גמ׳ בְּמַאי קָמִיפַּלְגִי? אָמַר שְׁמוּאֵל:

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

כְּגוֹן שֶׁנִּמְצְאוּ 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.

אַבַּיֵי אָמַר: דְּאַבַּיֵי קַשִּׁישָׁא אִיכָּא בֵּינַייְהוּ. דְּתָנֵי אַבַּיֵי 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.

תַּנָּא קַמָּא – לֵית לֵיהּ דְּאַבַּיֵי קַשִּׁישָׁא, וּבֶן נַנָּס – אִית לֵיהּ דְּאַבַּיֵי קַשִּׁישָׁא.

The first *tanna* does not accept the ruling **of Abaye the Elder** and therefore holds that the fourth wife does not have to take an oath when collecting her marriage contract. **And ben Nanas accepts** the ruling **of Abaye the Elder** and therefore holds that the fourth wife must take an oath before collecting part of the estate.

אָמַר רַב הוּנָא: הָנֵי תְּרֵי אַחֵי וּתְרֵי שׁוּתָּפֵי דְּאִית לְהוּ דִּינָא בַּהֲדֵי חַד, וַאֲזַל חַד מִינַּייהוּ בַּהֲדֵיהּ לְדִינָא, לָא מָצֵי אֵידָךְ לְמֵימַר לֵיהּ: אַתְּ לָאו בַּעַל דָּבָרִים דִּידִי אַתְּ, אֶלָּא שְׁלִיחוּתֵיהּ עָבַד.

§ **Rav Huna said:** In a case of **two brothers or two partners**[H] **who have legal** proceedings **against** another **individual, and one of them went to** attend to the **legal** proceedings **against him** and lost, **the other** brother or partner **cannot say** to the litigant: **I am not legally answerable to you,** i.e., I am not bound by the verdict because I was not represented in the legal proceedings. **Rather,** the brother or partner who appeared in court is considered to have **acted as his agent.**

אִקְּלַע רַב נַחְמָן לְסוּרָא, שַׁיְילוּהִי: כִּי הַאי גַּוְונָא מַאי?

The Gemara relates that **Rav Naḥman** once **happened** to come **to Sura. They asked him: What** is the *halakha* in **a case like this** one presented by Rav Huna, where only one of the two brothers or partners attends the court proceedings?

אֲמַר לְהוּ: מַתְנִיתִין הִיא: הָרִאשׁוֹנָה נִשְׂבַּעַת לַשְּׁנִיָּה, וּשְׁנִיָּה לַשְּׁלִישִׁית וּשְׁלִישִׁית, לָרְבִיעִית. וְאִילּוּ רִאשׁוֹנָה לַשְּׁלִישִׁית – לָא קָתָנֵי, מַאי טַעְמָא – לָאו מִשּׁוּם דִּשְׁלִיחוּתָהּ עָבְדָה?

He said to them: It is taught in **a mishna: The** woman he married **first takes an oath to the** woman he married **second, the second to the third, and the third to the fourth.** But **it does not teach** that **the first** wife takes an oath **to the third** or the fourth. **What is the reason? Is it not due to** the fact that when the second wife requires the first to take an oath, **she is acting as** the third wife's **agent** as well, since they both share the same concern regarding the first wife?

מִי דָּמֵי? הָתָם – שְׁבוּעָה לְאֶחָד וּשְׁבוּעָה לְמֵאָה, הָכָא אָמַר: אִילּוּ אֲנָא הַוַאי – טָעֵינְנָא טְפֵי.

The Gemara responds: **Is it comparable? There,** in the case of the mishna, **an oath to one is** equal to **an oath to one hundred,**[H] and there is no need for the first wife to take multiple oaths about the same matter. **Here,** however, in the case of the brothers or business partners, the second brother or partner can **say: Had I been** there, **I would have** presented **a more** convincing **claim.**

וְלָא אֲמַרַן אֶלָּא דְּלָא אִיתֵיהּ בְּמָתָא, אֲבָל אִיתֵיהּ בְּמָתָא – אִיבָּעֵי לֵיהּ לְמֵיתֵי.

The Gemara notes: **We said** that this doubt is taken into account **only** if the second brother or partner **is not in town**[H] when the legal proceedings take place. **However,** if **he is in town, he should come** to court to participate in the legal proceedings, and if he fails to do so, it is clear that he is content to allow his brother or partner to represent him in court.

אִתְּמַר, שְׁנֵי שְׁטָרוֹת הַיּוֹצְאִים בְּיוֹם אֶחָד. רַב אָמַר: חוֹלְקִין, וּשְׁמוּאֵל אָמַר: שׁוּדָּא דְּדַיָּינֵי.

§ **It was stated** that in a case of **two deeds that are issued,** i.e., dated, **on the same day,**[H] e.g., where an individual gave or sold the same item to two different people, **Rav said: They divide** it between them, as it is impossible to determine who it belongs to, **and Shmuel said:** The item is awarded according to **the discretion** [***shuda***][L] **of the judges.**

לֵימָא רַב דְּאָמַר כְּרַבִּי מֵאִיר, דְּאָמַר: עֵדֵי חֲתִימָה כָּרְתִי,

The Gemara asks: **Shall we say** that **Rav said** his ruling **in accordance with** the opinion of **Rabbi Meir, who said** that **signatory witnesses** on the document **effect** the transaction?[N] Here, since the seller or the giver of the field did not ask the signatory witnesses to note the exact time, it implies that he wished to give it to two people, but did not want to reveal that he was giving it to both of them.

HALAKHA

Two brothers or two partners – תְּרֵי אַחֵי וּתְרֵי שׁוּתָּפֵי: In the case of brothers who have not yet divided their father's estate, or partners in a joint business venture, if one brother or partner presses legal charges against another individual, he is considered to be doing so on behalf of all the brothers or all the partners. This applies even if he did not obtain special permission from the other brothers or partners, in accordance with the opinion of Rav Huna (Rambam *Sefer Kinyan*, *Hilkhot Sheluḥin VeShutafin* 3:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 122:9).

An oath to one is equal to an oath to one hundred – שְׁבוּעָה לְאֶחָד וּשְׁבוּעָה לְמֵאָה: If two partners had a claim against a third party, and one of the partners sued him and forced him to take an oath in court, and he took the oath and was exempted from having to make any kind of payment, the second partner cannot sue him again and force him to take an oath a second time. This is because an oath to one is equal to an oath to one hundred (*Shulḥan Arukh*, *Ḥoshen Mishpat* 176:24).

We said this only if the second brother or partner is not in town – וְלָא אֲמַרַן אֶלָּא דְּלָא אִיתֵיהּ בְּמָתָא: If two partners have a claim against a third party and one of them sues him, he can sue for the full amount and does not need special permission from the other partner to do so. Furthermore, the second partner cannot say that had he been in court he would have offered other arguments and won the case, as the other litigant can say to him: Why did you not come to court and present your claims? Therefore, if the second partner was out of town at the time of the court case, he can sue the other litigant in order to present his arguments, and he need not agree with the arguments of the first partner. For this reason, a disputant may refuse to go to court with the first partner alone unless that partner has authorization from the other partner to represent both of them.

The Rema rules that all of the above applies when the partners are the ones suing a third party. However, if the partners are being sued and only one of them appeared in court, the other can argue that the verdict is not binding because the partner acted independently without his authorization (Ra'avya). Similarly, if the partner who came to court said that he has no further evidence, or if the court ruled in accordance with the other litigant, the partner who was absent from the case may offer further evidence and demand that the case be reopened (Rosh). See *Shakh*, where it is noted that the Rosh's ruling differs from the Rambam's, and that the opinion of the Rosh is not accepted as the final *halakha* in this matter (Rambam *Sefer Kinyan*, *Hilkhot Sheluḥin VeShutafin* 3:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 122:9, 176:25–26).

Two deeds that are issued on the same day – שְׁנֵי שְׁטָרוֹת הַיּוֹצְאִים בְּיוֹם אֶחָד: If two documents, either bills of sale or deeds of gifts, for the same piece of property are issued on the same day, the matter is subject to the discretion of the judges and they can decide to award the property to whomever they choose. This ruling is in accordance with Shmuel and is based on the principle that in monetary matters, the *halakha* is generally ruled according to the opinion of Shmuel and not that of Rav (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 5:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 240:3).

LANGUAGE

Discretion [*shuda*] – שׁוּדָּא: Just as the early commentaries were divided as to the halakhic meaning of this term, so too, were they divided as to its linguistic meaning. According to Rashi, who uses this interpretation in his halakhic opinion, *shuda* is related to the root *shin*, *dalet*, *alef*, which means to throw. According to *Tosafot*, it is a shortened form of *shoḥada*, meaning bribery; the guttural letter is contracted, as is the case in several places in the Babylonian Talmud, due to Babylonian influence. Its meaning here would therefore be that the judges may issue their decision without explanation, as though they had received some benefit from one of the parties. A strong proof for this interpretation is the fact that in a parallel discussion in the Jerusalem Talmud (*Ketubot* 10:5), also in the name of Shmuel, the expression appears with the word *shoḥada* instead of *shuda*.

NOTES

Signatory witnesses on the document effect [*karti*] the transaction – עֵדֵי חֲתִימָה כָּרְתִי: The main discussion with regard to this issue, including the interpretation of the word *karti*, literally, to cut, appears in the context of the *halakhot* of bills of divorce. Rabbi Meir holds that the bill of divorce takes effect when the witnesses sign the document, even though it has not yet been physically handed over to the woman. Although the document does need to be handed to her, this need not be done in the presence of witnesses. According to Rabbi Elazer, the bill takes effect when it is given to the woman in the presence of witnesses, and the only reason that witnesses are required to sign the document is to prevent people from contesting the authenticity of the divorce by claiming that it is forged. This same debate applies with regard to other types of contracts and documents as well.

Tosafot have a long discussion in which they explain, in different ways, the connection between the opinion of Rav, who holds that if two documents were issued on the same day the property is divided equally, and the opinion of Rabbi Meir. The Ra'ah explains that according to Rabbi Meir, the document does not take effect until it is transferred to the other party, but at that point it takes effect retroactively from the time it was signed. Consequently, if two documents were signed on the same day, it is apparent that they were meant to take effect simultaneously, and this is why both parties split the field.

וּשְׁמוּאֵל דְּאָמַר כְּרַבִּי אֶלְעָזָר, דְּאָמַר: עֵדֵי מְסִירָה כָּרְתִי?

And Shmuel said his ruling **in accordance with** the opinion of **Rabbi Elazar,**[N] **who said** that **witnesses of the transmission effect** the transaction,[H] i.e., the act of transferring the legal document to the beneficiary causes the transaction to take effect. Therefore, the fact that the two documents bear the same date is of no consequence because the documents were presumably not given to their beneficiaries simultaneously, and the property belongs exclusively to the individual who received his document first. Consequently, there is no reason to divide the property.

לָא, דְּכוּלֵּי עָלְמָא כְּרַבִּי אֶלְעָזָר. וְהָכָא בְּהָא קָמִיפַּלְגִי; רַב סָבַר: חֲלוּקָה עֲדִיפָא, וּשְׁמוּאֵל סָבַר: שׁוּתָּא דְּדַיְּינֵי עֲדִיפָא.

The Gemara responds: **No,** it is possible to say **that everyone** holds **in accordance with** the opinion of **Rabbi Elazar, and here they disagree about the following: Rav holds** that in a case of a doubt that cannot be resolved with regard to monetary law, **division is preferable, and Shmuel holds** that leaving the decision to **the discretion of the judges is preferable.**[N]

וּמִי מָצֵית מוֹקְמַתְּ לֵיהּ לְרַב כְּרַבִּי אֶלְעָזָר? וְהָאָמַר רַב יְהוּדָה אָמַר רַב: הֲלָכָה כְּרַבִּי אֶלְעָזָר בְּגִיטִּין. כִּי אָמְרִיתָהּ קַמֵּיהּ דִּשְׁמוּאֵל אָמַר: אַף בִּשְׁטָרוֹת. מִכְּלָל דְּרַב סָבַר – בִּשְׁטָרוֹת לָא! אֶלָּא, מְחַוְורְתָּא: רַב – כְּרַבִּי מֵאִיר, וּשְׁמוּאֵל – כְּרַבִּי אֶלְעָזָר.

The Gemara asks: **Can you really establish** that the opinion **of Rav** is **in accordance with** the opinion of **Rabbi Elazar? Didn't Rav Yehuda say** that **Rav said: The *halakha* is in accordance with** the opinion of **Rabbi Elazar with regard to bills of divorce?**[H] And Rav Yehuda related further: **When I said this** *halakha* **in the presence of Shmuel, he said:** The *halakha* is in accordance with the opinion of Rabbi Elazar **even with regard to** other legal **documents** as well. **By inference,** it is apparent **that Rav holds** that with regard to other legal **documents, no,** the *halakha* is not in accordance with Rabbi Elazar. **Rather, it is clear** that **Rav** holds **in accordance with** the opinion of **Rabbi Meir, and Shmuel** holds **in accordance with** the opinion of **Rabbi Elazar.**

מֵיתִיבִי: שְׁנֵי שְׁטָרוֹת הַיּוֹצְאִים בְּיוֹם אֶחָד – חוֹלְקִין, תִּיובְתָּא דִּשְׁמוּאֵל! אָמַר לָךְ שְׁמוּאֵל: הָא מַנִּי – רַבִּי מֵאִיר הִיא, וַאֲנָא דַּאֲמָרִי כְּרַבִּי אֶלְעָזָר.

The Gemara **raises an objection** from a *baraita*: In the case of **two deeds that are issued** dated **the same day,** the recipients of the deeds **divide** the property equally. Is this not **a conclusive refutation of** the opinion of **Shmuel?** The Gemara answers that **Shmuel** could have **said to you:** In accordance with **whose** opinion **is this** *baraita*? **It is** in accordance with the opinion of **Rabbi Meir, and I said** my opinion **in accordance with** the opinion of **Rabbi Elazar.**

אִי רַבִּי מֵאִיר – אֵימָא סֵיפָא: כָּתַב לְאֶחָד וְמָסַר לְאַחֵר, זֶה שֶׁמָּסַר לוֹ, קָנָה. וְאִי רַבִּי מֵאִיר – אַמַּאי קָנָה? הָאָמַר: עֵדֵי חֲתִימָה כָּרְתִי!

The Gemara continues to ask: **If** this *baraita* is in accordance with the opinion of **Rabbi Meir, say the latter clause** of that same *baraita*: If **he wrote** a deed **to one** individual **and** then **transmitted it to another** individual, **the one to whom** the deed **was transmitted has acquired** the property. **If** the *baraita* is following the opinion of **Rabbi Meir, why** did the latter individual **acquire** the property? **Didn't** Rabbi Meir **say** that **the signatory witnesses** on the document **effect the transaction** and not the witnesses to its transmission?

HALAKHA

Witnesses of the transmission effect the transaction – עֵדֵי מְסִירָה כָּרְתִי: If an individual wrote two deeds to two different people pertaining to the same property, with the purpose of selling the property or giving it as a gift, and if one of them brought witnesses who testified that the deed was handed to him first, he is considered to have acquired the property. This is in accordance with the opinion of Rabbi Elazar, who holds that witnesses of the transmission effect the transaction (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 5:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 240:4).

The *halakha* is in accordance with the opinion of Rabbi Elazar with regard to bills of divorce – הֲלָכָה כְּרַבִּי אֶלְעָזָר בְּגִיטִּין: Although the Sages required that a bill of divorce be signed by witnesses, the main component of the legal procedure of divorce is effected when witnesses observe the bill being transmitted to the recipient. If there were signatory witnesses but no witnesses to the transmission of the bill of divorce to its intended recipient, some authorities still validate the bill of divorce after the fact. However, some *ge'onim* hold that it is invalid even after the fact. In general, unless known otherwise, it can be assumed that a signed bill of divorce was properly transferred in the presence of witnesses (Tur, based on Rosh). If there were witnesses to the transmission of the bill of divorce but no signatory witnesses, it is valid according to all opinions. This ruling is in accordance with Rabbi Elazar since both Rav and Shmuel follow his ruling with regard to bills of divorce (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 1:15; *Shulḥan Arukh*, *Even HaEzer* 133:1).

NOTES

And Shmuel said his ruling in accordance with the opinion of Rabbi Elazar, etc. – וּשְׁמוּאֵל דְּאָמַר כְּרַבִּי אֶלְעָזָר וכו': The Ritva explains as follows: According to Rabbi Meir, if two deeds that had the same date were given to two recipients at the same time, both recipients acquire rights to the property at the same time. If they were given to their recipients at different times on the day they were written, the one who received his deed first acquires rights to the property. If they were given at different times on a later date, both recipients acquire rights to the property retroactively from the end of the day when the deeds were issued. Consequently, since it is not known whether the deeds were given at the same time or at different times, or whether they were given on the day they were written or on a later date, and in most of the scenarios, both recipients would acquire rights to the property, it makes sense to divide the property between the two recipients. Consequently, the Gemara suggests that Rav agrees with the opinion of Rabbi Meir.

Conversely, according to Rabbi Elazar, since the transaction takes effect when the deed is given to the recipient, if the deeds are given after the date on which they were written, they are thereby invalidated, because the date specified in the deed is earlier than the date of the transaction. Therefore, there are only two possibilities: Either the deeds were given to the recipients simultaneously, in which case both of them acquire rights to the property, or the deeds were given one after the other, in which case only the first recipient acquires rights to the property. Since there is a high likelihood that only one of the recipients has acquired rights to the property, the matter is left to the discretion of the judges.

And Shmuel holds that leaving the decision to the discretion of the judges is preferable – וּשְׁמוּאֵל סָבַר שׁוּתָּא דְּדַיְּינֵי עֲדִיפָא: The Rosh explains the rationale for each side of this debate: Rav holds that division of the property is preferable because this ensures that the rightful owner receives at least a portion of the property. Shmuel is of the opinion that it is better to leave the matter to the discretion of the judges, since in this way the chances are high that the true owner will receive the entire property, whereas if it is divided, the true owner will definitely lose half of what he deserves.

תַּנָּאֵי הִיא. דְּתַנְיָא, וַחֲכָמִים אוֹמְרִים: יֵחָלְקוּ, וְכָאן אָמְרוּ: מַה שֶּׁיִּרְצֶה הַשָּׁלִישׁ יַעֲשֶׂה.

The Gemara responds: The *baraita* cited above is entirely in accordance with the opinion of Rabbi Elazar. However, there **is** a dispute between ***tanna'im*** with regard to money whose ownership is uncertain, **as it is taught** in a *baraita*: In a case where an individual sent a sum of money to another via a messenger, and by the time the messenger arrived, the intended recipient had died, and in the meantime, the individual who had sent the money also died, the *tanna'im* disagree about what to do with the money. **The Rabbis say:** The heirs of the sender and the heirs of the intended recipient **should divide** the money.[N] **And here,** in Babylonia, **they said: The third** party, i.e., the messenger, **can do as he pleases**[N] with the money, a ruling that is comparable to the solution of leaving the decision to the discretion of the judges.

אִמֵּיהּ דְּרָמִי בַּר חָמָא כְּתַבְתִּינְהוּ לְנִכְסָהּ לְרָמִי בַּר חָמָא בְּצַפְרָא, לְאוֹרְתָא כְּתַבְתִּינְהוּ לְמָר עוּקְבָא בַּר חָמָא.

The Gemara relates that **the mother of Rami bar Ḥama wrote** a deed **in the morning** transferring ownership of **her property to Rami bar Ḥama,** and **in the evening she wrote** another deed transferring **her property to** another of her sons, **Mar Ukva bar Ḥama.**[P]

אֲתָא רָמִי בַּר חָמָא לְקַמֵּיהּ דְּרַב שֵׁשֶׁת, אוֹקְמֵיהּ בְּנִכְסָא. אֲתָא מָר עוּקְבָא לְקַמֵּיהּ דְּרַב נַחְמָן, אוֹקְמֵיהּ בְּנִכְסָא. אֲתָא רַב שֵׁשֶׁת לְקַמֵּיהּ דְּרַב נַחְמָן, אָמַר לֵיהּ: מַאי טַעְמָא עֲבַד מָר הָכִי? אָמַר לֵיהּ: וּמַאי טַעְמָא עֲבַד מָר הָכִי?

Rami bar Ḥama came before Rav Sheshet and the latter **established his** right **to the property. Mar Ukva,** his brother, **came before Rav Naḥman** and the latter **established his** right **to the property. Rav Sheshet came before Rav Naḥman** and **said to him: What is the reason that the Master did this,** i.e., why did you issue this ruling? Rav Naḥman **said to him: And what is the reason that the Master did this,** i.e., why did you rule as you did?

אָמַר לֵיהּ: דִּקְדִּים. אָמַר לֵיהּ: אַטּוּ בִּירוּשָׁלַיִם יָתְבִינַן, דְּכָתְבִינַן שָׁעוֹת? אֶלָּא מָר מַאי טַעְמָא עֲבַד הָכִי? אָמַר לֵיהּ: שׁוּדָּא דְּדַיְינֵי.

Rav Sheshet **said to him: Because** Rami bar Ḥama's deed **preceded** that of Mar Ukva. Rav Naḥman **said to** Rav Sheshet: **Is that to say** that **we are sitting in Jerusalem,**[H] **that we write the hours** on our legal documents? The *halakha* is that in any place where the hours are not recorded on legal documents, it does not matter when during the day a document was written. Rav Sheshet asked Rav Naḥman: **But what is the reason that the Master did this,** ruling as you did? Rav Naḥman **said to him:** It was **the discretion of the judges,** i.e., I ruled this way since it seemed to me that this is the way the mother wanted it.

אָמַר לֵיהּ: אֲנָא נַמִּי – שׁוּדָּא דְּדַיְינֵי. אָמַר לֵיהּ: חֲדָא – דַּאֲנָא דַּיְינָא וּמָר לָאו דַּיְינָא, וְעוֹד: מֵעִיקָּרָא לָאו בְּתוֹרַת הָכִי אָתֵית לָהּ.

Rav Sheshet **said to** Rav Naḥman: **I also** applied the principle of **the discretion of the judges** and ruled as I did. Rav Naḥman **said to him: One** response to your point is **that I am a judge,**[NH] **and the Master is not a judge,** as Rav Sheshet did not serve in the official capacity of a judge. **Furthermore, at the outset, you did not arrive at** your conclusion **for this** reason, but due to your own theory with regard to the dating of the documents, which proved to be incorrect.

NOTES

The Rabbis say: The heirs of the sender and the heirs of the intended recipient should divide the money, etc. – רַבָּנִן אוֹמְרִים יֵחָלְקוּ וכו': This case, which is discussed more extensively in tractate *Gittin* (14b), hinges on the following point: When the sender gives the money to his messenger and tells him to give the money to a particular individual, does the messenger acquire the money on behalf of the intended recipient, in which case, if the recipient dies before receiving the money, the money belongs to the recipient's heirs? Or, perhaps the messenger does not acquire it on behalf of the intended recipient, and therefore, if the recipient dies, the messenger must return the money to the sender or to the sender's heirs.

The third party can do as he pleases – מַה שֶּׁיִּרְצֶה הַשָּׁלִישׁ יַעֲשֶׂה: The Ritva proves from here that discretion of the judges, as explained by Rabbeinu Tam, means that the judges award the money to whomever they please, for whatever reason, similar to the messenger, who may give the money to whichever side he pleases. However, the Rivan accepts Rashi's understanding of this principle, which is that the judges attempt to determine what the original owner actually wanted. The Rivan explains that this is what the Gemara means here as well: If the messenger estimates that the sender would have wanted him to give the money to the heirs of the intended recipient, he gives them the money. Conversely, if the messenger thinks that the sender would not have wanted him to the give the money to the heirs of the recipient, he gives the money to the heirs of the sender.

That I am a judge, etc. – דַּאֲנָא דַּיְינָא וכו': The early commentaries asked how Rav Naḥman could say that Rav Sheshet was not a judge when it is known that he was one of the greatest scholars of his generation. Some explain that while Rav Naḥman was an expert judge certified by the Exilarch, Rav Sheshet lacked this official certification (Rashi; Rid). Others suggest that Rav Naḥman regularly adjudicated cases pertaining to monetary law, and therefore in this area he was more authoritative than Rav Sheshet (Ra'ah; see Rabbeinu Ḥananel). Alternatively, Rabbeinu Ḥananel explains that this case occurred in the area of Rav Naḥman's jurisdiction, and therefore Rav Sheshet should not have become involved. The Meiri explains that since Rav Sheshet was blind, he was disqualified by Torah law from serving as a judge unless both claimants willingly accepted his jurisdiction. Although it is possible that he could have directed one of his students to formally serve as the judge and issue the ruling, he himself could not have served as a judge.

Rabbeinu Ḥananel, based on the opinion of Rav Paltoi Gaon, concludes from this incident that only an expert judge is allowed to employ the discretion of the judges; not every court is able to employ this legal principle. Rabbeinu Ḥananel further writes that there is a tradition that the discretion of the judges is only applied in matters relating to real estate. This tradition is recorded by the *ge'onim* as well. *Tosafot*, however, disagree with this tradition.

PERSONALITIES

Rami bar Ḥama and Mar Ukva bar Ḥama – רָמִי בַּר חָמָא וּמָר עוּקְבָא בַּר חָמָא: These two brothers were both Torah scholars and were also both sons-in-law of Rav Ḥisda. It appears that Rami bar Ḥama was the older of the two and the greater Torah scholar. He was known for his sharpness, and it was even said that at times he overlooked details due to this attribute. He would frequently keep company with the great scholars of the previous generation and became their disciple-colleague. He was most frequently to be found in the company of his father-in-law, Rav Ḥisda, as well as Rav Naḥman and Rav Sheshet, who valued him greatly and spoke his praises often. His debates with Rava were numerous. After his death, Rava married his widow, the daughter of Rav Ḥisda.

The teachings of Mar Ukva bar Hama, who was sometimes called Rav Ukva bar Hama, are also mentioned several times in the Talmud.

HALAKHA

Is that to say that we are sitting in Jerusalem – אַטּוּ בִּירוּשָׁלַיִם יָתְבִינַן: If two deeds were written on the same date awarding the same property to two different individuals in a place where the time of day when the document was written is recorded on the document, the time is taken into account, and the individual whose deed was written first is awarded the property. In a place where the time of day is not recorded in the document, the decision is left to the discretion of the judges, in accordance with the opinion of Rav Naḥman (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 5:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 240:3).

I am a judge – אֲנָא דַּיְינָא: Some say that only an expert judge can apply the legal principle of the discretion of the judges (*Tur* citing Rabbeinu Ḥananel; *Shulḥan Arukh*, *Ḥoshen Mishpat* 240:3, and in the comment of Rema).

הָנְהוּ תְּרֵי שְׁטָרֵי דְּאָתוּ לְקַמֵּיהּ דְּרַב יוֹסֵף, חַד הֲוָה כָּתוּב ״בְּחַמְשָׁא בְּנִיסָן״, וְחַד הֲוָה כָּתוּב בֵּיהּ ״בְּנִיסָן״ סְתָמָא, אוֹקְמֵיהּ רַב יוֹסֵף לְהַהוּא דְּחַמְשָׁא בְּנִיסָן בַּנְּכָסִים.

The Gemara relates another incident in which an individual wrote two deeds about the same piece of property: There were **these two deeds**[N] **that came before Rav Yosef.** In **one** deed, **it was written** that the owner of the field sold it to a particular individual **on the fifth of Nisan, and in** the other **one it was written** that he sold the same property to someone else **in Nisan, without specifying** on which day in Nisan the sale took place. **Rav Yosef established** that **the one** whose deed said **the fifth of Nisan** had the right **to the property.**

אֲמַר לֵיהּ אִידָךְ: וְאֲנָא אַפְסִידְ? אָמַר לֵיהּ: אַתְּ יָדָךְ עַל הַתַּחְתּוֹנָה, אֵימָא בַּר עֶשְׂרִים וְתִשְׁעָה בְּנִיסָן אַתְּ.

The other claimant **said to** Rav Yosef: **Should I lose?** After all, it is possible that my deed was written prior to the other deed. Rav Yosef **said to him: You are at a disadvantage,** because there is no specific date in your deed, allowing one to **say** that **your deed is from the twenty-ninth of Nisan.** Since you have no way to prove otherwise, the property is awarded to the one who has a more specific date recorded in his deed.

אָמַר לֵיהּ: וְנִכְתּוֹב לִי מָר

The man **said to him: Let the Master write me**

Perek **X**
Daf **95** Amud **a**

טִירְפָא מֵאָיִיר וְאֵילָךְ. אָמַר לֵיהּ: יָכְלִי לְמֵימַר לָךְ: אַתְּ בַּר חַד בְּנִיסָן אַתְּ.

a document of **authorization to repossess** liened property of the seller from anyone who purchased property from him **from** the first of the month of **Iyyar and on.** Rav Yosef **said to him:** A purchaser **can say to you: Your** deed is from **the first of Nisan,** so that the field that you purchased is rightfully yours and it is the other man, whose deed was dated on the fifth of Nisan, who took it illegally. Therefore, you should take possession of that field rather than repossessing other property.

מַאי תַּקָּנְתֵּיהּ? נִכְתְּבוּ הַרְשָׁאָה לַהֲדָדֵי.

The Gemara asks: If so, **what is his remedy?** The Gemara answers: **Let** the deed holders **write** a document of **authorization to each other.** If the individual whose deed was written on the fifth of Nisan authorizes the other individual to repossess property on his behalf, then he will be able to repossess property sold after the end of Nisan, because regardless of when his deed was written and whose deed was written first, he now has the right to repossess liened property.

מתני׳ מִי שֶׁהָיָה נָשׂוּי שְׁתֵּי נָשִׁים, וּמָכַר אֶת שָׂדֵהוּ. וְכָתְבָה רִאשׁוֹנָה לַלּוֹקֵחַ ״דַּיִן וּדְבָרִים אֵין לִי עִמָּךְ״ – הַשְּׁנִיָּה מוֹצִיאָה מֵהַלּוֹקֵחַ, וְרִאשׁוֹנָה מִן הַשְּׁנִיָּה, וְהַלּוֹקֵחַ מִן הָרִאשׁוֹנָה. וְחוֹזְרוֹת חֲלִילָה, עַד שֶׁיַּעֲשׂוּ פְּשָׁרָה בֵּינֵיהֶם. וְכֵן בַּעַל חוֹב, וְכֵן אִשָּׁה בַּעֲלַת חוֹב.

MISHNA In a case of **one who was married**[H] **to two women and sold his field, and the** wife whom he married **first wrote to the purchaser: I do not have** any **legal** dealings **or involvement with you,** then **the second** wife, who did not relinquish her claim to repossess this property, **may appropriate** the field **from the purchaser** as payment of her marriage contract. This is because the property was liened for the payment of her marriage contract before it was sold to this purchaser. Then, **the first** wife can appropriate the field **from the second** as payment for her marriage contract, since her marriage contract predates that of the second wife. **The purchaser** can then appropriate the field **from the first** wife, due to the fact that she relinquished her rights vis-à-vis the purchaser. They **continue** to do so according to this **cycle** [*ḥalila*][LN] **until they** agree on a **compromise between them. And so too,** with regard to **a creditor, and so too,** with regard to **a female creditor.**

NOTES

Those two deeds, etc. – הָנְהוּ תְּרֵי שְׁטָרֵי וכו׳: Rashi explains that these were two bills of sale for the same property. The Rosh explains that these were both promissory notes, and there was enough property left in the debtor's possession to pay back only one of the loans. The Ra'ah states that the Gemara can be understood according to either of the above explanations, and that there is no halakhic difference between them. He writes further, citing Rabbi Shlomo min HaHar, that it is even possible to say that the document dated for the fifth of Nisan was a bill of sale while the other one was a promissory note.

HALAKHA

One who was married, etc. – מִי שֶׁהָיָה נָשׂוּי וכו׳: In a case of one who had two wives and sold his field, and the first wife gave up her right to repossess it from the purchaser and affirmed this waiver with a valid act of acquisition, if the husband then died or divorced both his wives and was not in possession of other properties, the second wife may repossess the sold property from the purchaser. The first wife can then repossess it from the second wife, since her lien predates that of the second wife. Subsequently, the purchaser may repossess the field from the first wife, since she transferred her rights to him by means of her waiver. This cycle continues until they agree to a compromise (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:12; *Shulḥan Arukh*, *Even HaEzer* 100:4).

LANGUAGE

Cycle [*ḥalila*] – חֲלִילָה: This word is interpreted similarly to the word *maḥol*, which is something found in a circle that continuously turns, e.g., dancers who continuously turn around in a circle. Likewise, in this case, the legal rights of each party would continuously supersede those of another and forestall a settlement until they come to a compromise.

NOTES

They continue to do so according to this cycle – וְחוֹזְרוֹת חֲלִילָה: The Ritva, quoting Rabbeinu Shimshon, says that the mishna does not mean that the cycle where one repossesses the property from the other is actually repeated again and again, as there is no reason to trouble the court and the litigants to go through all these proceedings. Rather, the mishna means that since the parties have the legal right to keep repossessing the field from each other, the court immediately suggests that they find a compromise.