fact entitled to less than the stated amount due to an agreement of trust between them, she may collect the sum she claims without taking an oath. The *halakha* follows the *baraita* and the opinion of Rava, son of Rabba (Rambam *Sefer Nashim*, *Hilkhot Ishut* 16:17; *Shulhan Arukh*, *Even HaEzer* 96:14).

אחד מחייבו שבועה – One witness obligates him to take an oath – In any case where two witnesses would obligate one to pay money but there is only one witness, the defendant must take an oath in order to exempt himself from payment (Rambam *Sefer Hafla'a*, *Hilkhot Shevuot* 11:5; *Sefer Mishpatim*, *Hilkhot To'en VeNitan* 1:1; and *Sefer Shofetim*, *Hilkhot Edut* 5:1; *Shulhan Arukh*, *Hoshen Mishpat* 87:1).

She reduces her marriage contract, what is the *halakha* – פוחתת בתובתה מהו – The Ritva asks about the Gemara's question: In this case, unlike the case of a woman who claims to have received partial payment, there is no reason to suspect that she was imprecise with regard to the payment, as she has not received anything. Why, then, is there any reason to think she would be required to take an oath? He answers that this case is still somewhat similar to a partial admission.

It is explained in the Jerusalem Talmud that the difference between a woman who reduces the amount of her marriage contract and a woman who receives partial payment of it is that only in the latter case was there a negotiation between them as to the sum of the first installment, and she might have made a mistake with regard to how much he had actually paid (*Shita Mekubbetzet*).