

And all the people conducted themselves following his example and instructed to take them for burial in linen garments – וְנִהְגוּ כָּל הָעָם אַחֲרָיו לְהוֹצִיא בְּכֵלֵי פִשְׁתָּן: The prevalent custom is to bury the deceased in white linen shrouds, as per the allusion in the Gemara. The Rambam writes that according to the custom of the Sages, the shrouds should be worth no more than a dinar. However, if one wants to add to that sum, he is not reprimanded (Radbaz; Rambam *Sefer Shofetim, Hilkhot Evel* 4:1; *Shulḥan Arukh, Yoreh De'á* 352:2).

LANGUAGE

Rough cloth [tzerada] – צֵרָדָא: In the *Arukh*, this word is written *tzedara*. It is apparently related to the Middle Persian *čādūr*, meaning a veil.

מאי רבן גמליאל? דתניא: בראשונה היתה הוצאת המת קשה לקרוביו יותר ממימתו, עד שהיו מניחים אותו ובורחין. עד שבא רבן גמליאל ונהג קלות בעצמו, והוציאוהו בכלי פשתן. ונהגו כל העם אחריו להוציא בכלי פשתן, אמר רב פפא: והאידינא נהגו עלמא אפילו בערדא בר זוזא.

What is the connection between Rabban Gamliel and a house of mourning? It is as it is taught in a *baraita*: **Initially, the funeral expenditures for the deceased were more taxing for his relatives than his death, as the burials were opulent, until it reached a point where people would abandon the deceased and flee. This continued until Rabbi Gamliel came and conducted himself in a self-deprecatory manner, instructing the people that they were to take him for burial in plain linen garments. And all the people conducted themselves following his example, and instructed their families to take them for burial in plain linen garments.**^H Rav Pappa said: **And today, everyone is accustomed to bury the dead in plain garments, even in rough cloth [tzerada]^L worth one zuz.**

אמר רבי אלעזר: Rabbi Elazar said:

Perek I

Daf 9 Amud a

האומר "פתח פתוח מצאתי" – נאמן לאוסרה עליו.

A groom who says: **I encountered an unobstructed orifice,**^{HN} claiming that when he consummated the marriage he discovered that his bride was not a virgin, **is credible^N to render her forbidden to himself.** Although it is not always possible to corroborate his claim with testimony that his wife committed adultery after betrothal, he is credible to render her forbidden to him as though she had in fact committed adultery.

ואמאי? ספק ספיקא הוא: ספק תחתיו ספק אין תחתיו, ואם תמצא לומר תחתיו – ספק באונס ספק ברצון!

The Gemara asks: **But why** is she forbidden to him? It is a case of **compound uncertainty.**^N It is **uncertain** whether she engaged in intercourse while **under his jurisdiction**, after betrothal, in which case she would be forbidden to him, and it is **uncertain** whether she engaged in intercourse while **not under his jurisdiction**, in which case she would not be forbidden to him. **And if you say** that she engaged in intercourse while **under his jurisdiction**, it is **uncertain** whether she engaged in intercourse **by coercion**, in which case she would not be forbidden to him, and it is **uncertain** whether she engaged in intercourse **willingly**, in which case she would be forbidden to him. In cases of compound uncertainty, the ruling is lenient. Why, then, is his claim deemed credible?

HALAKHA

A groom who says: I encountered an unobstructed orifice – האומר פתח פתוח מצאתי: If a priest betroths a woman, marries her after a period of time, and claims that he discovered that his wife was not a virgin when consummating the marriage, then the woman is forbidden to him, as there is only one uncertainty, whether she lost her virginity before or after she was betrothed to her husband. However, if the man is not a priest, the woman is permitted to her husband, as there is compound uncertainty: Did she lose her virginity before or after betrothal? And even if she lost her virginity after betrothal, it may have been by means of rape, in which case she is not forbidden to her non-priest husband (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:10; *Shulḥan Arukh, Even HaEzer* 68:7).

NOTES

I encountered an unobstructed orifice – פתח פתוח מצאתי: A fundamental question addressed by all the early commentaries is: What of the bleeding that accompanies rupture of the hymen? The presence or absence of blood clearly indicates whether or not a woman is a virgin. Rashi explains that perhaps the Gemara is referring to a woman from a family where the women do not bleed from a ruptured hymen, or perhaps the sheet was lost and it cannot be ascertained whether or not there was bleeding. Rabbeinu Hananel explains that the Gemara is dealing with a grown woman who does not bleed, although her hymen is intact (see *Tosafot*). The Ramban explains that even if there was bleeding, the groom could claim that it was the result of a wound or deceit. The Meiri adds that he could claim that it was menstrual blood.

With regard to the case itself, the groom is making a claim that cannot be corroborated by witnesses. Therefore, the matter is entirely dependent on the credibility of the husband and whether he is sufficiently knowledgeable to ascertain the matter.

Credible – נאמן: The early commentaries write that the groom is accorded credibility specifically when the bride denies the matter, claiming that she is a virgin and the husband is falsely

accusing her, or when she remains silent. However, if she can explain the lack of a hymen by claiming that she was raped or that she engaged in intercourse before betrothal, or that her hymen was ruptured by a foreign object, she is accorded credibility not only with regard to monetary claims, i.e., that she does not lose the right to payment of the marriage contract, but also with regard to the prohibition, i.e., she is not forbidden to her husband as an adulteress. This is because the husband's claim is not a certain one, as even if it is true that the orifice was unobstructed, he can only speculate how that came to be, while hers is a certain claim.

The early commentaries also question why the court doesn't make one of those effective claims on her behalf if she remains silent. They answer that the court does not do so because those occurrences are rare.

It is a case of compound uncertainty – ספק ספיקא הוא: This principle that the ruling is lenient in cases where there are multiple elements of uncertainty is unique to the Babylonian Talmud. According to the Jerusalem Talmud, she remains forbidden to him, just as she is in the case of *sota*, where he suspects that she committed adultery, although he is not accorded credibility to prohibit her to others or to void her marriage contract.

Various explanations were proposed with regard to the reason that the ruling is lenient in cases of compound uncertainty. The Rambam is of the opinion that in any case of uncertainty with regard to a Torah prohibition, the ruling is lenient by Torah law. The stringent ruling in those cases is by rabbinic law. Therefore, the second uncertainty is uncertainty with regard to a rabbinic prohibition, in which case the ruling is lenient.

According to *Tosafot*, who maintain that in any case of uncertainty with regard to a Torah prohibition the ruling is stringent by Torah law, the reason for leniency in the case of compound uncertainty is, according to the Rashba, based on the principle of majority. Since any uncertainty is essentially an equally balanced uncertainty, with each possibility carrying a probability of 50 percent, the second uncertainty, which is based on one of those possibilities, carries with it only a 25 percent probability of prohibition. The *Shakh*, in his summary of the principles of compound uncertainty (*Yoreh De'á* 110), writes that not every case of multiple uncertainties has the legal status of a compound uncertainty. In addition, based on the modern discipline of statistics and probability, there are cases where the elements of uncertainty are factored together and others where they are not. Later authorities greatly elaborate on this topic, conceptually and practically.

In the case of the wife of a priest – באשת כהן: The Ramban asks: Why is there not a compound uncertainty in this case as well, as, even if the women's hymens were ruptured after betrothal, perhaps it was ruptured by a foreign object and she is permitted to her husband? He answers that there is an additional reason to rule stringently, as, even if the hymen were ruptured before betrothal, a woman who had relations with one disqualified from entering the congregation of Israel renders her forbidden to a priest. Others answer that, as cited previously, the possibility that her hymen was ruptured by a foreign object is uncommon and therefore cannot be classified as an uncertainty. The early commentaries discuss at length whether or not that circumstance is uncommon.

Only over matters of jealous warning and seclusion – אלא על עסקי קינוי וסתירה: The Ritva proves at length that this statement is not to be taken literally. If it were to be taken literally, even if a man actually witnessed his wife committing adultery she would not be forbidden to him. He therefore explains that the Gemara means that in a case of uncertainty, where there is no full-fledged testimony that she committed adultery, a woman is rendered forbidden to her husband only through warning followed by seclusion. Others reject his proof and explain that perhaps Rabbi Elazar maintains that by Torah law a woman is rendered forbidden to her husband only by means of the testimony of witnesses, and the Gemara can be explained that in bringing his wife to court, the matter will be publicized and witnesses will come to testify against her (Rabbi Akiva Eiger).

And as it was in the incident that transpired – וכמעשה שיהיה: Rabbeinu Hananel explains that there is a tradition that the incident in question is the incident involving David and Bathsheba, and the reference is obscure in deference to David. He adds that the correct understanding of the Gemara is: Either over matters of jealous warning and seclusion or as it was in the incident that transpired.

HALAKHA

In a case where her father accepted her betrothal when she was less than three years and one day old – וכגון: דקביל בה אבוא קידושין פחותה מבת שלש שנים ויום אחד: If a man accepts betrothal on behalf of his daughter when she is less than three years and one day old, and if her husband claims that when consummating the marriage he discovered that his wife is not a virgin, she is forbidden to her husband. In that case, there is only one uncertainty: Whether or not she was raped. She could not have lost her virginity before betrothal, as the hymen of a girl younger than three years old does not rupture (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:11; *Shulhan Arukh, Even HaEzer* 68:7).

A man who says to a woman: I betrothed you – האומר: לאשה קדשתך: If a man says to a woman that he betrothed her in the presence of two witnesses who are currently unavailable to testify, e.g., they died or moved, and she claims that she had never been betrothed to him, it is prohibited for him to marry any of her relatives, e.g., her mother or sister, but it is permitted for her to marry any of his relatives (Rambam *Sefer Nashim, Hilkhot Ishut* 9:15–16; *Shulhan Arukh, Even HaEzer* 48:5).

לא צריכא באשת כהן. ואיבעית אימא באשת ישראל, וכגון דקביל בה אבוא קידושין פחותה מבת שלש שנים ויום אחד.

מאי קא משמע לן? תנינא. האומר לאשה "קדשתך". והיא אומרת "לא קדשתני" – היא מותרת בקרובי, והוא אסור בקרובותיה!

מהו דתימא: התם דודאי קים ליה, אבל הכא – מיקם הוא דלא קים ליה, קא משמע לן.

ומי אמר רבי אלעזר הכי? והאמר רבי אלעזר: אין האשה נאסרת על בעלה: אלא על עסקי קינוי וסתירה, וכמעשה שיהיה!

והסתברא, מעשה שיהיה בקינוי וסתירה הוה? ועוד: מי אסרוה?

הא לא קשיא: הכי קאמר: אין האשה נאסרת על בעלה אלא על עסקי קינוי וסתירה, ממעשה שיהיה דלא הוה קינוי וסתירה, ולא איתפרא. מכל מקום קשיא: קינוי וסתירה – אין, פתח פתוח – לא!

ולטעמין, קינוי וסתירה – אין, עדים – לא?

No, it is necessary to teach this ruling only in the case of the wife of a priest,^N who is rendered forbidden to her husband even if she engaged in intercourse by coercion. In that case, there is a single uncertainty. And if you wish, say instead that this ruling is relevant even to the wife of an Israelite, and it is in a case where her father accepted her betrothal when she was less than three years and one day old.^H Intercourse with a girl less than three years old does not permanently rupture the hymen, and therefore there is no uncertainty whether she engaged in intercourse before or after betrothal. Clearly, it took place after betrothal, and there is only one uncertainty: Did she engage in intercourse by coercion or willingly?

The Gemara asks: If this is a case where there is only one uncertainty, **what is it teaching us?** We already learned this explicitly: With regard to a man who says to a woman: **I betrothed you,^H and she says: You did not betroth me,** and there are no witnesses to corroborate either claim, **she is permitted to marry any of his relatives, e.g., his brother, because based on her claim they are not related. And it is prohibited for him to marry her relatives,** as based on his claim she is his betrothed. Apparently, one is capable of creating a prohibition for himself without corroborating witnesses.

The Gemara says that it was necessary to teach the case of the claim of virginity, **lest you say: There, where certainly it is clear to him that he betrothed her, it is prohibited for him to marry her relatives. However, here, perhaps it is not clear to him that she was not a virgin, as he is not experienced in these matters and is mistaken. Therefore, Rabbi Elazar teaches us that his claim is nevertheless credible and she is forbidden to him.**

And did Rabbi Elazar say that? But didn't Rabbi Elazar say: A woman is forbidden to her husband due to adultery, only over matters of jealous warning and seclusion,^N and as it was in the incident that transpired^N involving David and Bathsheba? A wife is forbidden to her husband only in a case where he warns her not to seclude herself with a certain man and witnesses testify that she subsequently entered into seclusion with him.

And how can you understand it in that manner? Was the incident that transpired with jealous warning and seclusion? Furthermore, did the Sages render Bathsheba forbidden to her husband? Had she been forbidden to her husband, she would have also been forbidden to David, based on the following principle: Just as an adulteress is forbidden to her husband, she is also forbidden to her paramour.

That is not difficult, as this is what Rabbi Elazar is saying: The fact that a woman is forbidden to her husband due to adultery **only over matters of jealous warning and seclusion is derived from the incident that transpired involving David and Bathsheba, as there was no jealous warning and seclusion, and therefore she was not forbidden to her husband. In any case, it is difficult, as the statements of Rabbi Elazar are contradictory. It may be inferred: By means of jealous warning and seclusion, yes, a man renders his wife forbidden to him; by means of the claim that he encountered an unobstructed orifice, no, he does not render her forbidden.**

The Gemara rejects that inference: **And according to your reasoning, that the statement of Rabbi Elazar restricts to jealous warning and seclusion the manner in which a husband can render his wife forbidden, infer: By means of jealous warning and seclusion, yes, a man renders his wife forbidden to him; by means of the testimony of two witnesses that she engaged in adulterous relations, no, he does not render her forbidden. That cannot be so, as clearly two witnesses establish her as one who committed adultery and render her forbidden to her husband.**

אֵלָא הָכִי קָאָמַר: אִין הָאִשָּׁה נֶאֱסְרָת
עַל בְּעֻלָּהּ בְּעֵד אֶחָד אֵלָא בְּשְׁנֵי עֵדִים,
וְקִינֵי וְסִתְעֵרָה – אֶפִּילוּ בְּעֵד אֶחָד נְמִי,
וּפְתַח פְּתוּחַ – כְּשֵׁנֵי עֵדִים דְּמִי.

The Gemara explains: **Rather, this is what Rabbi Elazar is saying: A woman is not rendered forbidden to her husband through the testimony of one witness. Rather, she is rendered forbidden only by means of the testimony of two witnesses^H who testify that she engaged in adulterous relations. And if there was jealous warning and seclusion, she is rendered forbidden even by means of the testimony of one witness as well,^H if he comes after the husband warned his wife and testifies that she engaged in adulterous relations. And the legal status of the claim: I encountered an unobstructed orifice, is like that of two witnesses, and it renders her forbidden even without jealous warning and seclusion.**

וְכִי תִימָא: מַעֲשֵׂה שְׁהִיָּה מִפְּנֵי מָה לָא
אֶסְרָה – הָתָם אוֹנָס הוּוּ. וְאִיבְעִית
אִימָא, כִּי הָא דְאָמַר רַבִּי שְׁמוּאֵל בְּר
נַחְמָנִי אָמַר רַבִּי יוֹנָתָן:

And if you would say with regard to the incident that transpired involving David and Bathsheba: For what reason did the Sages not deem her forbidden, when clearly David committed adultery with a married woman? The Gemara answers: There it was rape, and she did not engage in intercourse willingly. And if you wish, say instead^N that the Sages did not deem her forbidden, as that which Rabbi Shmuel bar Nahmani said that Rabbi Yonatan said:

NOTES

And if you wish, say instead – ואיבעית אימא – There is a practical halakhic difference between these two answers. According to the first, since a woman who is raped is not forbidden to her husband, after her husband dies she would be permitted to the rapist. Although the rapist raped her intentionally, the reason that a woman who commits adultery is forbidden to her paramour is based only on her being forbidden to her husband (*Beit Shmuel*). Others add that this is dependent on a tannaitic

dispute (*Sota* 28a) with regard to the source of her prohibition to her paramour. If it is derived from an amplification in the verse that prohibits her to the husband, then she is not forbidden to the rapist since she is not forbidden to her husband. However, if there is an independent source for her prohibition to the paramour, it is entirely possible that she is forbidden to the rapist even in the absence of a prohibition to her husband, if he has died (*Hatam Sofer*).

A woman is not rendered forbidden to her husband... Rather, only by means of the testimony of two witnesses – אין האשה נאסרת על בעלה...אלא בשני עדים – Although the Sages said that one who notices improper conduct in his wife, leading him to the conclusion that his wife committed adultery, is obligated to divorce her, the court compels him to divorce her only when there are two witnesses who testify that they saw the woman committing adultery of her own volition (Rambam *Sefer Nashim, Hilkhhot Ishut* 24:18; *Tur, Even HaEzer* 115; *Shulhan Arukh, Even HaEzer* 11:1).

And if there was jealous warning and seclusion, even by means of the testimony of one witness as well – וקיני וסיתרה אפילו בעד אחד נמי If a man grows suspicious of his wife and warns her not to enter into seclusion with a specific man, then even if only a single witness testifies that she engaged in relations with that man, she does not drink the ritual water of a *sota*, but rather he divorces her immediately and she does not receive payment of her marriage contract. This is the case even if the witness is one who is ordinarily disqualified from giving testimony, e.g., a relative (Rambam *Sefer Nashim, Hilkhhot Sota* 1:14–15; *Shulhan Arukh, Even HaEzer* 178:14).

Perek I

Daf 9 Amud b

כָּל הַיּוֹצֵא לְמַלְחָמָת בֵּית דָּוִד גָּט
כְּרִיתוֹת כּוֹתֵב לְאִשּׁוֹתָיו, דְּכָתִיב “וְאָת
אֶחֱיֶיךָ תִּפְקֹד לְשָׁלוֹם וְאָת עֲרֻבְתָּם
תִּקַּח”. מֵאִי “וְאָת עֲרֻבְתָּם תִּקַּח” –
תָּנִי רַב יוֹסֵף: דְּבָרִים הַמְעוֹרְבִין בֵּינָם
לְבִינָהּ.

Anyone who goes to a war waged by the royal house of David writes a conditional bill of divorce to his wife.^N This was done to prevent a situation in which the wife of the soldier would be unable to remarry because her husband did not return from battle and there were no witnesses with regard to his fate. The conditional bill of divorce accorded the wife the status of a divorcée and freed her to remarry, as it is written: “And to your brothers bring greetings and take their pledge [*arubatam*]” (1 Samuel 17:18).^N What is the meaning of: And take *arubatam*? Rav Yosef taught: It is referring to matters that are shared [*hame'oravin*] between the husband and his wife, i.e., marriage. Since apparently it was customary for men at war to send their wives a conditional divorce, and since Uriah later died, Bathsheba assumed divorced status retroactively from the time that he set out to war. Therefore, she was not forbidden to David.

NOTES

Writes a conditional bill of divorce to his wife – גט כריתות – From Rashi's explanation, it appears that this was a bill of divorce that was given conditionally, to take effect if the husband dies at war, to spare his wife the obligation to enter into levirate marriage with her brother-in-law. The question is raised: If that is its purpose, it affects only a small segment of the population, i.e., men with a brother and no children. Rather, to prevent their wives from assuming the status of a deserted wife, all those going out to war would write a conditional bill of divorce that would take effect retroactively from the time the bill of divorce was written (*Tosafot*; Ramban).

Another problem discussed is with regard to the legal status of the wife between receipt of the bill of divorce and the husband's failure to return. *Tosafot* note that there is a tannaitic dispute whether during that interim period the woman

is considered married or divorced. Apparently, according to the opinion in the Gemara that Uriah gave his wife a conditional bill of divorce, it is determined retroactively that she was not married in the interim. However, many authorities question that from the statement in *Bava Metzia* (59a), where Bathsheba is characterized, even according to that opinion, as a woman whose marital status is uncertain, not a woman who is considered divorced and permitted.

Tosafot explain simply that at the time that David had relations with Bathsheba, there was uncertainty with regard to whether or not Uriah would return. The Ramban explains that although the matter was ultimately resolved, David did not know what the resolution would be when he engaged in relations with Bathsheba. Therefore, ostensibly he engaged in relations with a woman whose marital status is uncertain.

Rabbeinu Tam (see *Tosafot*) explains the Gemara in its plain sense, as follows: Those going to war, who were uncertain about their fate, would write an unconditional bill of divorce and divorce their wives; upon their return, they betrothed and married them a second time. Therefore, David did not commit even an uncertain transgression; nevertheless, taking Uriah's wife before it became clear that Uriah died in battle was despicable.

As it is written...and take their pledge – ואת ערבותם דכתבי... Although this verse is written with regard to the wars of King Saul, apparently it was the custom of Yishai, David's father. When David assumed the throne, he taught this practice to all his troops (Ritva; see Rashi).

On Thursday, no – ליום המשי לא: Some ask: Why is this inference necessary, when the reason for this ordinance, i.e., to enable him to go to court the next day and make the claim concerning virginity, is articulated explicitly in the mishna? Rashi explains that if the groom marries on Thursday, he would need to wait several days until Monday.

The *Shita Mekubbetzet* cites an explanation why Thursday is emphasized rather than simply another day: The blessing to procreate, “Be fruitful, and multiply” (Genesis 1:22), was first stated on Thursday, and therefore one might think that marriage can be held on Thursday. Even so, the Sages insisted that a virgin should marry specifically on Wednesday. The inference was necessary to prove that the Sages were concerned that the groom’s resolve will cool, and therefore it is clear that they were concerned due to the prohibition.

His resolve will cool – איקרורי דעתא: The distinction between the claim of an unobstructed orifice and a claim that there was no blood from the rupture of the hymen is that in the former case the groom lacks confidence in his claim and is concerned that perhaps he is mistaken, either due to his lack of sexual experience or due to his lack of familiarity with a woman’s body. Therefore, with the passage of time, if he grows fond of his bride, or as it is phrased in the Jerusalem Talmud, his acquisition is pleasant in his eyes, the feeling he had when he consummated the marriage and discovered an unobstructed orifice is forgotten. However, with regard to a claim of the lack of blood, there is no uncertainty or lack of confidence and the passage of time will not compromise that fact (see *Tosafot*; Ritva).

Where he makes the claim that there was no blood – דקטעין טענת דמים: The commentaries discuss the difference between these two claims at length, and there are different opinions with regard to both the explanation and the halakhic implications of that difference. Some say that in the claim of an unobstructed orifice, there is concern that he is lying, and there is no way to disprove his claim. In the claim that there was no blood, she could bring proof to refute that claim (Rabbeinu Hananel). Rashi explains that in a claim of an unobstructed orifice, there is uncertainty with regard to the degree of the husband’s expertise in those matters. Accordingly, there would be a distinction between a bachelor and one who was previously married. The claim that there was no blood requires no expertise. Others explain on a similar note that the claim of an unobstructed orifice is based on feeling and the claim of blood is based on empirical evidence and can be verified (see Ramban; Rashba).

He is deemed credible with regard to causing her to lose her marriage contract – נאמן להפסידה כתובה: There are numerous opinions among the early commentaries with regard to the relationship between the statements of Rav Yehuda in the name of Shmuel and the earlier statement of Rabbi Elazar that the groom is deemed credible with regard to rendering her forbidden to him. Some suggest that Shmuel agrees with Rabbi Elazar, i.e., that she is forbidden to the husband; he is merely adding that she loses her marriage contract. Others are of the opinion that Shmuel holds that the groom is accorded credibility only with regard to losing the marriage contract but not to rendering her forbidden to him (see *Tosafot*; Ramban).

Yet others claim that the Sages agree with each other, but that each formulates the ruling in a far-reaching and novel manner. Rabbi Elazar holds that the fact that she is forbidden is a more novel element, as despite her presumptive status of being permitted, she is rendered forbidden by his claim. In contrast, the fact that his claim is credible in monetary matters is clear, as the burden of proof is incumbent upon the claimant. On the other hand, Shmuel holds that he is accorded credibility with regard to the monetary issue, where there is room for leniency, as stringency for one party is leniency for the other. Once his claim is deemed credible with regard to the marriage contract, the result is that she is forbidden, as with regard to the prohibition there is certainly greater concern (Ritva).

אמר אביי: אף אגן נמי תנינא, בתולה נשאת ליום הרביעי. ליום רביעי – אין, ליום המשי – לא, מאי טעמא – משום איקרורי דעתא.

ולמאי? אי למיתב לה כתובה – ניתב לה, אלא לאוסרה עליו, ודקא טעין טענה.

מאי לאו דקטעין טענת פתח פתוח! לא, דקטעין טענת דמים.

אמר רב יהודה אמר שמואל: האומר פתח פתוח מצאתי נאמן להפסידה כתובתה. אמר רב יוסף: מאי קא משמע לן? תנינא: האוכל אצל חמיו ביהודה שלא בעדים – אינו יכול לטעון טענת בתולים, מפני שמתיהוד עמה. ביהודה הוא דלא מצוי טעין, הא בגליל – מצוי טעין.

Ⓢ Apropos the credibility of the claim: I encountered an unobstructed orifice, **Abaye said: We, too, learn** in the mishna proof for the opinion of Rabbi Elazar: **A virgin is married on Wednesday.** Abaye infers: **On Wednesday, yes, a virgin is married; on Thursday, no,**^N she is not married. **What is the reason** for this ruling? It is **due to the fact that** if the marriage were to be held on Thursday, several days would elapse before the court would next convene, and in the interim **his resolve will cool**^N and his anger subside. The concern is that consequently he will fail to claim before the court that his bride was not a virgin.

The Gemara asks: **And for what matter** is that a source of concern? If the concern is with regard to **giving her** payment for her **marriage contract**, i.e., if he fails to go to court, her legal status at the time of marriage will remain that of a virgin, and when the time comes she will receive payment for her marriage contract to which she is not entitled; then **let him give it to her** if he wishes. Why is that a concern? **Rather, it is** with regard to **rendering her forbidden to him**, and that would result in a case **where he makes a claim.**

What, is it not referring to a case **where he makes the claim:** I encountered an **unobstructed orifice**, after engaging in intercourse with his bride, and his claim is accorded credibility to render her forbidden to him in accordance with the opinion of Rabbi Elazar? The Gemara rejects that proof: **No**, it can be explained that it is a case **where he makes the claim** that there was no **blood**,^{NHB} which would have resulted from rupture of the hymen had she been a virgin. That is a claim based on objective, verifiable evidence and not merely dependent on his subjective sensation.

Ⓢ Rav Yehuda said that Shmuel said that a groom who says: **I encountered an unobstructed orifice, is deemed credible** with regard to **causing her to lose her marriage contract.**^N Rav Yosef said: **What is he teaching us?** We already learned explicitly in a mishna (12a): **A man who eats at the house of his father-in-law in Judea after betrothal, without witnesses** to attest to the fact that he was not alone with her, **cannot make a claim about his bride’s virginity after marriage, because** in accordance with the custom in Judea, the assumption is **that he secluded himself with her** and it was he who engaged in intercourse with her. The Gemara infers: **It is in Judea that he cannot claim** that she is not a virgin, **but in the Galilee, he can claim** that this is the case.

HALAKHA

The claim of an unobstructed orifice and the claim that there was no blood – טענת פתח פתוח וטענת דמים: If the groom claims after engaging in intercourse with his virgin bride for the first time that she is not a virgin, based on the absence of blood from the ruptured hymen, and that absence cannot be attributed to illness, malnutrition, or a genetic anomaly, his claim is accepted, whether the woman in question is an adult or a minor. If, however, his claim that she is not a virgin is based on encountering an unobstructed orifice and she is a grown woman, i.e., more than twelve and

a half years old, his claim is not accepted and it is attributed to the fact that he did not sense that the hymen was intact. If she is a young woman, i.e., less than twelve and a half years old, his claim is accepted even if there is evidence of bleeding (Rambam). Others maintain that if there is blood, the claim of an unobstructed orifice is not accepted, even if the bride is less than twelve and half years old years old (Ri; Ramban; Rashba; Rambam *Sefer Nashim, Hilkhot Ishut* 11:12–13; *Shulhan Arukh, Even HaEzer* 68:3, 6).

BACKGROUND

An unobstructed orifice and blood – פתח פתוח ודמים: Most women have some opening in the hymen, the size of which varies from woman to woman and is influenced by age. If the opening is relatively large it is conceivable that one could engage in intercourse with a virgin without encountering that membrane at all. Nevertheless, if the hymen is at all ruptured

it bleeds. However, unlike bleeding, where there is a clear, objective criterion to determine the matter, his sensing that he encountered an unobstructed orifice is subjective. It is entirely possible that the hymen was intact, but it simply had a relatively large opening (see 36a).

To cause her to lose her marriage contract – לְהַפְסִידָהּ – כְּתוּבָתָהּ: The Gemara later (13a) cites a dispute among the *amora'im* whether this means that she loses the marriage contract of two hundred dinars to which a virgin is entitled, and instead receives one hundred as a non-virgin, or whether she loses her entire marriage contract, since the entire marriage was based on false pretenses and is therefore a mistaken transaction. The early halakhic authorities (Rif, citing Rav Hai Gaon) write that the dispute is only with regard to the standard payment of the marriage contract. However, the groom is required to pay any sum that he committed to add to the marriage contract.

In Judea... where he makes the claim that there was no blood – בְּיְהוּדָה... דְּקָא טַעֲיִן טַעֲנַת דְּמִים: Some explain that with regard to the claim of an unobstructed orifice, it is conceivable that they engaged in intercourse while betrothed and were both under the impression that it was not full-fledged intercourse. However, with regard to bleeding, had they engaged in intercourse in Judea, and she saw blood, she would have told both him and her parents, to avoid suspicion later. However, if she said nothing at the time, it is likely that she had engaged in intercourse with another man (*Tosefot Yeshanim*).

וְלִמָּאִי אִי לְאוֹסְרָהּ עָלָיו – בִּיהוּדָה אִמָּאִי לָא? אֵלָּא לָא – לְהַפְסִידָהּ כְּתוּבָתָהּ, וְדְקָא טַעֲיִן טַעֲנָהּ, מָאִי לָא דְקָא טַעֲיִן טַעֲנַת "פְּתַח פְּתוּחָהּ"! לָא, דְּקָא טַעֲיִן טַעֲנַת דְּמִים.

The Gemara asks: **And for what matter is this claim directed? If it is to render her forbidden to him, then in Judea why is the claim not credible?** If he is certain that he did not engage in intercourse with her, and finds that she is not a virgin, apparently she committed adultery and that claim should render her forbidden. **Rather, is it not that he is seeking to cause her to lose her marriage contract^N in a case where he makes a claim? And what, is it not referring to a case where he makes the claim: I encountered an unobstructed orifice, and apparently he is accorded credibility? The Gemara rejects that proof: No, it can be explained that it is a case where he makes the claim that there was no blood.^N**

Perek I

Daf 10 Amud a

אֵיתִּמְר, אָמַר רַב נַחֲמָן אָמַר שְׁמוּאֵל מִשּׁוּם רַבֵּי שְׁמַעוֹן בֶּן אֶלְעָזָר: חֲכָמִים תִּקְנוּ לָהֶם לְבָנוֹת יִשְׂרָאֵל, לְבִתּוּלָה מְאֵתִים, וְלִלְמִנָּה מְנָה, וְהֵם הָאֲמִינוּהוּ, שְׂאֵם אָמַר "פְּתַח פְּתוּחָהּ מִצְאָתִי" נֶאֱמַן. אִם בֶּן מָה הוֹעִילוּ חֲכָמִים בְּתִקְנָתָם?

§ It was stated: Rav Nahman said that Shmuel said in the name of Rabbi Shimon ben Elazar: The Sages instituted the marriage contract for Jewish women:^N For a virgin two hundred dinars^N and for a widow one hundred dinars.^H And they deemed the groom credible in that if he says with regard to his virgin bride: **I encountered an unobstructed orifice and she is not a virgin, he is deemed credible, causing her to lose her marriage contract.** The Gemara asks: **If so, and the Sages deemed him credible, what did the Sages accomplish in their ordinance that the marriage contract of a virgin is two hundred dinars, if his claim that she is not a virgin is effective?**

אָמַר רַבָּא: חֲזָקָה, אִין אָדָם טוֹרַח בְּסַעוּדָה וּמִפְסִידָהּ.

Rava said: The ordinance is effective due to the **presumption that a person does not^N exert himself to prepare a wedding feast and then cause it to be lost.^N** Investing in the wedding preparations clearly indicates that the groom's intention is to marry the bride and rejoice with her. If, nevertheless, he claims that she is not a virgin, apparently he is telling the truth.

HALAKHA

For a virgin two hundred dinars and for a widow one hundred dinars – לְבִתּוּלָה מְאֵתִים וְלִלְמִנָּה מְנָה: If a man marries a virgin, even if she was widowed or divorced after betrothal to another man, she is entitled to a marriage contract of two hundred dinars. However, if a man marries a woman who was widowed or divorced after marriage to another man, or who engaged in sexual relations while single, she is entitled to a marriage contract of one hundred dinars (Rambam *Sefer Nashim, Hilkhot Ishut* 11:1; *Shulhan Arukh, Even HaEzer* 66:6, 67:1-2).

NOTES

The Sages instituted the marriage contract for Jewish women – חֲכָמִים תִּקְנוּ לָהֶם לְבָנוֹת יִשְׂרָאֵל: Rashi states that the Gemara explained the fact that the Sages accorded credibility to the claim of the groom to void the marriage contract, by stating that the marriage contract is an obligation by rabbinic law. The commentaries discuss why his claim would not be accepted if it was an obligation by Torah law.

For a virgin two hundred dinars – לְבִתּוּלָה מְאֵתִים: According to Rabban Shimon ben Gamliel, who holds that the marriage contract is an obligation by Torah law, the source of two hundred dinars for a virgin is clear, as that is the sum of the dowry of a virgin in the Torah. According to the Rabbis, who hold that it is an obligation by rabbinic law, the reason that the Sages instituted two hundred dinars is that they concluded that one with that sum, which was approximately the basic annual wage, is not considered poor, and they sought to ensure that the divorcee or widow would not be dependent on the aid of society. For a widow, who already received a certain sum from

the marriage contract of her first husband, one hundred dinars was sufficient (*Ramat Shmuel*).

The presumption that a person does not, etc. – חֲזָקָה אִין אָדָם: The early commentaries discuss the fundamental legal situation with regard to the woman's claim that she is entitled to payment of the marriage contract. On the one hand, since the husband is currently in possession of the disputed funds, the burden of proof is incumbent upon the woman, who is the claimant in this case. On the other hand, the woman's claim is supported by the presumptive status of her body, as most women marry as virgins. As a rule, the presumptive status of her body takes precedence over the possession of disputed property. Therefore, it was necessary to buttress the husband's claim with an additional presumption: A person does not exert himself to prepare a wedding feast and then cause it to be lost.

A person does not exert himself to prepare a wedding feast and then cause it to be lost – אִין אָדָם טוֹרַח בְּסַעוּדָה וּמִפְסִידָהּ: *Tosafot* infer that this presumption is relevant only in a case where he stands to lose his entire investment in the feast because the wedding is voided, e.g., where the groom is a priest and therefore there is only one uncertainty, or where he claims that the betrothal was a mistaken transaction. However, if his claim is merely to reduce the marriage contract payment to the one hundred dinars of a non-virgin, his claim is not accorded credibility. Similarly, the Rosh explains that in any case where his intention is for her to remain his wife, then since he doesn't actually lose the value of the entire feast, his claim is not credible. The Ramban writes that the primary reason is not that he will lose the money invested in the feast, but rather, in a broader sense, that a person does not get married in order to immediately cast aspersions upon the woman he just married. Or, as he phrased it: A person does not spit in the cup from which he is drinking. According to all of these explanations, the groom's credibility is based on the assumption that he will behave rationally.