הָנָהוּ 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**

NOTES

Those two deeds, etc. – הָנָהוּ 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.

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

טִירְפָא מֵאִיַּיר 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 ״דִּין 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.**

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.

גמ׳ וְכִי כְּתָבָהּ לֵיהּ מַאי הָוֵי? וְהָתַנְיָא: הָאוֹמֵר לַחֲבֵירוֹ ״דִּין וּדְבָרִים אֵין לִי עַל שָׂדֶה זוֹ״ וְ״אֵין לִי עֵסֶק בָּהּ״ וְ״יָדִי מְסוּלֶקֶת הֵימֶנָּה״ – לֹא אָמַר כְּלוּם! הָכָא בְּמַאי עָסְקִינַן – בְּשָׁקְנוּ מִיָּדָהּ.

GEMARA The Gemara asks: **And if** the first wife **wrote** this **to him, what of it? Isn't it taught** in a *baraita*: **One who says to another,** e.g., if a field is jointly owned and one partner says to the other: **I have no legal** dealings **or involvement with regard to this field, or: I have no connection to it, or: I have withdrawn from it, has said nothing,** as such declarations have no legal validity. The Gemara answers: **With what are we dealing here?** It is a case **where he acquired** it **from her possession** by performing an act of acquisition in order to validate her relinquishing the field, in which case her statement is legally valid.

וְכִי קָנוּ מִיָּדָהּ מַאי הָוֵי? תֵּימָא: ״נַחַת רוּחַ עָשִׂיתִי לְבַעְלִי״! מִי לָא תְּנַן: לָקַח מִן הָאִישׁ וְחָזַר וְלָקַח מִן הָאִשָּׁה – מְקָחוֹ בָּטֵל. אַלְמָא: יְכוֹלָה הִיא שֶׁתֹּאמַר ״נַחַת רוּחַ עָשִׂיתִי לְבַעְלִי״!

The Gemara asks: **And if they acquired it from her, what of it? Let** the woman **say** afterward: **I** did it only to **please my husband,** as I saw that he wished to sell the field and I did not want to quarrel with him, but I did not mean it seriously. **Didn't we learn** in a mishna (*Gittin* 55b): If one **purchased** property **from a man,** even if he later **went back**[H] **and purchased** rights to that property **from the** man's **wife, the transaction is nullified? Apparently,** the wife **can say: I** did it only to **please my husband** but did not mean it, and that claim is accepted.

אָמַר רַבִּי זֵירָא אֲמַר רַב חִסְדָּא: לָא קַשְׁיָא; הָא – רַבִּי מֵאִיר, הָא – רַבִּי יְהוּדָה.

Rabbi Zeira said that **Rav Ḥisda said:** This is **not difficult: This** mishna here **is** in accordance with the opinion of **Rabbi Meir, and that** mishna in tractate *Gittin* is in accordance with the opinion of **Rabbi Yehuda.**

דְּתַנְיָא: כָּתַב לָרִאשׁוֹן וְלֹא חָתְמָה לוֹ, לַשֵּׁנִי וְחָתְמָה לוֹ – אִיבְּדָה כְּתוּבָּתָהּ, דִּבְרֵי רַבִּי מֵאִיר.

As it is taught in a *baraita*: In a case where a husband **wrote** a bill of sale **to one** purchaser, **but** his wife **did not sign** it **for him** because she did not agree to the sale, and later he sold a different property **to a second** purchaser, **and** this time his wife **signed** the bill of sale **for him,**[N] the *halakha* is that **she has lost** the settlement promised to her in **her marriage contract** in the event that the husband is left without property from which she can collect; **this is the statement of Rabbi Meir.** According to Rabbi Meir, not only is the wife unable to sue the second purchaser after she signed his deed, but she cannot sue the first buyer either since he can say to her: When I purchased the field, I left you a field from which you could have collected, and you brought this loss upon yourself.

רַבִּי יְהוּדָה אוֹמֵר: יְכוֹלָה הִיא שֶׁתֹּאמַר ״נַחַת רוּחַ עָשִׂיתִי לְבַעְלִי, אַתֶּם מַה לָּכֶם עָלַי״?

Rabbi Yehuda says that **she can say: I** did it only to **please my husband** but did not mean to ratify the second sale either; **and you, what** claim **do you have against me?**

וְרַבִּי סָתָם לָהּ הָכָא כְּרַבִּי מֵאִיר וְסָתָם לָהּ הָתָם כְּרַבִּי יְהוּדָה?!

The Gemara asks: Is it possible that **Rabbi** Yehuda HaNasi, the redactor of the Mishna, presented the **unattributed** mishna **here in accordance with** the opinion of **Rabbi Meir and** presented the **unattributed** mishna **there in accordance with** the opinion of **Rabbi Yehuda?** Such a dichotomy is unlikely.

אָמַר רַב פַּפָּא: בִּגְרוּשָׁה, וְדִבְרֵי הַכֹּל.

Rav Pappa offered another answer to the question and **said:** The mishna here is referring **to a divorcée** who wrote a note to the purchaser relinquishing her rights to the field after her divorce, **and everyone agrees** that her statement is binding, as she cannot claim to have acted in order to please her husband.

רַב אַשִׁי אָמַר: כּוּלָּהּ רַבִּי מֵאִיר הִיא; וְעַד כָּאן לָא קָאָמַר רַבִּי מֵאִיר הָתָם – אֶלָּא בִּשְׁנֵי לָקוֹחוֹת, דְּאָמְרִי לָהּ: אִי אִיתָא דְּנַחַת רוּחַ עָבְדַתְּ – לְקַמָּא אִיבָּעֵי לָךְ לְמֵיעֲבַד, אֲבָל בְּלוֹקֵחַ אֶחָד – אֲפִילּוּ רַבִּי מֵאִיר מוֹדֶה. וּמַתְנִיתִין – דְּכָתַב לֵיהּ לְאַחֵר.

Rav Ashi said: It is all in accordance with the opinion of **Rabbi Meir, and Rabbi Meir states** his opinion **there only in** a case where the husband sold property to **two** different **purchasers,**[H] **as they** can **say to her: If it is** true **that you acted** only in order to **please** your husband, **you should have done so with regard to the first** purchaser and not just the second. **However,** in a case **where** there is only **one purchaser, even Rabbi Meir concedes** that she can claim to have acted only out of the desire to please her husband. **And the mishna** here is referring to a case **where** the husband previously **wrote** a bill of sale **to another** purchaser and the wife did not ratify the sale, and the second time he sold a property she did ratify the sale. Consequently, even Rabbi Meir concedes that the woman cannot claim that she acted only in order to please her husband.

HALAKHA

If one purchased property from a man, even if he later went back, etc. – לָקַח מִן הָאִישׁ וְחָזַר וכו׳: If a husband sold or gave away land to which his wife has rights, either because she brought it to the marriage, or because he added it to the marriage contract, or because he designated it as the property from which the marriage contract would be paid, then even if she subsequently agrees to the sale and even if the purchaser acquired her share of the rights from her, the transaction is void, as the wife can argue that she only agreed in order to please her husband (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:11, *Sefer Kinyan*, *Hilkhot Mekhira* 30:3; *Shulḥan Arukh*, *Even HaEzer* 90:17).

Only in a case where the husband sold property to two different purchasers – אֶלָּא בִּשְׁנֵי לָקוֹחוֹת: If a husband sold property and asked his wife to waive her right to repossess it from the purchaser, and she refused to do so, and then later he sold other property and his wife waived her right to repossess it from the purchaser, she is no longer able to repossess the second piece of property. She is unable to claim that she waived her rights in order to please her husband, since by refusing her husband's request with regard to the first sale, she demonstrated that she is capable of refusing him. This is in accordance with the opinion of Rabbi Meir as well as Rav Ashi, since he is the last of the *amora'im* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:11; *Shulḥan Arukh*, *Even HaEzer* 90:17).

NOTES

He sold to a second purchaser and his wife signed the bill of sale for him, etc. – לַשֵּׁנִי וְחָתְמָה לוֹ וכו׳: The commentaries and halakhic authorities explained that Rabbi Meir's rationale here is simple: Since the woman did not sign for the first purchaser, she has already demonstrated that she is capable of refusing her husband's request and not pleasing him; it is therefore clear that when she signs for the second she does so of her own volition. The Rivan explains the rationale behind Rabbi Yehuda's ruling as follows: The woman can claim that after her husband asked her to sign once and she did not give in, were she to refuse his request a second time it would lead to animosity between them.

HALAKHA

One does not collect a debt from liened property, etc. – אֵין נִפְרָעִין מִמְּשׁוּעְבָּדִים וכו׳: A creditor may not collect from liened property if he is able to collect from unsold property. This is the case even if the unsold lands are of inferior quality and the liened properties are of intermediate or superior quality (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 19:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 111:8).

If an individual borrowed from one creditor and sold his property to two purchasers – לָוָה מִן הָאֶחָד וּמָכַר נְכָסָיו לִשְׁנַיִם: In the case of one who borrowed money from one individual and then sold his property to two different people, and the creditor waived his right to repossess the property sold to the second purchaser, he forfeits his right to repossess the property sold to the first purchaser as well. This is because the first purchaser can claim: I left you a place from which you could collect your debt, i.e., the property later sold to the second purchaser; now you have gone and caused yourself a loss. However, if the creditor waived his right to repossess the property sold to the first purchaser, he can still collect from the second.

If a husband sold property and the wife did not waive her lien on it, and he then went and sold land to another purchaser, and this time the woman agreed to waive her lien, she can no longer appropriate the land from the second purchaser. *Tosafot* say that she can still collect from the first purchaser and that her case is not comparable to that of a creditor, while other authorities (Rashi) rule that she cannot collect from the first purchaser (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 19:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 118:1, *Even HaEzer* 100:3).

§ תְּנַן הָתָם: אֵין נִפְרָעִין מִמְּשׁוּעְבָּדִים בְּמָקוֹם שֶׁיֵּשׁ נְכָסִים בְּנֵי חוֹרִין, וַאֲפִילּוּ הֵן זִיבּוּרִית. אִיבַּעְיָא לְהוּ: אִישְׁתַּדּוּף בְּנֵי חָרֵי, מַהוּ דְּלִיטְרוֹף מִמְּשׁוּעְבָּדֵי?

§ **We learned** in a mishna **elsewhere** (*Gittin* 48b): **One does not collect** a debt **from liened property**[H] that has been sold to a third party **where there is unsold property** available, **even** if the unsold property **is** of **inferior quality. A dilemma was raised before** the Sages: If **the unsold** property **became blighted** and is no longer of sufficient value to pay off the debt, **what is** the *halakha*? Would the creditor be allowed **to repossess liened** property that has been sold to a third party?

תָּא שְׁמַע: כָּתַב לָרִאשׁוֹן וְלֹא חָתְמָה לוֹ, לַשֵּׁנִי וְחָתְמָה לוֹ – אֵיבְּדָה כְּתוּבָּתָהּ, דִּבְרֵי רַבִּי מֵאִיר.

Come and **hear** a solution to this dilemma based upon the following *baraita*: In a case where a husband **wrote** a bill of sale **to one** purchaser, **but** his wife **did not sign** it **for him,** and later he sold a different property **to a second** purchaser **and** his wife **signed** the bill of sale **for him,** the *halakha* is that **she has lost** the settlement specified in **her marriage contract** in the event that the husband is left without property from which she can collect; **this is the statement of Rabbi Meir.**

וְאִי סָלְקָא דַּעְתָּךְ אִישְׁתַּדּוּף בְּנֵי חָרֵי טָרִיף מִמְּשׁוּעְבָּדֵי, נִהֵי דְּאֵיבְּדָה כְּתוּבָּתָהּ מִשֵּׁנִי – מֵרִאשׁוֹן מִיהָא תִּיגְבֵּי!

Now, **if it should enter your mind** that in a case where **the unsold** property **became blighted** the creditor would be able to **repossess liened** property, then even **though she lost** her ability to collect **her marriage contract from the second** purchaser, **she should at least** be able to **collect from the first** purchaser, because she never relinquished her right to the property he purchased. Although there was unsold property left at the time that the first purchase was made, that property is inaccessible to her because she relinquished her right to it. Consequently, her inability to repossess property from the first purchaser indicates that it is not possible to repossess liened property in the event that unsold property is blighted.

אָמַר רַב נַחְמָן בַּר יִצְחָק: מַאי אֵיבְּדָה – אֵיבְּדָה מִשֵּׁנִי.

Rav Naḥman bar Yitzḥak said: It is possible to explain that **what** Rabbi Meir meant when he said: **She has lost** her marriage contract, is that **she has lost** her rights **from the second** purchaser alone, but not from the first.

אָמַר רָבָא: שְׁתֵּי תְּשׁוּבוֹת בַּדָּבָר; חֲדָא – דְּ״אֵיבְּדָה״ לְגַמְרֵי מַשְׁמַע. וְעוֹד, תַּנְיָא: לָוָה מִן הָאֶחָד וּמָכַר נְכָסָיו לִשְׁנַיִם, וְכָתַב בַּעַל חוֹב לְלוֹקֵחַ שֵׁנִי ״דִּין וּדְבָרִים אֵין לִי עִמְּךָ״ – אֵין לוֹ עַל לוֹקֵחַ רִאשׁוֹן כְּלוּם, מִפְּנֵי שֶׁיָּכוֹל לוֹמַר: הִנַּחְתִּי לְךָ מָקוֹם לִגְבּוֹת הֵימֶנּוּ.

Rava said: There are **two responses** with which your **statement** can be rejected. **One** is that the expression: **She has lost, indicates** that she has lost her rights **entirely,** even with regard to the first purchaser. **And furthermore, it is** explicitly **taught** in a *baraita*: If an individual **borrowed from one** creditor **and sold his property to two** purchasers[H] **and the creditor wrote** a note **to the second** purchaser saying: **I do not have** any **legal** dealings **or involvement with you, he has no** claims **toward the first purchaser** either. This is **because** the first purchaser is **able to say** to the creditor: **I left you a place from** where **to collect** your debt, since when I purchased the land, unsold property still remained in the debtor's possession, and therefore you have no claims against me.

הָתָם אִיהוּ דְּאַפְסִיד נַפְשֵׁיהּ בִּידַיִם.

The Gemara rejects the attempt to solve the dilemma with regard to collecting from liened property when the unsold property was blighted: **There,** in the case of a woman or man who wrote to the second purchaser: I do not have any legal dealings or involvement with you, it is **he who causes a loss to himself**[N] **by** his own direct **action** of signing away his rights. It cannot be proven what the *halakha* would be in the case of a blighted field, where the reason he cannot make use of the field is not due to his own action.

אָמַר לֵיהּ רַב יֵימָר לְרַב אַשִׁי:

Rav Yeimar said to Rav Ashi:

NOTES

There, it is he who causes a loss to himself – הָתָם אִיהוּ דְּאַפְסִיד נַפְשֵׁיהּ: Rashi explains that this answer was offered by Rava and is a continuation of his opinion. However, *Tosafot* object to Rashi's explanation, arguing that if that had been the case, it would have been appropriate to preface this last remark with the word: However. The difference between the explanations has halakhic ramifications. In the *Sefer Halttur*, an early version of this passage is cited, which includes the phrase: However, Rava said. The author of that work is of the opinion that even without that phrase, however, the intention of the Gemara is to report this answer citing Rava.

וְהָא מַעֲשִׂים בְּכָל יוֹם, דְּהַהוּא גַּבְרָא דְּמִישְׁכֵּן לֵיהּ פַּרְדֵּיסָא לְחַבְרֵיהּ לְעֶשֶׂר שְׁנִין, וְקַשׁ לְחָמֵשׁ שְׁנִין, וַאֲתָא לְקַמַּיְיהוּ דְּרַבָּנַן, וְכָתְבוּ לֵיהּ טִירְפָּא!

But it is a daily occurrence that courts permit creditors to collect from liened property in cases where the unsold property became ruined, **as** in the case of **a certain man who mortgaged his orchard** [***pardeisa***]L **to another** person **for ten years,** thereby allowing the latter to consume the produce as payment of the loan that the owner of the orchard owed him. After **five years** the orchard **grew old** and no longer produced as it once did. The creditor **came before the Sages** to argue his claim, **and they wrote him** a document of **authorization to repossess** liened property from those who purchased land from the debtor after the giving of the loan. This proves that if unsold property becomes unproductive, a creditor may collect his debt from liened property.

הָתָם נַמִּי אִינְהוּ הוּא דְּאַפְסִידוּ אַנַּפְשַׁיְיהוּ; כֵּיוָן דְּהָווּ יָדְעִי דְּפַרְדֵּיסָא עֲבִיד דְּקִישׁ – לָא אִיבָּעֵי לְהוּ לְמִיזְבַּן.

The Gemara answers: **There too, it was they,** the purchasers, **who brought this loss upon themselves since they know that an orchard tends to age.** Therefore, **they should not have purchased** the land from the debtor because they should have realized that there was a chance that he would be unable to pay off his debt with the fruits of the orchard, and the creditor would repossess the land they were purchasing.

וְהִלְכְתָא: אִישְׁתַּדּוּף בְּנֵי חָרֵי – טָרְפָא מִמְּשַׁעְבְּדֵי.

The Gemara concludes: **And the *halakha*** is that if **unsold** property **became blighted,**H the creditor **may repossess liened** property that has been sold to a third party.

אָמַר אַבַּיֵי: ״נְכָסַי לֵיךְ וְאַחֲרַיִךְ לְפְלוֹנִי״ וְעָמְדָה וְנִיסֵּת – בַּעַל לוֹקֵחַ הָוֵי, וְאֵין לְ״אַחֲרַיִךְ״ בְּמָקוֹם בַּעַל כְּלוּם.

Abaye said: If a man said to an unmarried woman: **My property** is hereby bequeathed **to you, and after you** die it will pass **to so-and-so, and** the woman **went and married**H someone and then died, **her husband** takes possession of the property and **is** considered **a purchaser,** i.e., it is as if the woman sold him the property. **And** the individual that the man had designated to receive the property **after you,** i.e., after the woman, receives **nothing** in a case **where there is a husband.** This is because during the time that the property belongs to the woman it is hers completely, and all transactions she performs are considered valid. Consequently, her husband, who is considered a purchaser, may keep the property after her death.

כְּמַאן – כִּי הַאי תַּנָּא. דְּתַנְיָא: ״נְכָסַי לֵיךְ וְאַחֲרַיִךְ לְפְלוֹנִי״ יָרַד הָרִאשׁוֹן וּמָכַר – הַשֵּׁנִי מוֹצִיא מִיַּד הַלָּקוֹחוֹת, דִּבְרֵי רַבִּי. רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר: אֵין לַשֵּׁנִי אֶלָּא מַה שֶּׁשִּׁייֵר רִאשׁוֹן.

The Gemara asks: **In accordance with whose** opinion did Abaye rule? The Gemara answers: **In accordance with** the opinion of **this *tanna*, as it is taught** in a *baraita* that if one says: **My property** is hereby bequeathed **to you, and after you** die it will pass **to so-and-so,** and **the first** beneficiary **entered,** i.e., took possession of the field, **and sold** it, **the second** beneficiary has the right to **repossess** that property **from the purchasers** upon the death of the first beneficiary. This is **the statement of Rabbi** Yehuda HaNasi, who holds that the first beneficiary had the right to use the property, but not to permanently transfer it to someone else. **Rabban Shimon ben Gamliel says: The second** beneficiary **has** a claim **only** to **that which the first** beneficiary **left** in his possessionH and did not transfer to anyone else. Abaye ruled in accordance with the opinion of Rabban Shimon ben Gamliel.

וּמִי אָמַר אַבַּיֵי הָכִי? וְהָאָמַר אַבַּיֵי: אֵיזֶהוּ רָשָׁע עָרוּם – זֶה הַמַּשִּׁיא עֵצָה לְמָכוֹר בִּנְכָסִים כִּרְבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל!

The Gemara asks: **And did Abaye** actually **say so? Didn't Abaye** himself **say: Who is a wily, wicked person?**H **One who gives** his fellow **advice to sell** his **property in accordance with** the ruling of **Rabban Shimon ben Gamliel** in order to prevent the second beneficiary from taking possession of the property.

מִי קָאָמַר ״תִּינָּשֵׂא״? ״נִשֵּׂאת״ קָאָמַר.

The Gemara answers: **Did he say** that the woman **should** be advised to **marry** in order to deprive the second beneficiary? **He said** his ruling with regard to a case where the woman **married** because it is the way of the world that a woman gets married. She did not do this in order to deprive the second heir of his property; it is merely a consequence of the fact that she did get married that her properties ended up in her husband's possession.

LANGUAGE

Orchard [*pardeisa*] – פַּרְדֵּיסָא: This word, which appears in the Bible in the Song of Songs (4:13) and Nehemiah (2:8), apparently derives from the Old Persian paridaida, which literally means enclosure but refers to a garden or orchard.

HALAKHA

Unsold property became blighted – אִישְׁתַּדּוּף בְּנֵי חָרֵי: If a debtor's unsold fields were blighted, the creditor can repossess property that the debtor has sold, because once the fields are ruined it is as if they do not exist. This applies even if the creditor did not collect payment for his debt immediately on the date designated for repayment (Rashba).

This *halakha* applies only if the fields were ruined. However, if they were stolen, the creditor cannot repossess property the debtor has sold, because it is likely that the robbers will eventually be caught and then he will be able to collect his debt from unsold property (Rashba). If the debtor converted to another religion and now the creditor is unable to collect from him according to the laws of the non-Jewish courts, he is entitled to repossess property that the debtor has sold to others (Rosh; Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 19:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 111:12–13).

My property is hereby bequeathed to you, and after you die it will pass to so-and-so, and the woman went and married – נְכָסַי לֵיךְ וְאַחֲרַיִךְ לְפְלוֹנִי וְעָמְדָה וְנִיסֵּת: If an individual on his deathbed said to an unmarried woman: My property is hereby bequeathed to you, and after you die it will pass to so-and-so, and she went and married someone, her husband is considered as though he purchased the property, and the second beneficiary receives nothing. The same *halakha* applies if the woman sold these properties and then died in her husband's lifetime: The properties remain in the possession of the purchaser.

However, if the first beneficiary was a married woman, and she sold the property and later died, the second beneficiary can appropriate the land from the husband, in accordance with Abaye's second statement (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 12:12; *Shulḥan Arukh*, *Ḥoshen Mishpat* 248:8).

The second beneficiary has a claim only to that which the first beneficiary left in his possession – אֵין לַשֵּׁנִי אֶלָּא מַה שֶּׁשִּׁייֵר רִאשׁוֹן: If a person on his deathbed said: I hereby bequeath my property to so-and-so, and after him it shall pass to so-and-so, the first beneficiary is not permitted to sell the property *ab initio*; he may consume the produce until his death, at which point the second beneficiary takes possession of the property. If the first beneficiary transgressed this guideline and sold or gave away some of the property, the second beneficiary loses his claim to that part of the property. This follows the opinion of Rabban Shimon ben Gamliel, in accordance with the general principle that the *halakha* follows the rulings of Rabban Shimon ben Gamliel in his disputes with other Sages (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 12:3, 8–9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 248:1, 3).

A wily, wicked person – רָשָׁע עָרוּם: One who counsels another to sell property that he received under the stipulation that after his demise it should pass to someone else, is considered a wicked person, in accordance with the statement of Abaye (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 12:3, 8–9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 248:1, 3).

וְאָמַר אַבַּיֵי: ״נִכְסַי לֵיךְ וְאַחֲרַיִךְ לִפְלוֹנִי״, וּמָכְרָה וּמֵתָה – הַבַּעַל מוֹצִיא מִיַּד הַלָּקוֹחוֹת, וְ״אַחֲרַיִךְ״ מִיַּד בַּעַל, וְלוֹקֵחַ מִיַּד ״אַחֲרַיִךְ״, וּמוֹקְמִינַן לְכוּלְּהוּ בִּידָא דִּלּוֹקֵחַ.

The Gemara presents another statement of Abaye with regard to this subject: **And Abaye said:** If one says to a married woman: **My property** is hereby bequeathed **to you, and after you** die it will pass **to so-and-so, and she sold** the property **and** subsequently **died, the husband** can **repossess** the property **from the purchasers.** Because he himself is considered a purchaser, he is the first purchaser in line, and is therefore entitled to repossess property from other purchasers. **And** the individual originally designated to receive the property **after you,** i.e., after the woman, can repossess the property **from the possession** of **the husband** since he had the right to receive the property after the woman. **And** then **the purchaser may repossess** it **from the possession of** the individual designated to receive it **after you,** since he purchased it from the first beneficiary, i.e., the woman. Finally, **the property is established in the possession of the purchaser.**

מַאי שְׁנָא מֵהָא דְּתַנַן: וְחוֹזְרוֹת חֲלִילָה עַד שֶׁיֵּעָשׂוּ פְּשָׁרָה בֵּינֵיהֶן? הָתָם אִית לְהוּ פְּסִידָא לְכוּלְּהוּ, הָכָא – לוֹקֵחַ הוּא דְּאִית לֵיהּ פְּסִידָא.

The Gemara asks: In **what** way **is** this case **different from that which we learned** in **the mishna:** They **continue** to do so according to this **cycle until they** agree on a **compromise between them?** The Gemara answers: **There,** in the case of the mishna, **they all** stand to **incur a loss,** as the purchasers paid money for their property and the woman has a monetary claim to collect her marriage settlement. **Here, it is** only the **purchaser who** stands to **incur a loss,** as he paid for the property, while the others received it as a gift.

אֲזַל רַפְרָם אֲמַר לִשְׁמַעְתָּא קַמֵּיהּ דְּרַב אַשִׁי: מִי אֲמַר אַבַּיֵי הָכִי? וְהָאָמַר אַבַּיֵי: ״נִכְסַי לֵיךְ וְאַחֲרַיִךְ לִפְלוֹנִי״, עָמְדָה וְנִיסֵּת – בַּעַל לוֹקֵחַ הֲוֵי, וְאֵין לְ״אַחֲרַיִךְ״ בְּמָקוֹם בַּעַל כְּלוּם.

Rafram went and stated this *halakha* before Rav Ashi and then asked him: **Did Abaye** actually **say this? Didn't Abaye say:** If a man said to a woman: **My property** is hereby bequeathed **to you, and after you** die it will pass **to so-and-so,** and the woman **went and married** someone, **her husband is** considered **a purchaser, and** the individual that the man had designated to receive the property **after you,** i.e., after the woman, receives **nothing** in a case **where there is a husband.** If the husband is considered to be a purchaser, why, according to Abaye's second ruling, does the later purchaser receive the property?

אָמַר לֵיהּ: הָתָם – דַּאֲמַר לָהּ כְּשֶׁהִיא פְּנוּיָה, הָכָא – דַּאֲמַר לָהּ כְּשֶׁהִיא נְשׂוּאָה. מַאי קָאָמַר לָהּ: ״אַחֲרַיִךְ״ – לִיקְנֵי, בַּעַל – לָא לִיקְנֵי.

Rav Ashi **said to him: There,** in the case where the husband acquires exclusive rights to the property, it is **where** the original owner **spoke to** the woman **while she was** still **unmarried,** while **here,** in the latter case, **he spoke to her when she was** already **married.**[N] **What he is saying to her** by making this statement even though she is already married and her husband is her heir, is that the individual designated to receive the property **after you shall acquire** the property, and your **husband shall not acquire** it. Consequently, the husband does not attain rights to this property.

״וְכֵן בַּעַל חוֹב״. תָּנָא: וְכֵן בַּעַל חוֹב וּשְׁנֵי לָקוֹחוֹת,

§ The mishna taught: **And so too,** with regard to **a creditor,** and so too, with regard to a female creditor. The Gemara explains this phrase based upon what was **taught** in a *baraita*: **And so too,** in a case where one owes one hundred dinars to **a creditor** and he sells property worth fifty dinars each to **two purchasers.**[H] If the creditor waives his right to repossess the property from the second purchaser, he can still repossess the property from the first purchaser. The first purchaser can then repossess from the second purchaser, the creditor can repossess that property from the first purchaser, and the second purchaser can reclaim it from the creditor. This cycle continues until they reach a compromise.

וְכֵן אִשָּׁה בַּעֲלַת חוֹב וּשְׁנֵי לָקוֹחוֹת.

And so too, in the case of **a female creditor,** i.e., a woman who seeks to collect her marriage contract from her husband's estate, **and two purchasers** who purchased his property from him.

הדרן עלך מי שהיה נשוי

NOTES

He spoke to her when she was already married – אָמַר לָהּ כְּשֶׁהִיא נְשׂוּאָה: Some commentaries prove from the Gemara here that when one gives a gift of a field to a married woman, the intent of the giver is that although her husband is entitled to the produce, the field should actually belong to the woman alone. Consequently, the principle that a husband acquires whatever his wife has acquired is not applied (see *Shulḥan Arukh*, *Ḥoshen Mishpat* 248:8 and *Sefer Meirat Einayim*).

HALAKHA

And so too in a case where a creditor sells to two purchasers – וְכֵן בַּעַל חוֹב וּשְׁנֵי לָקוֹחוֹת: If a debtor sold fields, whose combined value is equal to his debt, to two purchasers, and his creditor waived the right to repossess property from the second purchaser, he can still repossess the field sold to the first purchaser. The first purchaser can then repossess the field sold to the second purchaser, and the creditor can then repossess that property from him. The second purchaser can then take back from the creditor the field that he had purchased. The first purchaser may then repossess it again. This cycle continues until the parties reach a compromise. This is in accordance with the Gemara as interpreted by Rashi.

The same *halakha* would apply if the debt was for one hundred dinars and the debtor sold two fields for one hundred dinars each to two separate purchasers, the creditor had waived his right to repossess the land sold to the second purchaser, and it was later discovered that the field purchased by the first had not truly belonged to the debtor. The same applies if the field sold to the first purchaser had been designated to serve as the repayment of a loan to a previous creditor. In such cases, the first purchaser can repossess the land sold to the second purchaser, the second creditor can repossess it from him, and the second purchaser can repossess it from the creditor, until they reach a compromise (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 19:8, and *Maggid Mishne* there; *Shulḥan Arukh*, *Ḥoshen Mishpat* 118:2–4).

מתני׳ אַלְמָנָה נִיזּוֹנֶת מִנִּכְסֵי יְתוֹמִים – מַעֲשֵׂה יָדֶיהָ שֶׁלָּהֶן, וְאֵין חַיָּיבִין בִּקְבוּרָתָהּ. יוֹרְשֶׁיהָ, יוֹרְשֵׁי כְּתוּבָּתָהּ, חַיָּיבִין בִּקְבוּרָתָהּ.

MISHNA **A widow is sustained**[H] **from the property of orphans. Her earnings belong to them,**[H] **and they are not obligated** to see **to her burial.**[H] **Her heirs,** who **inherit her marriage contract,**[N] **are obligated** to see **to her burial.**

גמ׳ אִיבַּעְיָא לְהוּ: ״נִיזּוֹנֶת״ תְּנַן, אוֹ ״הַנִּיזּוֹנֶת״ תְּנַן? ״נִיזּוֹנֶת״ תְּנַן – וּכְאַנְשֵׁי גָּלִיל, וְלָא סַגִּי דְּלָא יָהֲבִי לָהּ.

GEMARA **A dilemma was raised before** the Sages: Did **we learn** in the mishna: A widow **is sustained, or** did **we learn** in the mishna: A widow **who is sustained?** There is a difference between the two versions. If **we learned** in the mishna: A widow **is sustained,** that means that every widow is sustained by her husband's heirs. **And** the mishna is **in accordance with** the custom of **the people of Galilee,** who write a clause in the marriage contract stipulating that it is the widow's right to remain in her husband's house after his death and to be supported from his estate as long as she does not remarry. **And it is impossible** for the heirs **not to give her** sustenance.

אוֹ דִלְמָא: ״הַנִּיזּוֹנֶת״ תְּנַן, וּכְאַנְשֵׁי יְהוּדָה, וְאִי בָּעוּ – לָא יָהֲבִי לָהּ?

Or perhaps, we learned in the mishna: A widow **who is sustained,** meaning that not all widows are sustained by their husbands' heirs. **And** the mishna is **in accordance with** the custom of **the people of Judea,** who write a clause in the marriage contract stipulating that it is the widow's right to remain in her husband's house and be sustained by the heirs until they pay her marriage contract. **And if they** so **desire,** they can pay her marriage contract and then **they** need **not give her** sustenance any longer.

HALAKHA

A widow is sustained – אַלְמָנָה נִיזּוֹנֶת: A widow is entitled to receive her sustenance from the property of her husband's heirs as long as she does not remarry. This is the *halakha* even if this is not expressly stated in the marriage contract, as it is one of the basic conditions of the marriage contract. This *halakha* is in accordance with the conclusion of the Gemara on 52b and 54a (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:1; *Shulḥan Arukh*, *Even HaEzer* 93:3).

Her earnings belong to them – מַעֲשֵׂה יָדֶיהָ שֶׁלָּהֶן: Any money earned by a widow belongs to her husband's heirs. The heirs cannot rid themselves of the responsibility to support her by telling her to keep her earnings and provide for herself. However, she can make this stipulation with them if she so desires. This ruling is in accordance with the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:6; *Shulḥan Arukh*, *Even HaEzer* 95:1).

They are not obligated to see to her burial – אֵין חַיָּיבִין בִּקְבוּרָתָהּ: If a widow dies her husband's heirs are not responsible for her burial, rather, the heirs of her marriage contract are responsible for it. The Rambam holds that if she dies before taking an oath that she had not received payment of her marriage contract, her husband's heirs are responsible for her burial, but the Ra'avad, *Tur*, and *Tosafot* did not accept this ruling (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:6; *Shulḥan Arukh*, *Even HaEzer* 89:4, 94:7).

NOTES

Her heirs, who inherit her marriage contract – יוֹרְשֶׁיהָ, יוֹרְשֵׁי כְּתוּבָּתָהּ: The syntax of this phrase is discussed earlier in the Gemara (81a). This phrase is used to stress that in the case of a woman who has several heirs, e.g., a widow awaiting levirate marriage, who bequeaths to both her children from a previous marriage and to the *yavam*, the responsibility for her funeral falls specifically to those heirs who will inherit her marriage contract.

The Rambam concludes from here that the obligation for the widow's heirs to bury her is dependent on whether or not they actually receive the marriage contract. If for any reason her heirs do not receive the marriage contract and the money remains with the heirs of the husband, the latter are responsible for her burial. This could occur, for example, in a case where the woman did not have the opportunity to take an oath that she had not received payment of her marriage contract. Other commentaries conclude from here that if no one inherited the marriage contract, for example, if the widow passed away without leaving any assets, then no one is obligated to pay for her burial, and she is buried with money from charitable funds. The Ra'avad and others disagree and explain that when the mishna speaks of those who inherit her marriage contract, it means those who are designated to inherit her marriage contract, even if in actuality they do not inherit it (see *Shita Mekubbetzet*, citing *Talmid HaRashba*).