עֲסִיקִין, עַד שֶׁלֹּא הֶחֱזִיק בָּהּ – יָכוֹל לַחֲזוֹר בּוֹ, מִשֶּׁהֶחֱזִיק בָּהּ – אֵינוֹ יָכוֹל לַחֲזוֹר בּוֹ, מִשּׁוּם דְּאָמַר לֵיהּ: חַיְיתָא דְּקִיטְרֵי סָבְרַתְּ וְקַבִּילַתְּ. וּמֵאֵימַת מַחֲזִיק בָּהּ – מִכִּי דָּיֵישׁ אַמְּצָרֵי.

disputants[N] i.e., individuals who dispute Reuven's ownership of the field, **as long as** Shimon **has not** yet **taken possession of it,**[HN] **he can renege** on the deal. However, **once he has taken possession,** Shimon **cannot renege** on the deal, **because** at that point the seller, Reuven, **can say to him: You agreed** to **a sack** [*ḥaita*][L] **of knots**[N] **and you received it,** i.e., since you purchased the field with no guarantee, you understood that it was a risky investment. The Gemara asks: **And from when** is Shimon considered to have **taken possession of** the property?[N] The Gemara answers: It is **from when he walks the boundaries**[N] of the land to inspect it.

אִיכָּא דְּאָמְרִי: אֲפִילּוּ בְּאַחֲרָיוּת נַמִּי, דְּאָמַר לֵיהּ: אַחֲוֵי טִירְפָּךְ וַאֲשַׁלֵּם לָךְ.

There are those **who say** that **even** if Reuven sold him the field **with a guarantee,** Shimon may not demand a refund immediately when he discovers that there are disputants, **as** Reuven **can say to** Shimon: **Show me your** document of **authorization to repossess** property from me, **and I will pay you.**[N]

מתני׳ מִי שֶׁהָיָה נָשׂוּי שָׁלֹשׁ נָשִׁים וּמֵת, כְּתוּבָּתָהּ שֶׁל זוֹ מָנֶה, וְשֶׁל זוֹ מָאתַיִם, וְשֶׁל זוֹ שְׁלֹשׁ מֵאוֹת, וְאֵין שָׁם אֶלָּא מָנֶה – חוֹלְקִין בְּשָׁוֶה.

MISHNA In the case of **one who was married** to **three women and died** and **the marriage contract of this** wife was for **one hundred dinars and** the marriage contract **of this** second wife was for **two hundred** dinars, **and** the marriage contract **of this** third wife was for **three hundred,** and all three contracts were issued on the same date so that none of the wives has precedence over any of the others, **and** the total value of the estate is **only one hundred dinars,** the wives **divide** the estate **equally.**

HALAKHA

As long as Shimon has not yet taken possession of it – עַד שֶׁלֹּא הֶחֱזִיק בָּהּ וכו׳: If one purchases a parcel of land from another by means of one of the accepted methods of acquisition, but before he makes use of the land disputants arise to challenge the seller's ownership of the property, the purchaser may cancel the sale, and the seller must refund his money. However, according to the Rosh, the purchaser can only renege on the transaction if he has not yet paid for the property (see *Sefer Me'irat Einayim*). If the purchaser already made use of the land, even if he merely walked its perimeter and leveled it with the rest of the property, he can no longer withdraw from the transaction. It appears that this is the case even if the sale was guaranteed, as the *halakha* generally follows statements introduced with the phrase: There are those who say (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 19:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 226:5).

LANGUAGE

Sack [*ḥaita*] – חַיְיתָא: The *Arukh* explains this word to mean a skin that was normally used to carry wine or water.

NOTES

It emerged that he had disputants [*asikin*] – יָצְאוּ עָלָיו עֲסִיקִין: The meaning of the term *asikin* is unclear. Some commentaries explain that creditors of Reuven came to repossess the field from the purchaser. The author of *Sefer Halttur* cites *ge'onim* who explain that *asikin* are individuals who dispute the seller's claim of ownership to the tract of land. In that case, the purchaser can claim that although he purchased the land with no guarantee and consequently took upon himself the risk that creditors may come and repossess the land from him, he did not take it upon himself to litigate with disputants (see *Beit Yosef*, citing Rabbeinu Yeruḥam).

As long as Shimon has not yet taken possession of it – עַד שֶׁלֹּא הֶחֱזִיק בָּהּ: According to Rashi, this refers to a case where the purchaser has not yet paid for the property. Consequently, the purchaser is not the legal owner of the property, and Abaye's point is that although the Sages cursed one who reneges on a verbal pledge to carry out a transaction (see *Bava Metzia* 44a), that does not apply here, because the purchaser is backing out because of the concern that the property will be taken from him (*Tosafot*; see *Talmidei Rabbeinu Yona*). However, most early authorities (see Ramban and Ra'ah) explain that this refers to a case where the purchaser has already paid for the land, and Abaye's point is that even though he has already acquired it, he can still force the seller to take back his land and return the money.

It is explained in the *Sefer Halttur* that while land is normally acquired with money or a deed, in this case, because the purchaser could be facing a potential loss, it was determined that the transaction would not be considered complete until the purchaser performs an act denoting ownership.

A sack of knots – חַיְיתָא דְּקִיטְרֵי: Rashi understood this to mean a sack full of knots. The Rivan interprets it as an empty, tied sack. In his commentary on tractate *Bava Kamma* (9a), Rashi explains that it is a tied sack full of air. This is also the interpretation of Rabbeinu Yehonatan. In the *Nimmukei Yosef* on *Bava Kamma* it is interpreted as a tied sack whose contents are unknown.

And from when is Shimon considered to have taken possession of the property – וּמֵאֵימַת מַחֲזִיק בָּהּ: *Tosafot* wondered why this question is necessary here, as the *halakhot* of property possession and acquisition are clearly delineated in a mishna in tractate *Bava Batra* (42a). They cite the opinion of the Rabbi Yitzḥak ben Mordekhai, that what is being discussed here is not how the purchaser can acquire the property. Rather, although he has already acquired the property, he may still renege on the deal until he takes action to begin to tend to it, which demonstrates his intention to keep the property; it is this action that is being defined here. Many other early authorities (see Meiri) offer a similar explanation.

Walks the boundaries – דָּיֵישׁ אַמְּצָרֵי: The commentaries suggest various explanations of this expression. Some explain it to mean that the purchaser walks around the boundaries of the field to see what kind of work needs to be done (*Tosafot*). Others say that he repairs the boundary markers (Ritva). The Rif and Rambam explain that the neighboring field belongs to the purchaser as well, and he removes the boundary markers between the two fields in order to conjoin them.

Show me your document of authorization to repossess property from me and I will pay you – אַחֲוֵי טִירְפָּךְ וַאֲשַׁלֵּם לָךְ: Once Shimon has taken possession of the field, he may not renege on the deal until the field is actually repossessed by Reuven's creditors, as it is not clear in advance that Reuven's creditors will be granted the right to repossess the field. Once Reuven's creditors legally repossess the field, the court must write a document authorizing Shimon to repossess property belonging to Reuven as compensation for his loss.

הָיוּ שָׁם מָאתַיִם – שֶׁל מָנֶה נוֹטֶלֶת חֲמִשִּׁים, שֶׁל מָאתַיִם וְשֶׁל שְׁלֹשׁ מֵאוֹת – שְׁלֹשָׁה שְׁלִשָּׁה שֶׁל זָהָב. הָיוּ שָׁם שְׁלֹשׁ מֵאוֹת – שֶׁל מָנֶה נוֹטֶלֶת חֲמִשִּׁים, וְשֶׁל מָאתַיִם מָנֶה וְשֶׁל שְׁלֹשׁ מֵאוֹת שִׁשָּׁה שֶׁל זָהָב.

If **there were two hundred** dinars[N] in the estate, the one whose marriage contract was **for one hundred dinars takes fifty** dinars, while those whose contracts were **for two hundred and three hundred** dinars take **three** dinars **of gold each,** which are the equivalent of seventy-five silver dinars. If **there were three hundred** dinars in the estate, the one whose marriage contract was **for one hundred** dinars **takes fifty** dinars, the one whose contract was **for two hundred** dinars **takes one hundred** dinars, **and the one whose** contract was **for three hundred** dinars takes **six** dinars **of gold,** the equivalent of one hundred and fifty silver dinars.

וְכֵן שְׁלֹשָׁה שֶׁהִטִּילוּ לַכִּיס, פִּיחֲתוּ אוֹ הוֹתִירוּ – כָּךְ הֵן חוֹלְקִין.

Similarly, three individuals **who deposited** money **into a purse,**[N] i.e., invested different amounts of money into a joint business venture: If they **incurred a loss or earned a profit,** and now choose to dissolve the partnership, **they divide** the assets **in this manner,** i.e., based upon the amount that each of them initially invested in the partnership.

גמ׳ שֶׁל מָנֶה נוֹטֶלֶת חֲמִשִּׁים?! תְּלָתִין וּתְלָתָא הוּא דְּאִית לָהּ!

GEMARA The Gemara asks about the *halakha* in the case where the estate has two hundred dinars, in which case the wife whose marriage contract was for one hundred dinars receives fifty dinars. Why should the wife whose marriage contract was **for one hundred take fifty? She should have** the right to collect only **thirty-three and one-third** dinars.[N] Since her claim is only for the first hundred dinars, and all three women have an equal right to this first hundred, it stands to reason that it should be divided equally between the three of them.

NOTES

If there were two hundred dinars, etc. – הָיוּ שָׁם מָאתַיִם וכו׳: This ruling is based on the assumption that each of the marriage contracts imposes a lien on a different amount of the husband's property, and each woman has a right to collect her share only from the amount of property that is liened to her marriage contract. However, the details of the mishna do not reconcile well with this assumption, and consequently Shmuel and Rav Ya'akov of Nehar Pekod had to interpret the mishna as addressing a special case in which the property is divided in a non-standard way, either due to an agreement between the wives or due to the manner in which the property became available.

Rav Sa'adia Gaon writes that there is a way to interpret the mishna in accordance with one uniform principle without having to rely on the solutions offered in the Gemara. He posits the following: Each woman whose marriage contract is either equal to or greater than the value of the estate divides the assets with the others based on the total number of women, while the amounts exceeding the value of the marriage contract are divided based on the respective ratios of the marriage contracts. Therefore, if the estate consists of just one hundred dinars, it is divided equally among the three wives, since the least valuable contract is equal to the value of the estate. If the inheritance consists of two hundred, the first hundred is divided equally among the wives, while the second hundred is split as follows: The first woman, whose marriage contract is one-sixth of the total amount owed to all the women for their marriage contracts, receives one-sixth of the amount above one hundred dinars, which is sixteen and two-thirds dinars, bringing her total to fifty dinars. The remainder of the second hundred dinars is divided equally between the other wives, which brings their totals to seventy-five dinars each. If three hundred dinars are available, a sum equal to the largest of the marriage contracts, they divide the entire sum based on their respective ratios: The first woman receives one-sixth, which is fifty dinars; the second receives one-third, which is one hundred dinars; and the third woman receives one-half, which is one hundred and fifty dinars.

Similarly, three individuals who deposited money into a purse – וְכֵן שְׁלֹשָׁה שֶׁהִטִּילוּ לַכִּיס: The commentaries agree that in the case of dissolving a partnership, the partners divide the assets in proportion to their respective shares. However, this interpretation does not fit well with the word similarly in the mishna, which indicates that the partners divide their business assets in the same way that wives would divide their husband's estate. Rabbeinu Ḥananel explains that the word similarly in the mishna indicates only that the case of the business partners is similar to the case of the wives in that the assets are distributed based upon the amounts of their initial investments; however, it is not meant to indicate that the methods of dividing the assets are identical.

Thirty-three and one-third dinars, etc. – תְּלָתִין וּתְלָתָא וכו׳: Most of the commentaries follow the opinion of Rashi and the Rif, who explain that according to the mishna, each woman has a lien on a sum corresponding to the value of her marriage contract, but not on the entire estate. For this reason, when the estate is valued at one hundred dinars, the lien imposed by each marriage contract is for the entire sum, and all the women divide that amount equally. When the estate is worth two hundred, all the women have a lien on the first hundred dinars, which are divided equally among them.

However, the woman whose marriage contract was for only one hundred dinars has no claim on the estate's second hundred dinars, and that second hundred is divided equally among the other two women. Consequently, the first woman should receive thirty-three and one-third, and the others should each receive eighty-three and one-third. When the estate consists of three hundred dinars, the first wife still only receives thirty-three and one-third and the second wife eighty-three and one-third. The third wife receives one-third of the first hundred, one half of the second hundred, and the entire third hundred, adding up to a total of one hundred and eighty-three and one-third.

NOTES

Where the wife whose contract was for two hundred writes, etc. – בְּכוֹתֶבֶת בַּעֲלַת מָאתַיִם וכו׳: According to the Ritva, the wife whose contract was for three hundred dinars must have also agreed to this arrangement, because she should not be forced to incur a loss due to the fact that another wife waived some of her own rights. The Meiri holds that since the third wife saw that the second wife consented and remained silent, it is as if she also agreed to relinquish some of her share.

אָמַר שְׁמוּאֵל: בְּכוֹתֶבֶת בַּעֲלַת מָאתַיִם לְבַעֲלַת מָנֶה ״דִּין וּדְבָרִים אֵין לִי עִמָּךְ בְּמָנֶה״.

Shmuel said: This is a case **where** the wife **whose** contract **was for two hundred writes**[N] a document **to** the wife **whose** contract **was for one hundred** dinars: **I do not have** any **legal** dealings **or involvement with you with regard to** the first **hundred dinars.** Since she relinquished her share in the first hundred dinars, only two claimants remain, the one whose contract was for one hundred and the one whose contract was for three hundred, and they divide it equally between them.

אִי הָכִי, אֵימָא סֵיפָא: שֶׁל מָאתַיִם וְשֶׁל שְׁלֹשׁ מֵאוֹת – שָׁלֹשׁ שֶׁל שָׁלֹשׁ שֶׁל זָהָב. תֵּימָא לָהּ: הָא סָלְקַתְּ נַפְשָׁךְ מִינָּהּ!

The Gemara asks: **If that is so, say the latter clause** of that very same statement in the mishna, where it states that the wife **whose** contract **was for two hundred and** the one **whose** contract **was for three hundred take three** dinars **of gold each.** This is difficult, because the wife whose contract was for three hundred **should** be able to **say to** the wife whose contract was for two hundred: **You have removed yourself from** the first hundred dinars, and so you have a claim only against the remaining hundred. It should follow that the wife whose contract was for three hundred should take one hundred in total, fifty from the first hundred and fifty from the second hundred, and the one whose contract was for two hundred should receive only fifty, which is half of the second hundred.

מְשׁוּם דְּאָמְרָה לָהּ: ״מִדִּין וּדְבָרִים הוּא דְּסָלִיקִי נַפְשַׁאי״.

The Gemara answers: This is not so, **because** the wife whose contract was for two hundred **can say to** the wife whose contract was for three hundred: **I have removed myself** only **from legal** dealings **or involvement,** i.e., I have not completely relinquished my rights to the first hundred; I only agreed not to become involved in litigation with the wife whose marriage contract was for one hundred dinars. However, I maintain my rights to the first hundred dinars with regard to my involvement with you. Consequently, both women have equal rights to the remaining one hundred and fifty dinars, and they divide it equally between them.

״הָיוּ שָׁם שְׁלֹשׁ מֵאוֹת״ וכו׳.

The mishna teaches that if **there were three hundred** dinars in the estate, the money is divided so that the wife whose marriage contract was for one hundred receives fifty dinars, the wife whose contract was for two hundred receives one hundred, and the one whose contract was for three hundred receives one hundred and fifty dinars.

שֶׁל מָאתַיִם מָנֶה?! שִׁבְעִים וַחֲמִשָּׁה הוּא דְּאִית לָהּ!

The Gemara asks: Why does the one **whose** contract **was for two hundred** receive **one hundred dinars? She should have** the right to receive only **seventy-five.** As Shmuel explained above, since she agreed not to litigate with the wife whose contract was for one hundred with regard to the first hundred, it turns out that she has a claim only for one hundred and fifty of the remaining sum, since she clearly has no rights at all to the third hundred; therefore, she should receive half of what she is suing for, which is seventy-five dinars.

אָמַר שְׁמוּאֵל: בְּכוֹתֶבֶת בַּעֲלַת שְׁלֹשׁ מֵאוֹת לְבַעֲלַת מָאתַיִם וּלְבַעֲלַת מָנֶה: ״דִּין וּדְבָרִים אֵין לִי עִמָּכֶם בְּמָנֶה״.

The Gemara answers that **Shmuel said:** The case is **where** the one **whose** contract **was for three hundred writes** a document **to** the one **whose** contract **was for two hundred and to** the one **whose** contract **was for one hundred** dinars: **I have no legal** dealings **or involvement with you with regard to** the first **hundred dinars.** Due to this agreement, the first hundred is divided between the wife whose contract was for one hundred and the wife whose contract was for two hundred, with each receiving fifty. The second hundred is divided between the wife whose contract was for two hundred and the wife whose contract was for three hundred. As a result of this, the wife whose contract was for two hundred ends up with a full hundred. The third hundred goes exclusively to the wife whose contract was for three hundred, bringing her total to one hundred and fifty dinars.

רַב יַעֲקֹב מִנְּהַר פְּקוֹד מְשַׁמֵּיהּ דְּרָבִינָא אֲמַר: רֵישָׁא בִּשְׁתֵּי תְּפִיסוֹת, וְסֵיפָא בִּשְׁתֵּי תְּפִיסוֹת.

Rav Ya'akov of Nehar Pekod[B] **said in the name of Ravina:** The mishna is not referring to cases where one of the women waived her rights, but rather to cases in which they did not receive the inheritance all at once, but in installments; each time an installment became available, the women repossessed a portion of the estate. **The first clause** is referring to a case **where** there were **two seizures** of property, **and the latter clause** is similarly referring to **a case where** there were **two seizures** of property.

רֵישָׁא בִּשְׁתֵּי תְּפִיסוֹת; דְּנָפְלוּ שִׁבְעִין וַחֲמִשָּׁה בְּחַד זִימְנָא, וּמֵאָה וְעֶשְׂרִים וַחֲמִשָּׁה בְּחַד זִימְנָא.

The Gemara explains: **The first clause** of the mishna, where two hundred dinars were available, is referring to a case **where** there were **two seizures** of property, **as seventy-five** dinars became available **at one time and one hundred and twenty-five** dinars **at another time.** When the first installment became available, each of the women had an equal claim to the money and they divided it equally, each receiving twenty-five dinars. When the second installment became available, the woman whose contract was for one hundred dinars had a claim to seventy-five dinars, and received one-third of that amount, bringing her total to fifty. The other women also received an equal share of those seventy-five dinars, and divided equally the remaining fifty dinars, bringing their totals to seventy-five dinars apiece.

סֵיפָא בִּשְׁתֵּי תְּפִיסוֹת; דְּנָפְלוּ שִׁבְעִים וַחֲמִשָּׁה בְּחַד זִימְנָא, וּמָאתַיִם וְעֶשְׂרִים וַחֲמִשָּׁה בְּחַד זִימְנָא.

The latter clause, where three hundred dinars were available, is also referring to a case **where** there were **two seizures** of property,[N] **as seventy-five** dinars **became available** to them **at one time and two hundred and twenty-five** dinars **at another time.**

תַּנְיָא: זוֹ מִשְׁנַת רַבִּי נָתָן, רַבִּי אוֹמֵר: אֵין אֲנִי רוֹאֶה דְּבָרָיו שֶׁל רַבִּי נָתָן בְּאֵלּוּ, אֶלָּא חוֹלְקוֹת בְּשָׁוֶה.

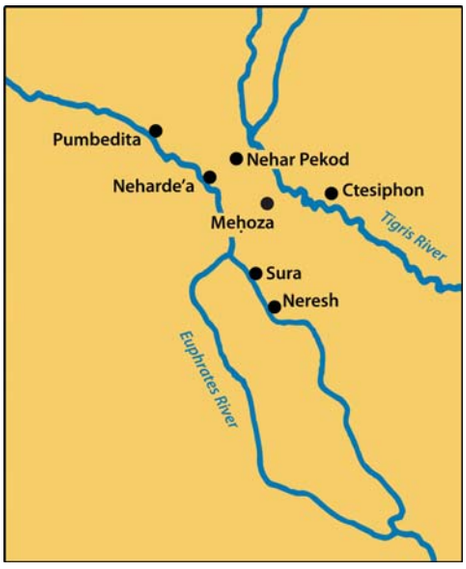
It is taught in a *baraita*: **This is the teaching of Rabbi Natan. Rabbi** Yehuda HaNasi **says: I do not agree with Rabbi Natan's statement with regard to these** women; **rather, they divide** the estate **equally.**[HN]

"וְכֵן שְׁלֹשָׁה שֶׁהִטִּילוּ". אָמַר שְׁמוּאֵל: שְׁנַיִם שֶׁהִטִּילוּ לַכִּיס, זֶה מָנָה וְזֶה מָאתַיִם

It was taught in the mishna: **Similarly, three** individuals **who deposited** money **into a purse,** i.e., invested different amounts in a joint business venture, divide the assets in a similar manner. **Shmuel said:** In a case of **two** individuals **who deposited** money **into a purse,** where **this** individual invested **one hundred dinars and that** individual invested **two hundred,**

BACKGROUND

Nehar Pekod – נְהַר פְּקוֹד: Nehar Pekod was a town located on the Tigris River. It was situated north of Ctesiphon, which was the imperial capital of the Parthian and Sasanian Empires.



Location of Nehar Pekod

HALAKHA

They divide the estate equally – חוֹלְקוֹת בְּשָׁוֶה: If a man was married to four women, and the marriage contract of the first was for one hundred dinars, that of the second was for two hundred, that of the third was for three hundred, and that of the fourth was for four hundred, and all of the contracts were signed on the same date, and the man died and there are insufficient funds to pay out all of the marriage contracts, his estate is distributed in the following manner: The funds are divided equally among all the women until the woman whose contract is worth the least has been paid in full. The remainder of the money is divided equally among the remaining women until the woman whose contract is worth two hundred has been paid in full, etc. The same *halakha* of distribution applies where a person had several creditors, none of whom have precedence over the others, and the individual did not have sufficient funds to pay all of them. The *halakha* was decided in accordance with the ruling of Rabbi Yehuda HaNasi, as interpreted by the Rif (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:8, *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 20:4; *Shulḥan Arukh*, *Even HaEzer* 96:18, *Ḥoshen Mishpat* 104:10).

NOTES

The latter clause is also referring to a case where there were two seizures of property, etc. – סֵיפָא בִּשְׁתֵּי תְּפִיסוֹת וכו': When the first installment became available and each of the women had an equal claim to the money, they divided it equally, receiving twenty-five dinars apiece. When the second installment became available, the three women had an equal claim to seventy-five of the two hundred and twenty-five dinars, since the woman whose marriage contract was for one hundred still needs seventy-five dinars to complete the full amount of her marriage contract. These seventy-five dinars were therefore divided equally between them, bringing the first woman's total to fifty dinars. The second woman, whose contract was for two-hundred dinars, had a claim to one hundred and seventy-five dinars. As stated above, she received twenty-five of the first seventy-five of the second installment. The remaining one hundred dinars are divided between the second and third wives, bringing the second woman's total to one hundred dinars. The final fifty dinars belong solely to the third woman, whose marriage contract was for three-hundred dinars, bringing her total to one hundred and fifty dinars.

Rather, they divide the estate equally – אֶלָּא חוֹלְקוֹת בְּשָׁוֶה: Rashi explains Rabbi Yehuda HaNasi's statement in a straightforward manner: The wives divide the estate equally, so that if three hundred dinars are available, each woman receives one hundred dinars. Once the first wife has received her entire payment, the rest of the money is divided equally among the other two wives. According to this opinion, Rabbi Yehuda HaNasi and Rabbi Natan disagree only with regard to the two latter cases relating to marriage in the mishna; however, in the first case, where the estate is valued at one hundred dinars, they both agree that all the wives receive an equal share of the estate. This is also the opinion of the Rif, who has a lengthy discussion on this topic, including a detailed explanation in Arabic. The Rambam accepts this opinion as well.

Tosafot cite the opinion of Rabbeinu Ḥananel, who argues that dividing the estate equally is unjust. He interprets Rabbi Yehuda HaNasi's statement to mean that each part of the estate is divided in the same manner, according to the proportional value of the marriage contracts. Consequently, the wife whose marriage contract is worth one hundred dinars receives one-sixth of the estate, the woman whose contract is for two hundred dinars receives one-third, and the woman whose contract is for three hundred receives one-half of the estate. Once the first woman's contract has been fully paid, the remainder is divided among the other two women. According to this approach, Rabbi Yehuda HaNasi disputes the opinion of Rabbi Natan only in the first two cases, but not in the third case mentioned in the mishna.

הַשָּׂכָר לָאֶמְצַע.

the earnings are divided equally.[N]

אֲמַר רַבָּה: מִסְתַּבְּרָא מִילְּתֵיהּ דִּשְׁמוּאֵל בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לַחֲרִישָׁה, אֲבָל בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה – זֶה נוֹטֵל לְפִי מְעוֹתָיו, וְזֶה נוֹטֵל לְפִי מְעוֹתָיו. וְרַב הַמְנוּנָא אָמַר: אֲפִילּוּ שׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה – הַשָּׂכָר לָאֶמְצַע.

Rabba said: Shmuel's statement stands to reason in a case **where** they bought **an ox for plowing and it was used for plowing,** and now they wish to divide the earnings from the work of the ox. Since each part of the ox is necessary in order to plow, each partner's contribution is equally necessary. **However,** in a case **where** they purchased **an ox for plowing, but it was used for slaughter** and they wish to divide their income from the sale of the meat, **this** partner **takes** his portion **according to his monetary** investment **and that** partner **takes** his portion **according to his monetary** investment. **And Rav Hamnuna said: Even** in a case where they purchased **an ox for plowing and used** it **for slaughter,**[N] **the earnings are divided equally.**

מֵיתִיבִי: שְׁנַיִם שֶׁהִטִּילוּ לַכִּיס, זֶה מָנֶה וְזֶה מָאתַיִם – הַשָּׂכָר לָאֶמְצַע. מַאי לָאו – בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה, וּתְיוּבְתָּא דְּרַבָּה! לָא, בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לַחֲרִישָׁה.

The Gemara **raises an objection** to Rabba's statement from the following *Tosefta*: In the case of **two** individuals **who deposited** money **into a purse,**[H] i.e., invested in a joint business venture, **this** one invested **one hundred dinars and that** one invested **two hundred, the earnings are divided equally.** The Gemara comments: **What, is it not** referring to the case **of an ox** that was purchased **for plowing and was used for slaughter, and** it is **a conclusive refutation of** the opinion of **Rabba?** The Gemara responds: **No,** the *Tosefta* is referring only to the case **of an ox** that was purchased **for plowing and used for plowing.**

אֲבָל שׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה מַאי – זֶה נוֹטֵל לְפִי מְעוֹתָיו, וְזֶה נוֹטֵל לְפִי מְעוֹתָיו? אַדְּתָנֵי סֵיפָא ״לָקַח זֶה בְּשֶׁלּוֹ וְזֶה בְּשֶׁלּוֹ וְנִתְעָרְבוּ – זֶה נוֹטֵל לְפִי מְעוֹתָיו וְזֶה נוֹטֵל לְפִי מְעוֹתָיו״,

The Gemara asks: **But in** the case of **an ox purchased for plowing and used for slaughter, what** is the opinion of the *Tosefta*; is it that **this** partner **takes** his portion **according to his monetary** investment **and that** partner **takes** his portion **according to his monetary** investment? If so, **rather than teaching the latter clause** of that same *Tosefta*, which reads as follows: If **this** partner **purchased** oxen **with his own** funds **and that** partner also purchased oxen **with his own** funds, **and they became mixed** when the two owners entered a joint business venture, **this** partner **takes** his portion **according to his monetary** investment **and that** partner **takes** his portion **according to his monetary** investment, it should teach a different case.

HALAKHA

Two individuals who deposited money into a purse, etc. – שְׁנַיִם שֶׁהִטִּילוּ לַכִּיס וכו׳: In a case of multiple business partners who invested varying sums of money into a joint venture, and over time they either earned profits or suffered losses, then the earnings or the losses are shared equally among them and not in proportion to their initial investments. If they purchased an ox for slaughter and actually slaughtered it, they would divide the money in proportion to their initial investments. However, if they sold it for slaughter, the profit or loss is shared equally among them. This ruling is in accordance with the opinions of Shmuel and Rav Hamnuna. It is explained in the *Kesef Mishne* that this is because the Gemara raised a question in opposition to Rabba's opinion; although it resolved the question, the simple reading of the *Tosefta* is in accordance with the opinion of Rav Hamnuna (Rambam *Sefer Mishpatim*, *Hilkhot Sheluḥin VeShutafin* 4:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 176:5).

NOTES

The earnings are divided equally – הַשָּׂכָר לָאֶמְצַע: Rashi touches upon the reason for this *halakha* as do other early authorities, most of whom relied on the discussion cited in the Jerusalem Talmud, which explains as follows: In all cases comparable to that of the ox purchased for plowing, the profits are split equally, because the ox would not exist without the investment of the minor partner. The Jerusalem Talmud provides a comparable example of partners who purchased a large jewel that a single investor alone would not have been able to afford. The problem becomes more complex when investors enter a partnership and purchase merchandise that is comprised of separate units that can be separated and divided between the investors. The dispute between Rabba and Rav Hamnuna relates to this type of partnership. It is explained in the Jerusalem Talmud why one could argue that two partners should divide the assets equally even in such a case. First, one does not necessarily earn more when dealing with more expensive items, as the turnover for cheaper items is higher than for more expensive ones, and in the time it takes to sell the more expensive merchandise one can sell a greater quantity of less expensive goods and earn the same profit. Furthermore, the partner who provided the smaller financial investment may be a more qualified salesman and, all in all, contribute just as much to the business as the partner who provided the larger financial investment. Additionally, two individuals working together and assisting each other can often accomplish more than one working alone.

In the Jerusalem Talmud there is also a discussion about whether the implied conditions of a business partnership are that the earnings are divided equally among the partners unless there are mitigating factors, in accordance with the opinion of Shmuel, or whether the earnings are divided in proportion to each partner's initial investment, unless stated otherwise.

Even in a case where they purchased an ox for plowing and used it for slaughter – אֲפִילּוּ שׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה: The early commentaries disagree with regard to the correct understanding of Rav Hamnuna's opinion (see Ritva). Some hold that the reason Rav Hamnuna cited the case of an ox purchased for plowing was in order to emulate Rabba's wording, but Rav Hamnuna would hold that the income is divided equally even if they had originally purchased an ox for slaughter. Others argue that Rav Hamnuna's wording is precise, and that he differentiates between a case where the ox was originally purchased for plowing and one where it was originally purchased for slaughter. If it was purchased for plowing, then even when the owners decide to slaughter it, the money is divided equally. However, if the ox was initially purchased for slaughter, it demonstrates their intent to share the profits in proportion to their investments. According to all opinions, the partners may stipulate from the outset that they will split the profits in proportion to their respective investments. In the Jerusalem Talmud, with regard to a case where the partnership is forced upon the individuals rather than formed of their own free will, e.g., where an ox belonging to a third party gored their oxen, in which case the ox that gored may be paid to the two of them as compensation for the damage, the case is treated as if they initially agreed to split the assets in proportion to their shares.

Even among the commentaries who hold that Rav Hamnuna would rule that the ox is divided equally even if it was originally purchased for slaughter, there is a dispute about the details of this ruling. According to Rabbeinu Ḥananel, the Rif, and the Rambam, the money is split equally only when the ox was sold alive; but if it was slaughtered and the meat was sold, the earnings are divided in proportion to the monetary investment of each partner. The same is true with regard to any merchandise that can be divided. Conversely, the Rosh and the Ra'ah are of the opinion that the money is split evenly in any event. This is also the opinion of the Ritva.

לִיפְלוֹג וְלִיתְנֵי בְּדִידֵיהּ: בַּמֶּה דְּבָרִים אֲמוּרִים: בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לַחֲרִישָׁה, אֲבָל בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה – זֶה נוֹטֵל לְפִי מְעוֹתָיו וְזֶה נוֹטֵל לְפִי מְעוֹתָיו!

The Gemara explains: **Let** the *Tosefta* **distinguish and teach within the case** of the first clause **itself,** as follows: **In what** case **is this statement said,** that the earnings are divided equally? **In** the case of **an ox** purchased **for plowing and used for plowing, but in** the case of **an ox** purchased **for plowing and used for slaughter, this** partner **takes** his portion **according to his monetary** investment **and that** partner **takes** his portion **according to his monetary** investment. Since the *Tosefta* did not make that distinction, it appears that it is dealing with both cases.

הָכִי נַמִּי קָאָמַר: בַּמֶּה דְּבָרִים אֲמוּרִים – בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לַחֲרִישָׁה, אֲבָל בְּשׁוֹר לַחֲרִישָׁה וְעוֹמֵד לִטְבִיחָה – נַעֲשָׂה כְּמִי שֶׁלָּקַח זֶה בְּשֶׁלּוֹ וְזֶה בְּשֶׁלּוֹ וְנִתְעָרְבוּ, זֶה נוֹטֵל לְפִי מְעוֹתָיו וְזֶה נוֹטֵל לְפִי מְעוֹתָיו.

The Gemara answers: **That is indeed what** the *Tosefta* **is saying: In what** case **is this statement said? In** the case of **an ox** purchased **for plowing and used for plowing, but in** the case of **an ox** purchased **for plowing but used for slaughter, it becomes like** a case **where this** partner **purchased** oxen **with his own** funds **and that** partner purchased oxen **with his own** funds, **and they became mixed** when the two owners entered a joint business venture. The *halakha* in such a case is that **this** partner **takes** his portion **according to his monetary** investment **and that** partner **takes** his portion **according to his monetary** investment.

תְּנַן: וְכֵן שְׁלֹשָׁה שֶׁהִטִּילוּ לַכִּיס, פָּחֲתוּ אוֹ הוֹתִירוּ – כָּךְ הֵן חוֹלְקִין.

The Gemara presents another proof: **We learned** in the mishna: **Similarly, three** individuals **who deposited** money **into a purse,** i.e., invested different amounts of money into a joint business venture: If they **incurred a loss or earned a profit**[H] and now choose to dissolve the partnership, **they divide** the assets **in this manner,** i.e., based upon the amount that each of them initially invested in the partnership.

מַאי לָאו, פָּחֲתוּ – פָּחֲתוּ מַמָּשׁ, הוֹתִירוּ – הוֹתִירוּ מַמָּשׁ!

What, is it not that when the mishna says: **They incurred a loss,** it means that **they incurred an actual loss,** and when it says: **They earned a profit,** it means that **they earned an actual profit,** and it says that they divide the assets proportionally and not equally? This poses a difficulty for Shmuel, who is of the opinion that they should divide the assets equally.

אֲמַר רַב נַחְמָן אֲמַר רַבָּה בַּר אֲבוּהּ: לָא, הוֹתִירוּ – זוּזֵי חֲדָתֵי, פָּחֲתוּ – אַסְתִּירָא דְּצוּנִיתָא.

Rav Naḥman said that **Rabba bar Avuh said: No,** when the mishna says **they earned a profit,** it means that they received **new dinars,** i.e., coins, in place of the old ones they had started with, and these new coins were of greater value than the original ones. Similarly, when it says that **they incurred a loss,** it means that they received defective **coins** useful only **for a wound.**[B] When they were dividing the money between themselves, they found some old coins, which had become rusty or invalidated by the government and therefore lost some or all of their value and were good for nothing other than scrap metal. When dividing the coins they are left with, they do so in proportion to their monetary stakes, but this does not apply to the actual profits they earned.

מתני׳ מִי שֶׁהָיָה נָשׂוּי אַרְבַּע נָשִׁים וּמֵת – הָרִאשׁוֹנָה קוֹדֶמֶת לַשְּׁנִיָּה, וּשְׁנִיָּה לַשְּׁלִישִׁית, וּשְׁלִישִׁית לָרְבִיעִית. וְרִאשׁוֹנָה נִשְׁבַּעַת לַשְּׁנִיָּה, וּשְׁנִיָּה לַשְּׁלִישִׁית, וּשְׁלִישִׁית לָרְבִיעִית, וְהָרְבִיעִית נִפְרַעַת שֶׁלֹּא בִּשְׁבוּעָה. בֶּן נַנָּס אוֹמֵר: וְכִי מִפְּנֵי שֶׁהִיא אַחֲרוֹנָה נִשְׁכֶּרֶת? אַף הִיא לֹא תִּפָּרַע אֶלָּא בִּשְׁבוּעָה.

MISHNA In the case of **one who was married** to **four women and died, the** woman he married **first precedes the** woman he married **second**[H] in claiming her marriage contract, **the second** precedes **the third, and the third** precedes **the fourth. And** the **first** wife **takes an oath to the second** that she has taken nothing from the jointly owned properties of the estate in an unlawful manner, **and** the **second** takes an oath **to the third, and** the **third to the fourth. The fourth** wife **is paid** her share **without** having to take **an oath. Ben Nanas says: Should she gain** this advantage merely **because she is last?** After all, she too is being paid from property that would otherwise go to the orphans. Rather, **she too is not paid without an oath.**

הָיוּ יוֹצְאוֹת כּוּלָּן בְּיוֹם אֶחָד – כָּל הַקּוֹדֶמֶת לַחֲבֶרְתָּהּ, אֲפִילּוּ שָׁעָה אַחַת – זָכְתָה. וְכָךְ הָיוּ כּוֹתְבִין בִּירוּשָׁלַיִם שָׁעוֹת. הָיוּ כוּלָּן יוֹצְאוֹת בְּשָׁעָה אַחַת, וְאֵין שָׁם אֶלָּא מָנֶה – חוֹלְקוֹת בְּשָׁוֶה.

However, **if all of** the marriage contracts **were issued on the same day,**[H] **whichever** wife's marriage contract **precedes** that of **another, even by a single hour, has acquired** the right to be paid first. **And so,** the practice **in Jerusalem** was that **they would write the hours**[N] when the documents had been signed on the documents, in order to enable the document holder to demonstrate that his or her document preceded that of another. If **all** the contracts **were issued in the same hour and there is only one hundred dinars** from which to pay all of them, all of the women **divide** the money **equally.**

HALAKHA

They incurred a loss or earned a profit – פָּחֲתוּ אוֹ הוֹתִירוּ: In cases where partners conducted business using shared funds, the profits and losses are divided equally between them. However, if they did not spend the money and still have the exact coins that were invested, but the government has changed their value, the coins are divided accordingly based on the initial investment of each partner.

The Rema writes, based on the *Tur*, that if they entered into a business venture involving produce, and this produce is still intact, it should certainly be split proportionally (Rambam *Sefer Mishpatim*, *Hilkhot Sheluḥin VeShutafin* 4:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 176:5).

The woman he married first precedes the woman he married second, etc. – הָרִאשׁוֹנָה קוֹדֶמֶת לַשְּׁנִיָּה וכו׳: If someone was married to many wives and died, the wives claim their marriage contracts in the order in which they were married. Each wife claims her share only after taking an oath. The wife he married last will only be able to collect her settlement from what remains in the estate after the shares are distributed to those who preceded her, and she too is required to take an oath, in accordance with the opinion of ben Nanas (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:1; *Shulḥan Arukh*, *Even HaEzer* 96:16).

If all of the marriage contracts were issued on the same day – הָיוּ יוֹצְאוֹת כּוּלָּן בְּיוֹם אֶחָד: If the various marriage contracts were written on the same date, or the same hour, in places where it is customary to note the hour, the women divide the estate equally, because in this case none of the wives takes precedence over another (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:3; *Shulḥan Arukh*, *Even HaEzer* 96:17).

BACKGROUND

Coins useful only for a wound [*tzunita*] – אַסְתִּירָא דְּצוּנִיתָא: Apparently, *tzinit*, or *tzunita*, is a swelling or an infected wart on the sole of the foot. A coin applied to such an area served to prevent chafing. Contact with the metal itself may have helped to heal the wound. Even today, various powdered metals are used for healing wounds. In the Jerusalem Talmud, however, it is explained that *tzinit* means gout, a very painful condition usually affecting the joints of the toes.

NOTES

And so the practice in Jerusalem was that they would write the hours – וְכָךְ הָיוּ כּוֹתְבִין בִּירוּשָׁלַיִם שָׁעוֹת: According to *Talmidei Rabbeinu Yona*, it can be concluded from here that in a place where the custom is that the hours are not written in the document, no notice is taken of the hours at all. Therefore, even if one is certain that the writing of one document preceded the writing of another by an hour or two, it makes no difference, and all documents issued on that day are assumed to create a lien on the property beginning from the end of that day.

גמ׳ בְּמַאי קָמִיפַּלְגִי? אָמַר שְׁמוּאֵל:

GEMARA The Gemara asks: **With regard to what do** the first *tanna* and ben Nanas **disagree? Shmuel said:**

כְּגוֹן שֶׁנִּמְצֵאת אַחַת מֵהֶן שָׂדֶה שֶׁאֵינָהּ שֶׁלּוֹ, וּבְבַעַל חוֹב מְאוּחָר שֶׁקָּדַם וְגָבָה קָמִיפַּלְגִי;

The case is **where it is discovered that one of the** fields in the estate **is not his** field, e.g., the husband had stolen it from someone else. Consequently, it is likely that the field will be repossessed, and if it is used to pay the marriage contract of one of the first three wives, that wife stands to lose out. **And they disagree with regard to a creditor** whose promissory note was dated **later** than that of another creditor, and yet **he collected** his debt **before** the other creditor, leaving nothing for the other creditor to collect. This is parallel to the case of the wives if the fourth wife collects her marriage contract and then one of the earlier wives loses the field she has been paid.

תַּנָּא קַמָּא סָבַר: מַה שֶּׁגָּבָה – לֹא גָּבָה,

The first *tanna* holds that **what** the creditor **has collected, he has not** fully **collected,** i.e., he will have to give up the property he collected so that the creditor with the earlier promissory note can collect his debt. Similarly, if the property given to one of the first three wives is repossessed and there is nothing left for her to collect, the fourth wife will have to relinquish the property that she had been paid to accommodate the wife who preceded her.

וּבֶן נַנָּס סָבַר: מַה שֶּׁגָּבָה – גָּבָה.

And ben Nanas holds that what the creditor **has collected, he has collected,** i.e., it is not taken from him in order to pay the earlier creditor. Consequently, according to the first *tanna*, there is no need for the fourth wife to take an oath before she collects the property, because whatever she collects can be taken from her in order to pay the other wives. According to ben Nanas, since the property the fourth wife collects cannot be taken from her, she must take an oath that she is collecting this property legally in order to ensure that none of the other wives will lose out because of what she collects.

(אָמַר) רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ: דְּכוּלֵי עָלְמָא, מַה שֶּׁגָּבָה – לֹא גָּבָה, וְהָכָא בְּחָיְישִׁינַן שֶׁמָּא תַּכְסִיף קָמִיפַּלְגִי;

Rav Naḥman said that **Rabba bar Avuh said: Everyone agrees** that **what** the later creditor **has collected, he has not collected,**[H] i.e., it may be repossessed by the earlier creditor. Rather, **they disagree here** as to whether **we are concerned** that **perhaps she will deplete** the field[N] and cause its value to depreciate.

מָר סָבַר: חָיְישִׁינַן שֶׁמָּא תַּכְסִיף, וּמָר סָבַר: לָא חָיְישִׁינַן שֶׁמָּא תַּכְסִיף.

One **Sage,** ben Nanas, **holds** that **we are concerned** that **perhaps she will deplete** the field. If she is not required to take the oath, she will understand that her hold on the land is uncertain, as it is possible that one of the other wives will repossess it. Consequently, she will try to reap the maximum benefit from the field in the short term without investing in the field for the long term, and thereby depleting the field. The Sages therefore imposed an oath upon the fourth wife. **And** one **Sage,** the first *tanna*, **holds that we are not concerned** that **perhaps she will deplete** the field and we can assume that it will retain its original value. Therefore, there is no reason to impose an oath upon the fourth wife.

אַבָּיֵי אָמַר: דְּאַבָּיֵי קַשִּׁישָׁא אִיכָּא בֵּינַייְהוּ. דְּתָנֵי אַבָּיֵי קַשִּׁישָׁא: יְתוֹמִים שֶׁאָמְרוּ – גְּדוֹלִים, וְאֵין צָרִיךְ לוֹמַר קְטַנִּים.

Abaye said: There is a practical difference **between them,** the first *tanna* and ben Nanas, with regard to the ruling **of Abaye the Elder, as Abaye the Elder taught:** The **orphans** with regard to whom the Sages **said** that one cannot collect property from them without taking an oath include **adult** orphans,[H] **and, needless to say,** orphans who are **minors.** Even adult orphans are not necessarily aware of the business affairs of their parents, and one can easily press claims against the estate that take advantage of their ignorance. Therefore, anyone who wishes to collect money from the estate is required to take an oath.

HALAKHA

What the later creditor has collected, he has not collected – מַה שֶּׁגָּבָה לֹא גָּבָה: If an individual owes money to multiple creditors, the creditors collect from him in the order that the debts were incurred. If a later creditor collects payment of a debt in the form of real estate prior to the creditors that preceded him, and the debtor does not have enough money to pay back all his creditors, the earlier creditors may repossess the property that the later creditor has taken as payment. The *halakha* follows the first opinion cited in the mishna; the later *ge'onim* agreed with this ruling as well (*Maggid Mishne*; Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 20:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 104:1).

The orphans with regard to whom the Sages said… include adult orphans – יְתוֹמִים שֶׁאָמְרוּ גְּדוֹלִים: One does not collect payment from the estate of a debtor after his death without taking an oath. This applies even if the debtor's heirs are adults. This is in accordance with the opinion of Abaye the Elder and the conclusion of the Gemara in tractate *Gittin*, 50b (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 14:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 108:17).

NOTES

We are concerned that perhaps she will deplete [*takhsif*] the field – בְּחָיְישִׁינַן שֶׁמָּא תַּכְסִיף: Rashi explains that the concern is that the fourth wife, who is not required to take an oath, will understand that her hold on the field is tenuous and will consequently decide to take maximum advantage of it in the short term, which will cause damage to the field. The Ramban finds this approach difficult because it indicates that the Sages require her to take an oath merely in order to trick her into thinking that she has a secure hold on the field, which is not true because the earlier wives can repossess her field if necessary. Instead, the Ramban explains that any one of the wives can prevent the fourth wife from taking the field because she may need to repossess it from her, and the fourth wife might ruin it in the interim. However, once the fourth wife takes the oath and then takes possession of the field, the other wives can no longer prevent her from holding on to it until a third party actually repossesses property that one of the earlier wives has taken. The Ra'ah interpreted the matter in a similar way. Alternatively, Rav Sherira Gaon explains that the word *takhsif* is from the same root as *kisufa*, meaning shame. The Gemara means to say that we are concerned about embarrassing the other women by forcing them to take an oath while the fourth wife is exempt from this requirement.