מַאי לָאו בְּהָא קָא מִיפַּלְגִי; דְּמָר סָבַר: אַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ – יֵשׁ לָהֶן כְּתוּבַּת בְּנִין דִּכְרִין, וּמָר סָבַר: אַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ – אֵין לָהֶם כְּתוּבַּת בְּנִין דִּכְרִין.

What, is it not that **they disagree with regard to** the following: One **Sage,** Rabbi Shimon, **holds** that in a case where **one** wife died **in his lifetime and one** died following **his death,** the sons of the first wife **are entitled to** collect the **marriage contract concerning male children; and** one **Sage,** the first *tanna,* **holds** that in a case where **one** wife died **in his lifetime and one** died following **his death,** the sons of the first wife **are not entitled to** collect the **marriage contract concerning male children,** and only the second wife's sons collect their mother's marriage contract.

לָא, דְּכוּלֵּי עָלְמָא: אַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ – יֵשׁ לָהֶן כְּתוּבַּת בְּנִין דִּכְרִין,

The Gemara rejects this: **No,** it is possible to say that **everyone** agrees that in a case where **one** wife died **in his lifetime and one** died following **his death,** the sons of the first wife **are entitled to** collect the **marriage contract concerning male children,**

Perek **X**
Daf **91** Amud **a**

וְהָכָא בִּדְינַר מְקַרְקְעֵי קָמִיפַּלְגִי. מָר סָבַר: מְקַרְקְעֵי – אִין, מְטַלְטְלֵי – לָא. וּמָר סָבַר: אֲפִילּוּ מְטַלְטְלֵי.

and here they disagree about a dinar's worth of **real estate:** One **Sage,** the first *tanna,* **holds** that if the surplus was in the form of **real estate,** meaning that there was sufficient real estate to cover the sums specified in the marriage contracts and one dinar's worth of land was still left over, then **yes,** each can claim his mother's marriage contract, but if the surplus of the dinar was only in **movable property,** then **no,** they cannot; **and** one **Sage,** Rabbi Shimon, **holds** that the heirs may claim the marriage contracts **even** if the surplus is in **movable property.**

וּמִי מָצֵית אָמְרַתְּ הָכִי? וְהָתְנַן: רַבִּי שִׁמְעוֹן אוֹמֵר: אֲפִילּוּ יֵשׁ שָׁם נְכָסִים שֶׁאֵין לָהֶם אַחֲרָיוּת – אֵינָן כְּלוּם, עַד שֶׁיְּהֵא שָׁם נְכָסִים שֶׁיֵּשׁ לָהֶן אַחֲרָיוּת, יָתֵר עַל שְׁתֵּי כְּתוּבּוֹת דִּינָר!

The Gemara asks: **But how can you say** that? **Didn't we learn** in the mishna (91a) that **Rabbi Shimon says: Even if there is property that does not** serve as **a guarantee** for a loan, i.e., movable property, **it is considered as nothing, unless there is property that** serves as **a guarantee** for a loan with a promissory note, i.e., land, **exceeding the** value of the **two marriage contracts** by at least one additional **dinar.**

אֶלָּא הָכָא בִּדְינַר מְשַׁעְבְּדֵי קָמִיפַּלְגִי; מָר סָבַר: מִבְּנֵי חוֹרִין – אִין, מִמְּשַׁעְבְּדֵי – לָא. וּמָר סָבַר: אֲפִילּוּ מִמְּשַׁעְבְּדֵי.

Rather, here they disagree about a dinar of lienedN property: One **Sage,** the first *tanna,* **holds** that if the surplus was in the form of **unsold** property, then **yes,** each can claim the sum specified in his mother's marriage contract, but if the surplus was only in **lienedN** property then **no,** he cannot. **And** one **Sage,** Rabbi Shimon, **holds** that it is deemed a surplus **even** if it was in the form of **liened** property.

אִי הָכִי, רַבִּי שִׁמְעוֹן אוֹמֵר: אִם יֵשׁ שָׁם מוֹתַר דִּינָר"! "כֵּיוָן שֶׁיֵּשׁ שָׁם מוֹתַר דִּינָר" מִיבָּעֵי לֵיהּ!

The Gemara asks: **If that is so,** the *baraita* should not have stated Rabbi Shimon's opinion using the conditional: **Rabbi Shimon says: If there is a surplus of a dinar.** In this case such a surplus certainly exists, and therefore **it should have** said: **Since there is a surplus of a dinar.**

אֶלָּא, בְּפָחוֹת מִדִּינָר קָמִיפַּלְגִי. מָר סָבַר: דִּינָר – אִין, פָּחוֹת מִדִּינָר – לָא. וּמָר סָבַר: אֲפִילּוּ פָּחוֹת מִדִּינָר.

Rather, the dispute can be explained differently: **They disagree about** a case where there is **less than a dinar** of surplus: One **Sage,** the first *tanna,* **holds** that if the surplus was worth **a dinar,** then **yes,** each can claim his mother's marriage contract, but if it was **less than a dinar** then **no,** he cannot. **And** one **Sage,** Rabbi Shimon, **holds** that it is deemed a surplus **even** if it was **less than a dinar.**

וְהָא רַבִּי שִׁמְעוֹן דִּינָר קָאָמַר! וְכִי תֵּימָא: אֵיפּוּךְ, תַּנָּא קַמָּא דְּמַתְנִיתִין נַמִּי דִּינָר קָאָמַר!

The Gemara asks: **But Rabbi Shimon said:** If there is a surplus of **a dinar,** and not less. **And if you would say: ReverseN** the interpretation of the opinion of the first *tanna* in the *baraita* cited above, that would be unacceptable, because the **first *tanna* of the mishna** (91a), who is presumably identical to the first *tanna* of the *baraita,* **also said** that the surplus must be at least one **dinar.**

NOTES

A dinar of liened property – בְּדִינָר מְשַׁעְבְּדֵי: Most of the commentaries explain in accordance with Rashi, cited in *Shita Mekubbetzet*, that the disagreement concerns a case where a portion of the father's property is liened due to an outstanding debt. A student of the Rashba, also cited in *Shita Mekubbetzet*, offers another explanation: The case here is one where the father received the right to benefit from the property of another individual as payment for a loan, as in a mortgage according to the custom of Sura (see *Bava Metzia* 67b). The question is whether this property should be included in the evaluation of the estate due to the fact that the heirs benefit from it. The Rashash suggests yet another approach. The case under discussion is that of an outstanding debt owed to the father by a third party, and the disagreement is similar to the tannaitic disagreement in tractate *Bava Batra* (124a), as to whether the expected payment is to be viewed as a potential holding or as an actual asset of the estate.

Reverse – אֵיפּוּךְ: According to *Tosafot*, this means that instead of explaining that the first *tanna* cited in the *baraita* (90b) holds that if one wife died during the husband's lifetime and a second wife died after the husband's death, the sons of the first wife are not entitled to payment of their mother's marriage settlement, a different interpretation is to be offered: They are not entitled to collect this amount only in the event that there would be no surplus left in their father's estate. However, if there would be any surplus, even if it is less than one dinar, they can collect. Rabbi Shimon holds that there must be a surplus of at least one dinar in order for them to be able to collect. See Rashi, who offers an alternative interpretation of this passage. Most of the early authorities accepted the interpretation of *Tosafot*.

אֶלָּא, כִּי הָנָךְ תְּרֵי לִישְׁנָאֵי קַמָּאֵי, וְאֵיפוּךְ.

The Gemara concludes: **Rather,** the dispute in the *baraita* must be explained **according to those first two formulations** cited above, that they disagree about a surplus in movable property or about a surplus in liened property. **And reverse** the interpretation of the opinion of the first *tanna*, so that he holds that the sons of the first wife may collect her marriage settlement if there is a surplus in their father's estate of one dinar worth of movable property or liened property, whereas Rabbi Shimon holds that there must be a surplus of one dinar worth of land that is not liened.

אֲמַר מָר זוּטְרָא מִשְּׁמֵיהּ דְּרַב פַּפָּא: הִלְכְתָא, אַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ – יֵשׁ לָהֶן כְּתוּבַּת בְּנִין דְּכָרִין, וּכְתוּבָּה נַעֲשֵׂית מוֹתָר לַחֲבֶרְתָּהּ.

Mar Zutra said in the name of Rav Pappa: The *halakha* in the case where **one** wife died **in his lifetime and one** died following **his death** is that the sons of the first wife **are entitled to the** collect the **marriage contract concerning male children, and** furthermore, that one **marriage contract becomes surplus for the other.**

בְּשְׁלָמָא אִי אַשְׁמַעִינַן: אַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ יֵשׁ לָהֶן כְּתוּבַּת בְּנִין דִּיכְרִין, וְלָא אַשְׁמַעִינַן: כְּתוּבָּה נַעֲשֵׂית מוֹתָר לַחֲבֶרְתָּהּ – הֲוָה אָמֵינָא: אִי אִיכָּא מוֹתַר דִּינָר – אִין, אִי לָא – לָא.

The Gemara wonders: **Granted, if** Mar Zutra **would have taught us** only that in a case where **one** wife died **in his lifetime and one** died following **his death,** the sons of the first wife **are entitled to** collect the **marriage contract concerning male children, and he** would **not have taught us** that one **marriage contract becomes surplus for the other, I would say** that **if there is a surplus of a dinar** after the payment of both marriage settlements, then **yes,** the sons of the first wife can claim their mother's marriage settlement, but **if not,** then **no,** they cannot.

אֶלָּא לִישְׁמַעִינַן כְּתוּבָּה נַעֲשֵׂית מוֹתָר לַחֲבֶרְתָּהּ, וַאֲנָא יָדְעֵנָא מִשּׁוּם דְּאַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ יֵשׁ לָהֶן כְּתוּבַּת בְּנִין דִּכְרִין!

However, let him teach us only that one **marriage contract becomes surplus for the other, and I would know** that it is **due to** the fact that if **one** wife died **in his lifetime and one** died following **his death,** the sons of the first wife **are entitled to** claim payment of the **marriage contract concerning male children.**

אִי אַשְׁמַעִינַן הָכִי, הֲוָה אָמֵינָא: כְּגוֹן שֶׁנָּשָׂא שָׁלֹשׁ נָשִׁים, וּמֵתוּ שְׁתַּיִם בְּחַיָּיו וְאַחַת בְּמוֹתוֹ. וְהַךְ דְּמֵיֵית לְאַחַר מִיתָה – יוֹלֶדֶת נְקֵבָה הִיא, וְלָאו בַּת יְרוּשָׁה הִיא.

The Gemara answers: **If he** would have **taught us** only **that,** that a marriage contract can serve as a surplus, **I would say** that this applies specifically in a case **where** an individual **married three women, and two** of them **died in his lifetime and one** after **his death, and that** wife **who died** after **his death** had **given birth to a daughter** but no sons, **and the daughter does not inherit** any part of the estate. Although the daughter is entitled to be sustained from her father's estate, she has no claim to a share in the inheritance. Consequently, there is no concern for quarreling, as all the heirs are in the same situation.

אֲבָל אַחַת בְּחַיָּיו וְאַחַת בְּמוֹתוֹ, וְהָא דְּלַאַחַר מִיתָה יוֹלֶדֶת זָכָר הִיא – אֵימָא לֵיחוּשׁ לְאִינְצוּיֵי, קָא מַשְׁמַע לָן.

However, in a case where **one** wife died **in his lifetime and one** died after **his death, where the one who** died **after his death** had **given birth to a son** who is suing for his portion of the estate, one could **say** that there is a **concern about quarreling** arising from the complaints of the son of the second wife. Therefore, Mar Zutra mentions both *halakhot* explicitly in order **to teach us** that this concern is not taken into account.

מתני׳ מִי שֶׁהָיָה נָשׂוּי שְׁתֵּי נָשִׁים וּמֵתוּ, וְאַחַר כָּךְ מֵת הוּא, וְיִתּוֹמִים מְבַקְּשִׁין כְּתוּבַּת אִמָּן, וְאֵין שָׁם אֶלָּא שְׁתֵּי כְּתוּבּוֹת – חוֹלְקִין בְּשָׁוֶה.

MISHNA In the case of **one who was married to two women and** the women **died, and subsequently he died, and the orphans** of one of the wives **are** now **seeking** to collect the payment specified in **their mother's marriage contract,** i.e., the marriage contract concerning male children, **but there is only enough** in the estate to pay the value of the **two marriage contracts,**[H] the marriage contract concerning male children cannot be collected, and the sons **distribute** the estate **equally** among themselves according to the biblical laws of inheritance.

הָיָה שָׁם מוֹתַר דִּינָר – אֵלּוּ נוֹטְלִים כְּתוּבַּת אִמָּן, וְאֵלּוּ נוֹטְלִים כְּתוּבַּת אִמָּן.

If **there was a surplus of a dinar**[N] left **there,** in the estate, beyond the value of the two marriage contracts, then **these** sons **collect their mother's marriage contract and those** sons **collect their mother's marriage contract,** and the remaining property valued at a dinar is divided equally among all the sons.

HALAKHA

There is only enough in the estate to pay the value of the two marriage contracts – אֵין שָׁם אֶלָּא שְׁתֵּי כְּתוּבּוֹת: If someone was married to two women who both died, and he himself subsequently died, as long as the value of the estate is less than the sum total of the two marriage contracts plus one additional dinar, the ordinance of the marriage contract concerning male children is voided and all the sons divide the estate equally, in accordance with the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:3; *Shulḥan Arukh*, *Even HaEzer* 111:2).

NOTES

A surplus of a dinar – מוֹתַר דִּינָר: The rationale for this requirement can be found in an earlier discussion in this tractate (52b) and in the parallel discussion in the Jerusalem Talmud: The property a father gives his daughter for her dowry is used by her husband once they are married. However, the marriage contract includes a list of this property, and it is returned to the woman as part of her marriage settlement upon divorce or her husband's death. If the woman were to predecease her husband, he would inherit the property from her. Upon his death, that property would be inherited equally by all his sons, including those born from other wives. The Sages instituted the ordinance of the marriage contract concerning male children in order to ensure that the property a father gives for his daughter's dowry will benefit his own grandchildren. That will motivate the father to increase the amount of his daughter's dowry. However, if the fulfillment of a rabbinic ordinance would cause a Torah law to be entirely uprooted, the rabbinic ordinance is set aside in favor of fulfilling the Torah law. In the case under discussion, if there is no surplus of a dinar, the biblical laws of inheritance supersede the ordinance of the marriage contract concerning male children.

It is noted in the *Tosefot Yom Tov* that the value of a dinar in various contexts does not always denote a precise sum but rather an approximate one. In the discussion here, however, according to the *Beit Yosef* and others, it appears to be a precise sum, as is evident from the fact that the Gemara suggested that the *tanna'im* dispute whether a surplus of less than a dinar is sufficient. The reason why this particular value was set is, according to *Gilyonei HaShas*, due to the fact that each heir must receive something of at least nominal value, i.e., the value of one *peruta*. Since the surplus had to be more than a *peruta*, the Sages established that it must be the value of a dinar.

אִם אָמְרוּ יְתוֹמִים: אֲנַחְנוּ מַעֲלִים עַל נִכְסֵי אָבִינוּ פָּחֹת דִּינָר, כְּדֵי שֶׁיִּטְּלוּ כְּתוּבַּת אִמָּן – אֵין שׁוֹמְעִין לָהֶן. אֶלָּא שָׁמִין אֶת הַנְּכָסִים בְּבֵית דִּין.

If the orphans who are entitled to receive the marriage settlement of greater value **say: We inflate** the value of **our father's property**[H] **by a dinar,** i.e., we agree to evaluate the property we will receive for our mother's marriage settlement at a value higher than the market value so that there will be a dinar left in the estate after the two marriage contracts have been paid, **so that they can collect their mother's marriage contract,** the court does **not listen to them. Rather,** the value of **the property is appraised in court,** and the distribution of the estate is based on that evaluation.

הָיוּ שָׁם נְכָסִים בְּרָאוּי – אֵינָן כִּבְמוּחָזָק.

If **there was potential** inheritance[N] **there,**[H] meaning that there was no surplus of a dinar in the existing properties of the estate, but there was property that was expected to be paid to the estate and which would increase the overall value of the estate so that there would be a surplus of a dinar after the payment of the marriage contracts, these properties **are not** considered to be **in** the **possession** of the estate in determining the total value of the estate.

רַבִּי שִׁמְעוֹן אוֹמֵר: אֲפִילּוּ יֵשׁ שָׁם נְכָסִים שֶׁאֵין לָהֶם אַחֲרָיוּת – אֵינָן כְּלוּם, עַד שֶׁיִּהְיוּ שָׁם נְכָסִים שֶׁיֵּשׁ לָהֶן אַחֲרָיוּת, יוֹתֵר עַל שְׁתֵּי הַכְּתוּבּוֹת דִּינָר.

Rabbi Shimon says:[N] **Even if there is property that does not** serve as **guarantee** for a loan, i.e., movable property, there in the estate, **it does not** have **any** impact on the value of the estate. The marriage contracts concerning male children are not collected **unless there is property that** serves as **a guarantee,** i.e., land,[H] **exceeding the** value of the **two marriage contracts** by at least one additional **dinar.**

גמ' תָּנוּ רַבָּנַן: לָזוֹ אֶלֶף וְלָזוֹ חֲמֵשׁ מֵאוֹת, אִם יֵשׁ שָׁם מוֹתַר דִּינָר – אֵלּוּ נוֹטְלִין כְּתוּבַּת אִמָּן, וְאֵלּוּ נוֹטְלִין כְּתוּבַּת אִמָּן. וְאִם לָאו – יַחְלְקוּ בְּשָׁוֶה.

GEMARA **The Sages taught** in a *baraita*: If **this** wife had a marriage contract valued at **one thousand** dinars and **that** wife had a marriage contract valued at **five hundred** dinars, **if there is a surplus of one dinar,** then **these** sons **collect their mother's marriage contract and those** sons **collect their mother's marriage contract. And if not, they divide** the inheritance **equally.**

פְּשִׁיטָא, מְרוּבִּין וְנִתְמַעֲטוּ – כְּבָר זָכוּ בָּהֶן יוֹרְשִׁין. מוּעָטִין וְנִתְרַבּוּ מַאי?

The Gemara notes: It **is obvious** that if there were **abundant** properties,[N] i.e., there was a surplus of a dinar above the value of the two marriage settlements at the time of the man's death, **but they depreciated**[H] before the sons collected the marriage settlements, **the heirs have already acquired rights to** the marriage settlements. However, **what** is the *halakha* if the estate's holdings were **few,** i.e., there was no surplus at the time of the man's death, **but they appreciated** before the sons divided the estate, so that there was a surplus? Do the sons collect the mothers' marriage settlements?

HALAKHA

We inflate the value of our father's property – אֲנַחְנוּ מַעֲלִים עַל נִכְסֵי אָבִינוּ: If the orphans said: We inflate the value of our father's property by one dinar, in order to enable themselves to collect their mother's marriage settlement, the court does not listen to them. Instead, the property is assessed in court in order to determine its value at the time of their father's death, in accordance with the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:5; *Shulḥan Arukh*, *Even HaEzer* 111:5).

There was potential inheritance there – הָיוּ שָׁם נְכָסִים בְּרָאוּי: If, at the time of the father's death the value of his real estate did not exceed that of the two marriage contracts plus an additional dinar, his sons divide the estate equally. Even if additional property was expected to come into their possession, e.g., inheritance from their paternal grandfather, they are not considered a surplus for this purpose, in accordance with the mishna (*Shulḥan Arukh*, *Even HaEzer* 111:3).

Property that serves as a guarantee, i.e., land – נְכָסִים שֶׁיֵּשׁ לָהֶם אַחֲרָיוּת: Some authorities hold that the *halakha* of the marriage contract concerning male children applies only with regard to real estate and not to movable property. Therefore, if the estate of the deceased includes no real estate, the heirs cannot claim their mother's marriage settlement. However, concerning the surplus, even if it is only in movable property, it is still considered a surplus for the purposes of the distribution of property, in accordance with the first *tanna* in the mishna and contrary to the opinion of Rabbi Shimon (*Shulḥan Arukh*, *Even HaEzer* 111:14).

Were abundant but they depreciated, etc. – מְרוּבִּין וְנִתְמַעֲטוּ: The court assesses the value of the estate according to its worth at the time of the father's death. Even if its value changed, whether it increased or decreased, the assessment is still based on the value of the property at the time of death. This is in accordance with the opinion of Rav Naḥman. The Rema writes that this *halakha* applies specifically to a case where the property depreciated in value, and not to a case where it was later discovered that a certain property did not truly belong to the father, because according to the Ran and others, such a case is considered an error and requires a reevaluation of the entire estate (Rambam *Sefer Nashim*, *Hilkhot Ishut* 19:5; *Shulḥan Arukh*, *Even HaEzer* 111:5).

NOTES

Potential inheritance – רָאוּי: Most of the commentaries explain this in accordance with Rashi's comment that this refers to property that the sons expect to inherit from their paternal grandfather. Upon the grandfather's death, his property is viewed as being inherited by his son, despite the fact that he is already dead, and the grandsons immediately inherit the property from him. The Rambam explains in his Commentary on the Mishna that the category of potential inheritance includes outstanding debts that are due to be repaid to the father or money that he owns in a distant location. Rabbi Ovadya of Bartenura offers a similar explanation.

Rabbi Shimon says, etc. – רַבִּי שִׁמְעוֹן אוֹמֵר וכו': There is a difference of opinion cited in the Jerusalem Talmud with regard to this dispute between the first *tanna* and Rabbi Shimon. One *amora* holds that the dispute relates to the value of the marriage settlements; however, all agree that the surplus of a dinar may be in the form of movable property. The other *amora* holds that all agree that the value of the marriage settlements must exist in the form of land, and the dispute pertains to the surplus of a dinar.

It is obvious that if there were abundant properties, etc. – פְּשִׁיטָא מְרוּבִּין וכו': The early authorities wondered why the *halakha* in a case where the properties were of high value and subsequently depreciated should be more obvious than in the opposite case, where they were of low value and their value subsequently increased. They explained the reason for this as follows: If the value of the properties at the time of death was sufficient to cover the two marriage contracts plus the additional dinar, the sons are considered to have instantly inherited their respective shares of the property. These shares are based upon the amounts of the mothers' marriage settlements and an equal division of the surplus, in accordance with the *halakhot* of inheritance according to Torah law. When the property depreciates, it depreciates for each of the sons according to his share. Conversely, if there was no surplus when their father died, the sons automatically inherit rights to equal shares of the estate. The question is if the Sages still imposed their enactment of the marriage contract concerning male children in this case given that at the time of the distribution the *halakhot* of inheritance according to Torah law can still be fulfilled with the surplus (Ramban; Ra'ah; Ritva). The Meiri explains differently: While it is clear that high-valued property that depreciated is considered actual property, it is uncertain whether low-valued property whose value increased is deemed potential or actual property, as the increase in value did not yet exist at the time of the father's death.

תָּא שְׁמַע: דְּנִיכְסֵי דְּבֵי בַּר צְרָצוּר מוּעָטִין וְנִתְרַבּוּ הָווּ, וַאֲתוּ לְקַמֵּיהּ דְּרַב עַמְרָם. אֲמַר לְהוּ: זִילוּ פַּיְּיסִינְהוּ. לָא אַשְׁגַּחוּ.

The Gemara suggests: **Come** and **hear** a solution based upon the following case: The **properties of the house of bar Tzartzur** were **few,** i.e., there was no surplus beyond his wives' marriage settlements, **and they appreciated.** The sons of the two wives **came before Rav Amram** to discuss the matter. **He said to** the sons of the wife who had the more valuable marriage contract: **Go appease** the sons of the other wife and give them some of your share. **They did not heed** his advice.

אֲמַר לְהוּ: אִי לָא מְפַיְּיסִיתוּ לְהוּ – מָחֵינָא לְכוּ בְּסִילְוָא דְּלָא מַבַּע דָּמָא – שָׁדְרִינְהוּ לְקַמֵּיהּ דְּרַב נַחְמָן. אָמַר לָהֶן: כְּשֵׁם שֶׁמְּרוּבִּין וְנִתְמַעֲטוּ

He said to them: If you will not appease them, I will strike you with a thorn [*silva*]ʟ **that does not draw blood,** i.e., I will excommunicate you. **He sent them before Rav Naḥman.** Rav Naḥman **said to them: Just as** the *halakha* is that if the properties were **abundant but depreciated,**

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זָכוּ בָּהֶן יוֹרְשִׁין, כָּךְ מוּעָטִין וְנִתְרַבּוּ – זָכוּ בָּהֶן יוֹרְשִׁין.

the heirs acquired rights to the mothers' marriage contracts due to the value of the estate when their father died, **so too,** in a case where the properties were **few and** the value subsequently **appreciated,**ɴ **the heirs have acquired rights** to divide the entire estate equally, due to the value of the estate when their father died.

(סִימָן: אֶלֶף וּמֵאָה מְצֻוֶּה בִּכְתוּבָּה יַעֲקֹב זָקֵף שְׁדוֹתָיו בִּדְבָרִים עֲסִיקִין.)

§ This is **a mnemonic** deviceʙ for the following *halakhot,* which are connected in one way or another to the problem being dealt with in the mishna: **One thousand, and one hundred, mitzva, in the marriage contract, Ya'akov, set up, his fields, with words, disputants.**

הַהוּא גַּבְרָא דְּהָווּ מַסְקֵי בֵּיהּ אַלְפָּא זוּזֵי, הָווּ לֵיהּ תְּרֵי אַפְּדָנֵי, זַבִּינְהוּ חֲדָא בַּחֲמֵשׁ מְאָה וַחֲדָא בַּחֲמֵשׁ מְאָה. אֲתָא בַּעַל חוֹב טָרְפָא לַחֲדָא מִינַּייהוּ. הֲדַר קָטָרִיךְ לְאִידָךְ.

There was **a certain man who** had a creditor with **a claim** of **one thousand dinars against him. He had two mansions** [*appedanei*].ʟ **He sold them, one for five hundred and the other** one also **for five hundred. The creditor came and repossessed one of them** from the purchaser, as the repayment of part of his debt. **He subsequently** sought to **repossess the other** mansion as well, in payment for the remainder of his debt.

שְׁקַל אַלְפָּא זוּזֵי וְקָא אָזֵיל לְגַבֵּיהּ, אֲמַר לֵיהּ: אִי שָׁוְיָא לָךְ אַלְפָּא זוּזֵי – לְחַיֵּי, וְאִי לָא – שְׁקֵיל אַלְפָּא זוּזֵי, וְאִיסְתַּלֵּק.

The purchaser **took one thousand dinars and went to** the creditor. **He said to him: If** the first mansion that you repossessed is **worth one thousand dinars to you, very well,** let it be yours in exchange for the entire sum that is owed to you, **and if not, take** these **one thousand dinars and abrogate** your rights to both of the mansions, leaving them both in my possession.

סָבַר רָמִי בַּר חָמָא לְמֵימַר: הַיְינוּ מַתְנִיתִין; אִם אָמְרוּ יְתוֹמִים הֲרֵי אָנוּ מַעֲלִין עַל נִכְסֵי אָבִינוּ יָפָה דִּינָר.

Rami bar Ḥama thought to say that **this** case **is** identical to that which is taught in **the mishna: If the orphans say: We inflate** the value of **our father's property by a dinar,** the court does not listen to them. This appears to be the case here as well, and the value of the mansion should not be assessed at higher than its market value.

אֲמַר לֵיהּ רָבָא: מִי דָּמֵי? הָתָם – אִית לְהוּ פְּסִידָא לְיָתְמֵי, הָכָא – מִי אִית לֵיהּ פְּסִידָא? אַלְפָּא יָהֵיב, וְאַלְפָּא שָׁקֵיל.

Rava said to him: Are the two cases **comparable? There,** in the mishna, **the** other **orphans** whose mother's marriage contract was of lesser value will suffer a financial **loss** if the property is assessed at a value greater than it is actually worth. **Here,** in the case of the creditor, **does he incur a loss? He lent one thousand** dinars **and took one thousand** dinars; consequently, it would be cruel on his part to refuse to take the money and to insist on taking the second mansion from the purchaser.

LANGUAGE

Thorn [*silva*] – סִילְוָא: Similar to the Arabic سلاء, *sullā*, meaning the thorn of a palm tree. These are the small leaves on the palm fronds that become hard and thorny over time and whose stabs cause great pain. *Silva* is apparently synonymous with the word *sol* in the Mishna, and it may be connected to the words *salon* and *silon* that appear in Ezekiel (2:6, 28:24), which also refer to a prickly thorn.

NOTES

So too in a case where the properties were few and subsequently appreciated – כָּךְ מוּעָטִין וְנִתְרַבּוּ: Rashi explains that in a case where the value of the property was initially low and subsequently increased, the assessment of its value is also based on the time of the husband's death. Since at the time of death it was not yet possible to collect the marriage contract concerning male children, the sons of each of the wives have in fact already acquired an equal portion of the inheritance. Rabbeinu Ḥananel explains this similarly, as do the Rambam and other authorities (see *Nimmukei Yosef*). *Tosafot*, however, offer an opposite interpretation, suggested by the Ri, who explains that even in a case of an estate of low value whose value increased, the heirs are entitled to the marriage contract concerning male children. According to this understanding of the passage, the meaning of the phrase: The heirs have acquired rights, refers to the right of each heir to collect his mother's marriage settlement. It appears that the Rivan also follows this interpretation.

BACKGROUND

A mnemonic device – סִימָן: Because the Talmud was studied orally for many generations, mnemonic devices were often employed as an aid to remember a series of statements and the order in which they were taught.

LANGUAGE

Mansions [*appedanei*] – אַפְּדָנֵי: Originally from the Old Persian word apadāna, which means a palace or audience hall. The term came into Aramaic well before the talmudic period and appears in the book of Daniel (11:45).

וְטִירְפָא בְּכַמָּה כָּתְבִינַן?

The Gemara asks: If the creditor decided to hold on to the first mansion and to forgive the remainder of the debt, **what amount is written** in the document of **authorization to repossess** lienedH property, through which the purchaser will claim compensation from the seller? The purchaser had paid only five hundred dinars for the mansion that was repossessed, but the repossession of that mansion earned the seller one thousand dinars, as his entire debt was paid off.

רָבִינָא אָמַר: בְּאַלְפָא. רַב עֲוִירָא אָמַר: בַּחֲמֵשׁ מְאָה. וְהִלְכְתָא: בַּחֲמֵשׁ מֵאָה.

Ravina said: It is written **for one thousand** dinars. **Rav Avira said:** It is written **for five hundred** dinars; the fact that the creditor forgave the full amount of the debt in exchange for this house was his own personal decision and does not reflect an increase in the property value of the house. The Gemara concludes: **The *halakha* is** that it is written **for five hundred** dinars.

הַהוּא גַּבְרָא דְּהָווּ מַסְקֵי בֵּיהּ מֵאָה זוּזֵי, הָווּ לֵיהּ תְּרֵי קְטִינֵי דְּאַרְעָא. חַד זַבִּינְהוּ בְּחַמְשִׁין, וְחַד בְּחַמְשִׁין. אֲתָא בַּעַל חוֹב טָרְפָא לְחַד מִינַּיְיהוּ, הֲדַר אֲתָא וְקָטָרִיךְ לְאִידָךְ.

It is also related that there was **a certain man who** had a creditor with **a claim**H of **one hundred dinars against him. He had two small** tracts **of land. He sold one for fifty and** he also sold the other **one for fifty.**N **The creditor came and repossessed one of them** from the purchaser as the collection of part of his debt. **He subsequently came,** seeking to **repossess the other** tract of land as well, as payment for the rest of the debt owed to him.

שְׁקַל מֵאָה זוּזֵי, וְקָאָזֵיל לַגַּבֵּיהּ וְאָמַר לֵיהּ: אִי שַׁוְיָא לָךְ מֵאָה זוּזֵי – לְחַיֵּי, וְאִי לָא – שְׁקוֹל מֵאָה זוּזֵי וְאִיסְתַּלַּק.

The purchaser **took one hundred dinars and went to** the creditor. **He said to him: If** this tract is **worth one hundred dinars to you, very well, and if not, take one hundred dinars and abrogate** your rights to both of the tracts, leaving them both in my possession.

סָבַר רַב יוֹסֵף לְמֵימַר: הַיְינוּ מַתְנִיתִין: אִם אָמְרוּ יְתוֹמִים כו'. אָמַר לֵיהּ אַבַּיֵי: מִי דָּמֵי? הָתָם – אִית לְהוּ פְּסִידָא לְיָתְמֵי, הָכָא – מַאי פְּסִידָא אִית לֵיהּ? מֵאָה יָהֵיב, מֵאָה שָׁקֵיל.

Rav Yosef thought to say that this case **is** identical to that which is taught in **the mishna,** whereby **if the orphans say:** We inflate the value of our father's property by a dinar, the court does not listen to them. **Abaye said to him: Are** the two cases **comparable? There,** in the mishna, **the** other **orphans** suffer **a** financial **loss** if the property is assessed at a value greater than it is actually worth; **here, what loss** does the creditor **incur? He lent one hundred** dinars **and took one hundred** dinars. It would be cruel on his part to refuse to take the money and to insist on taking the land from the purchaser.

וְטִירְפָא בְּכַמָּה כָּתְבִינַן? רָבִינָא אָמַר: בְּמֵאָה, רַב עֲוִירָא אָמַר: בְּחַמְשִׁין. וְהִלְכְתָא: בְּחַמְשִׁין.

The Gemara asks: If the creditor decided to hold on to the first mansion and to forgive the remainder of the debt, **what amount is written** in the document of **authorization to repossess** lienedH property, through which the purchaser will claim compensation from the seller? **Ravina said** that it is written **for one hundred. Rav Avira said** it is written **for fifty.** The Gemara concludes: **The *halakha* is** that it is written **for fifty** dinars.

הַהוּא גַּבְרָא דְּהָווּ מַסְקֵי בֵּיהּ מֵאָה זוּזֵי. שְׁכִיב, שְׁבַק קְטִינָא דְּאַרְעָא דַּהֲוָה שָׁוְיָא חַמְשִׁין זוּזֵי. אֲתָא בַּעַל חוֹב וְקָטָרִיךְ לֵיהּ. אֲזוּל יָתְמֵי יָהֲבוּ לֵיהּ חַמְשִׁין זוּזֵי, הֲדַר קָטָרִיךְ לָהּ.

The Gemara relates that there was **a certain man who** had a creditor with **a claim of one hundred dinars against him. He died** and **left a small** tract **of land worth fifty dinars. The creditor came and repossessed it. The orphans came** and **gave him fifty dinars** and redeemed the property from him. **He returned** and **repossessed it** again in order to collect the remainder of the debt.

HALAKHA

There was a certain man who had a creditor with a claim, etc. – הַהוּא גַּבְרָא דְּהָווּ מַסְקֵי וכו': In the case of one who purchased two tracts of land, each for the price of one hundred dinars, and he owed two hundred dinars to a certain creditor, and that creditor came and repossessed the first tract that the purchaser bought; when he came to repossess the second tract to collect the remaining one hundred dinars of the outstanding debt, the purchaser came to him with two hundred dinars and said to him: If you would like to accept the first tract as payment for the entire two hundred dinars of the loan, very well, and if not, take these two hundred dinars and abrogate your claim; then the creditor must either accept the money or suffice with one tract of land.

If the creditor accepted the first tract as payment for the entire debt of two hundred dinars, then when the purchaser sues the seller for a refund, he collects no more than one hundred dinars, in accordance with the opinion of Rav Avira.

The Rema writes that this *halakha* applies only in a case where one person purchased both tracts of land. However, if two people purchased one tract of land each, neither one of them can force the creditor to either accept the other field at higher than its market value or accept money. This is because neither of the purchasers has anything to do with the tract purchased by the other individual (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 18:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 114:3).

NOTES

He sold one for fifty and he also sold the other one for fifty – חַד זַבִּינְהוּ בְּחַמְשִׁין וְחַד בְּחַמְשִׁין: Most commentaries explain that in the case of the mansions and this case of the tracts of land, the debtor sold both items to the same purchaser. If they had been sold to different purchasers, the second purchaser could not demand that the creditor abrogate his claim to the mansion or tract of land that he had already repossessed from someone else.

However, the Meiri explains that the *halakha* would apply equally regardless of whether the creditor sold his mansions or tracts of land to a single purchaser or to multiple purchasers. He therefore claims that the reason this case is stated, despite the fact that it does not seem to add anything that was not stated in the previous case, is because the case of the mansions was where the debtor sold the mansions to a single purchaser, whereas in this case he sold the tracts of land to two separate purchasers, and the novelty is that the same *halakha* applies.

Other commentaries offer different explanations as to the need for the case of the tracts of land. One is that while the first case relates to a mansion, whose price is not entirely fixed, the second case relates to a field, which has a fixed price. In the case of a mansion, the purchaser can argue that the value of the property did increase, so that he has a right to receive a document of authorization for the entire amount (Ḥaver ben Ḥayyim).

אָתוּ לְקַמֵּיהּ דְּאַבַּיֵי. אָמַר לָהֶן: מִצְוָה עַל הַיְתוֹמִים לִפְרוֹעַ חוֹב אֲבִיהֶן. הָנֵי קַמָּאֵי – מִצְוָה עָבְדִיתוּ, הָשְׁתָּא – כִּי טָרֵיף – בְּדִין קָטָרֵיף.

They came before Abaye to complain. **He said to them: It is a mitzva for orphans to settle their father's debt.** Consequently, with the money you paid the creditor **initially, you performed a mitzva,** as you partially settled a debt your father owed. However, this payment did not cancel the lien on the property, and so **now, when he repossesses** the land, **he is repossesses** it **lawfully.**

וְלָא אֲמָרַן דְּלָא אָמְרוּ לֵיהּ: הָנֵי חַמְשִׁין זוּזֵי דְּאַרְעָא קְטִינָא, אֲבָל אָמְרוּ לֵיהּ: הָנֵי חַמְשִׁין זוּזֵי דְּמֵי אַרְעָא קְטִינָא – סַלּוּקֵי סַלְּקוּהּ.

The Gemara notes: **And we said** this ruling only in a case **where** the orphans **did not say to** the creditor: **These fifty dinars are payment** for **the small** tract **of land. However,** if **they said to him: These fifty dinars are payment** for **the small** tract **of land,**[H] **they have** successfully **removed him** from the land and he has no further claim to it.

הַהוּא גַּבְרָא דְּזַבְנָהּ לִכְתוּבָּתָהּ דְּאִימֵּיהּ בְּטוֹבַת הֲנָאָה, וְאָמַר לֵיהּ: אִי אָתְיָא אֵם וּמְעַרְעֲרָא – לָא מְפַצֵּינָא לָךְ.

§ The Gemara relates that there was **a certain man who sold** the rights to **his mother's marriage contract**[HN] **for** a certain **financial advantage,** i.e., he received a certain sum on the condition that if he would inherit his mother's marriage contract, which would occur if his mother's husband would die prior to his mother, the purchaser would obtain the right to collect the money. **And he told** the purchaser: **If** my **mother comes and objects** to the sale, **I will not reimburse you** for your purchase.

שְׁכִיבָא אִימֵּיהּ וְלָא אִיעַרְעֲרָא, וַאֲתָא אֵיהוּ וְקָא מְעַרְעֵר. סָבַר רָמֵי בַּר חָמָא לְמֵימַר: אֵיהוּ בִּמְקוֹם אִימֵּיהּ קָאֵי. אָמַר לֵיהּ רָבָא: נְהִי דְּאַחֲרָיוּת דִּידָהּ לָא קַבִּיל עֲלֵיהּ, אַחֲרָיוּת דִּידֵיהּ – מִי לָא קַבִּיל?

His mother died after her husband died, **and** had **not objected** to the sale. **He,** however, **came and contested** the sale. **Rami bar Ḥama thought to say** that **he stands in his mother's place** and since he is her proxy, he has the right to object to the sale. **Rava said to him: Granted that he did not take upon himself** to **guarantee** the sale against his mother's objections, but **did he not take upon himself** to **guarantee** it against **his own** objections? When he sold the right to collect the marriage contract, he most certainly guaranteed that he would not renege on the sale.

אָמַר רָמֵי בַּר חָמָא: רְאוּבֵן שָׁמַכַר שָׂדֶה לְשִׁמְעוֹן שֶׁלֹּא בְּאַחֲרָיוּת, וַאֲתָא שִׁמְעוֹן וּמְכָרָהּ לִרְאוּבֵן בְּאַחֲרָיוּת,

The Gemara relates a similar discussion. Rami **bar Ḥama said:** If **Reuven sold a field to Shimon without a guarantee, and Shimon came and sold** the field back **to Reuven,** but he sold it **with a guarantee** that if the field is repossessed, he will compensate the buyer for his loss,

HALAKHA

Payment for the small tract of land – דְּמֵי דְּאַרְעָא קְטִינָא: If a man died and left a field worth one hundred dinars, and a creditor repossessed it as a partial payment for a debt, and the orphans gave him one hundred dinars, which is the price of the field, in order that he abrogate his rights to the field rather than repossess it, he may still repossess the field a second time as payment of the remaining debt, in accordance with the opinion of Abaye.

However, if upon paying the creditor the orphans stated that the money they were giving him was in payment for the field that he repossessed, and he accepted it, he can no longer repossess the field a second time, in accordance with the conclusion of the Gemara (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 18:10; *Shulḥan Arukh*, *Ḥoshen Mishpat* 107:6; see *Sefer Me'irat Einayim* and *Shakh)*.

Who sold the rights to his mother's marriage contract for a financial advantage – זְבְנָהּ לִכְתוּבָּתָהּ דְּאִימֵּיהּ בְּטוֹבַת הֲנָאָה: If someone sold the rights to his mother's marriage contract during his father's lifetime, so that if his father dies and then his mother dies, and he inherits the right to collect her marriage settlement, this right will then transfer to the purchaser; and he added the condition that if his mother objects to the sale and cancels it he will not reimburse the purchaser; then, if his mother dies without objecting to the sale, the son cannot object to the sale on her behalf. Rather, he is considered to have taken it upon himself to guarantee the sale against any objections he may wish to put forth, in accordance with the opinion of Rava (*Shulḥan Arukh*, *Even HaEzer* 105:7).

NOTES

Sold the rights to his mother's marriage contract – זַבְנָהּ לִכְתוּבָּתָהּ דְּאִימֵּיהּ: Rashi initially offers a simple explanation that fits well with the wording of the text. The case discussed here is that of a person who, while his stepfather was still alive, sold the right to collect his mother's marriage contract; should his stepfather die during his mother's lifetime, the purchaser would own the right to collect payment of the mother's marriage contract. The son sells the rights to collect his mother's marriage contract for financial gain. The Talmud understands the transaction as involving a rather small sum, due to the uncertainty involved. There are several possible scenarios: The mother may die before her husband, in which case the husband would inherit her assets, or the son himself may die before the mother, in which case he would never attain the right to her marriage contract in order to be able to transfer that right to the purchaser.

The early commentaries were faced with a great difficulty here: Ostensibly, the sale is meaningless, since the rights to the marriage contract do not yet belong to the son, and therefore it should be considered the sale of an entity that has not yet come into the world, which is not valid. This difficulty is perhaps why Rashi himself explains that the discussion is not whether the purchaser attains rights to the marriage contract, which he certainly does not; it is only about whether the seller must refund his money. Rabbeinu Tam (see *Tosafot*) argues that if one sells the rights to a specific item that he will inherit, rather than his general rights to the property he will inherit, the sale is legally binding.

In an alternate interpretation, Rashi explains that in this case, the son sold a field that had been set aside to serve as payment for his mother's marriage contract following his father's death. In that case, the acquisition applies to a specific object, although the mother has not yet acquired full rights to it. The field remains with the purchaser until the seller's mother decides to collect her marriage contract. The Ri interprets the matter in a similar manner, and the Ra'ah and Ritva are main proponents of this opinion. The Ra'avad explains that the case is one where the son sold property that was liened by virtue of the mother's marriage contract, and due to the lien he was not able to sell the land for its full value but only for a lesser amount, referred to as the financial advantage. A similar opinion can be found in the Meiri.

One of the later authorities explains that the son sold his right to the marriage contract concerning male children (*Eshel Avraham*). Rav Hai Gaon, who was also concerned about the issue of an entity that has not yet come to the world, is of the opinion that in this case, the mother was dying and the son sold the property in order to pay for her burial; in such a case, the Sages instituted an ordinance enabling the son to sell property that does not yet belong to him. However, in this case, the son stipulated that the transaction would be voided were the mother to recover from her illness.