תָּא שְׁמַע, אָמַר רַבִּי זֵירָא אָמַר שְׁמוּאֵל: מְצִיאַת אַלְמָנָה לְעַצְמָהּ. אִי אָמְרַתְּ בְּשֶׁלָּמָּא "הַנִּיזּוֹנֶת" תְּנַן – שַׁפִּיר, אֶלָּא אִי אָמְרַתְּ "נִיזּוֹנֶת" תְּנַן – נֵיהֱווּ כְּבַעַל; מַה בַּעַל – מְצִיאַת אִשָּׁה לְבַעְלָהּ, הָכָא נַמִּי – מְצִיאַת אִשָּׁה לַיּוֹרְשִׁים!

The Gemara suggests: **Come** and **hear** a proof from that which **Rabbi Zeira said** that **Shmuel said:** Any lost **article found by the widow** she acquires **for herself.**[H] **Granted, if you say** that **we learned** in the mishna: A widow **who is sustained,**[N] Shmuel's principle is **well** understood. Then, according to the mishna, there are cases where a widow is supported by her husband's heirs and other cases where she is not. Shmuel is referring to a case where the heirs do not sustain her, and therefore any earnings and articles that she may find belong to her. **However, if you say** that **we learned** in the mishna: A widow **is sustained** by the heirs in place of her husband, then **let** the heirs **be like the husband** in every sense. **Just as** in the case of **the husband,** any lost **article found by** the **wife** belongs **to the husband, here too,** any lost **article found by** the widowed **wife** should belong **to the heirs.**

לְעוֹלָם אֵימָא לָךְ: "נִיזּוֹנֶת" תְּנַן. טַעְמָא מַאי אֱמוּר רַבָּנַן מְצִיאַת אִשָּׁה לְבַעְלָהּ – דְּלָא תֶּיהֱוֵי לָהּ אֵיבָה, הָנֵי – תֶּיהֱוֵי לְהוּ אֵיבָה.

The Gemara rejects this proof: **Actually, I will say to you** that **we learned** in the mishna: A widow **is sustained,** and this does not contradict Shmuel's statement. **What is the reason** that **the Sages said** that any lost **article found by** the **wife** belongs **to her husband?** It is **so that she should not be subject to** her husband's **enmity.** The Sages were concerned that if the husband saw that his wife had come into possession of money and did not know the source of that money, they would quarrel. However, **these** heirs, **let them have enmity** toward the widow.

אָמַר רַבִּי יוֹסִי בַּר חֲנִינָא: כָּל מְלָאכוֹת שֶׁהָאִשָּׁה עוֹשָׂה לְבַעְלָהּ אַלְמָנָה עוֹשָׂה לַיּוֹרְשִׁים, חוּץ מִמְּזִיגַת הַכּוֹס, וְהַצָּעַת הַמִּטָּה, וְהִרְחָצַת פָּנָיו יָדָיו וְרַגְלָיו.

Rabbi Yosei bar Ḥanina said: All tasks that a wife performs for her husband, a widow performs for the husband's **heirs, except for filling** his **cup; and making** his **bed; and washing his face, hands, and feet,** which are expressions of affection that a woman performs specifically for her husband.[H]

אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי: כָּל מְלָאכוֹת שֶׁהָעֶבֶד עוֹשֶׂה לְרַבּוֹ תַּלְמִיד עוֹשֶׂה לְרַבּוֹ, חוּץ מֵהַתָּרַת (לוֹ) מִנְעָל.

Rabbi Yehoshua ben Levi said: All tasks that a Canaanite **slave performs for his master, a student performs for his teacher, except for untying his shoe,** a demeaning act that was typically performed by slaves and would not be appropriate for a student to do.[H]

אֲמַר רָבָא: לָא אֲמָרַן אֶלָּא בְּמָקוֹם שֶׁאֵין מַכִּירִין אוֹתוֹ, אֲבָל בְּמָקוֹם שֶׁמַּכִּירִין אוֹתוֹ – לֵית לָן בָּהּ. אֲמַר רַב אַשִׁי: וּבְמָקוֹם שֶׁאֵין מַכִּירִין אוֹתוֹ – נַמִּי לָא אֲמָרַן אֶלָּא דְּלָא מַנַּח תְּפִלִּין. אֲבָל מַנַּח תְּפִלִּין – לֵית לָן בָּהּ.

Rava said: We said this only if the teacher and the student are **in a place where** people are **not familiar with** the student and he could be mistaken for a slave. **However, in a place where** people are **familiar with** the student, **we have no** problem **with it** as everyone knows that he is not a slave. **Rav Ashi said: And in a place where** people are **not familiar with** the student, **we said this** *halakha* **only** if **he is not donning phylacteries, but if he is donning phylacteries, we have no** problem **with it.** A slave does not don phylacteries, and since this student is donning phylacteries, even if he unties his teacher's shoes he will not be mistaken for a slave.[B]

HALAKHA

Any lost article found by the widow she acquires for herself – מְצִיאַת אַלְמָנָה לְעַצְמָהּ: Any article found by a widow is legally hers and the heirs have no rights to it, in accordance with the opinion of Shmuel (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:8; *Shulḥan Arukh*, *Even HaEzer* 95:4).

Tasks that a widow performs for the heirs – מְלָאכוֹת שֶׁעוֹשָׂה אַלְמָנָה לַיּוֹרְשִׁים: All of the tasks that a wife performs for her husband, a widow performs for the orphans, except for filling their cup; making their bed; and washing their face, hands, and feet, as these are acts of affection. This ruling is in accordance with the opinion of Rabbi Yosei bar Ḥanina (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:7; *Shulḥan Arukh*, *Even HaEzer* 95:3).

Tasks that a student performs for his teacher – מְלָאכוֹת שֶׁהַתַּלְמִיד עוֹשֶׂה לְרַבּוֹ: All of the tasks that a slave performs for his master, a student performs for his teacher. However, if they are in a place where the student is not recognized and is not wearing phylacteries, he does not put on or take off his master's shoes, due to the concern that people might believe him to be a slave. This is in accordance with the opinion of Rabbi Yehoshua ben Levi, as explained by Rava and Rav Ashi (Rambam *Sefer HaMadda*, *Hilkhot Talmud Torah* 5:8; *Shulḥan Arukh*, *Yoreh De'a* 242:19).

NOTES

If you say that we learned in the mishna: A widow who is sustained – אִי אָמְרַתְּ...הַנִּיזּוֹנֶת תְּנַן: *Tosafot* and many early commentaries explain that the Gemara is not just interested in ascertaining the precise formulation of the mishna. It is also interested in understanding the rights that the heirs have to the widow's earnings.

It is possible to say that according to the custom of the people of Judea, which dictates that the woman stays in her husband's house only if the heirs do not pay her marriage contract, they have no rights to her earnings because they can drive her away any time they choose. If the mishna is understood to be referring to a widow who is sustained by the heirs in accordance with the Judean custom, it is understood why any article she finds belongs to her. This is why Shmuel's statement is linked with the mishna, though he does not rule this way. However, if the mishna were referring to all widows, it would mean that Shmuel's opinion is not accepted by *halakha* nor does it clarify the mishna (see Ritva).

BACKGROUND

Removing shoes and phylacteries – הַתָּרַת מִנְעָל וּתְפִלִּין: It appears from several sources in the Bible and the Talmud that shoes were considered to be especially distasteful objects. For this reason, it was prohibited to enter the Temple wearing shoes (see Exodus 3:5). Being hit with a shoe or throwing a shoe at someone was seen as a serious insult (see Psalms 60:10). For this reason, removing someone else's shoe was seen as an action that only a slave would do for his master.

By contrast, wearing phylacteries fulfills a positive mitzva that a slave is exempt from and they were a sign of great honor, as the Sages understood the verse "Bind your pride upon yourself" (Ezekiel 24:17) as referring to phylacteries (see *Moed Katan* 15a).

אָמַר רַבִּי חִיָּיא בַּר אַבָּא אָמַר רַבִּי יוֹחָנָן: כָּל הַמּוֹנֵעַ תַּלְמִידוֹ מִלְּשַׁמְּשׁוֹ, כְּאִילּוּ מוֹנֵעַ מִמֶּנּוּ חֶסֶד, שֶׁנֶּאֱמַר ״לַמָּס מֵרֵעֵהוּ חָסֶד״. רַב נַחְמָן בַּר יִצְחָק אוֹמֵר: אַף פּוֹרֵק מִמֶּנּוּ יִרְאַת שָׁמַיִם, שֶׁנֶּאֱמַר ״וְיִרְאַת שַׁדַּי יַעֲזוֹב״.

Rabbi Ḥiyya bar Abba said that **Rabbi Yoḥanan said: Anyone who prevents his student from serving him,**[HN] **it is as if he withheld from him kindness, as it is stated: "To him that is ready to faint** [*lamas*]**, from his friend kindness is due"** (Job 6:14). Rabbi Yoḥanan interprets this to mean that one who prevents [*memis*] another from performing acts on his behalf, prevents him from performing the mitzva of kindness. **Rav Naḥman bar Yitzḥak says: He even removes from** the student **the fear of Heaven, as it is stated** in the continuation of the verse: **"Even to one who forsakes the fear of the Almighty."**

אָמַר רַבִּי אֶלְעָזָר: אַלְמָנָה שֶׁתָּפְסָה מִטַּלְטְלִין בִּמְזוֹנוֹתֶיהָ – מַה שֶּׁתָּפְסָה תָּפְסָה. תַּנְיָא נַמִי הָכִי: אַלְמָנָה שֶׁתָּפְסָה מִטַּלְטְלִין בִּמְזוֹנוֹתֶיהָ – מַה שֶּׁתָּפְסָה תָּפְסָה.

Rabbi Elazar said: In the case of **a widow who seized movable property**[HN] **for her sustenance, that which she seized, she seized** and it remains in her possession. **That** *halakha* **is also taught** in a *baraita*: **A widow who seized movable property** to provide **for her sustenance, that which she seized, she seized.**

וְכֵן, כִּי אֲתָא רַב דִּימִי אֲמַר: מַעֲשֶׂה בְּכַלָּתוֹ שֶׁל רַבִּי שַׁבְּתַי שֶׁתָּפְסָה דִּסְקָיָא מְלֵאָה מָעוֹת, וְלֹא הָיָה כֹּחַ בְּיַד חֲכָמִים לְהוֹצִיא מִיָּדָהּ.

And likewise, when Rav Dimi came[B] from Eretz Yisrael **he said:** There was **an incident involving Rabbi Shabbtai's daughter-in-law, who seized a saddlebag** [***diskayya***][L] **full of coins** for her sustenance, **and the Sages did not have the authority to remove it from her possession.**

אֲמַר רָבִינָא: וְלָא אֲמָרַן אֶלָּא לְמְזוֹנֵי, אֲבָל לִכְתוּבָּה – מַפְקִינַן מִינָּהּ.

Ravina said: We said the *halakha* that we do not remove from her possession that which she seized **only** in a case where she seized the assets **for her sustenance. However,** if she seized the assets **as** payment of **her marriage contract, we remove it from her.**[H]

מַתְקִיף לָהּ מָר בַּר רַב אַשִׁי: מַאי שָׁנָא לִכְתוּבָּה – דִּמְמַקְרְקְעֵי וְלָא מִמַּטַּלְטְלֵי, מְזוֹנוֹת נַמִי – מִמְּקַרְקְעֵי וְלֹא מִמַּטַּלְטְלֵי! אֶלָּא, לְמְזוֹנֵי – מַאי דְּתָפְסָה תָּפְסָה, הָכִי נַמִי לִכְתוּבָּה!

Mar bar Rav Ashi objects to this: What is different about seizing assets **as** payment of **her marriage contract,** that they are removed from her possession? If it is **that** a marriage contract is paid only **from real estate and not from movable property,** there is a rabbinic enactment that **sustenance** is **also** paid only **from real estate and not from movable property. Rather,** just as you say that if she seizes assets **for her sustenance, that which she seized, she seized, so too,** her seizure is effective if she does so **as** payment of **her marriage contract.**

HALAKHA

Anyone who prevents his student from serving him – כָּל הַמּוֹנֵעַ תַּלְמִידוֹ מִלְּשַׁמְּשׁוֹ: Whoever prevents his student from serving him withholds from him the opportunity to perform kindness and causes his fear of Heaven to decline. This directive is in accordance with Rabbi Yoḥanan and Rav Naḥman bar Yitzḥak (Rambam *Sefer HaMadda*, *Hilkhot Talmud Torah* 5:8; *Shulḥan Arukh*, *Yoreh De'a* 242:20).

A widow who seized movable property – אַלְמָנָה שֶׁתָּפְסָה מִטַּלְטְלִין: According to talmudic law, a widow is not provided sustenance from her deceased husband's movable property. However, if she seized his movable property it is not removed from her possession. This *halakha* applies whether she did so during his lifetime or after his death, and even if she seized a gold bar worth more than the money owed to her at the time she seized it.

The court writes her a receipt noting the amount she seized and calculates the amount of sustenance she ought to be receiving, and she then lives off of what she holds in her possession. In a situation where she dies or the heirs are no longer responsible for providing her sustenance, the remaining value of the movable property that she seized returns to the heirs. This ruling is in accordance with the opinion of Rabbi Elazar and Rav Dimi.

In the present, after the *ge'onim* enacted that a woman may collect her marriage settlement from movable property, she is supported from movable property even if she did not seize it (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:10; *Shulḥan Arukh*, *Even HaEzer* 93:20, 23).

As payment of her marriage contract, we remove it from her – לִכְתוּבָּה, מַפְקִינַן מִינָּהּ: If a widow seized movable property as payment for her marriage contract during her husband's lifetime, it is not removed from her possession. If she seized it after his death, the court removes it from her. This ruling is in accordance with the opinion of Ravina, and the Rif rules accordingly. Although the *halakha* is usually in accordance with Mar bar Rav Ashi, here Ravina has the support of Rava. Some commentaries dispute the ruling and others dispute the reasons for the ruling (*Ba'al Halakhot Gedolot*; Rabbeinu Ḥananel).

There are some who understand from the words of the Rambam that even after the enactment of the *ge'onim*, seizing movable property after the owner's death is not legally effective (Mahari Mintz). According to the opinions of most halakhic authorities, it is effective in the present (*Beit Yosef*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:11).

NOTES

Anyone who prevents his student from serving him, etc. – כָּל הַמּוֹנֵעַ תַּלְמִידוֹ מִלְּשַׁמְּשׁוֹ וכו׳: This difficult verse was explained by interpreting the word *lamas* in the same way as *yimmas* in the following verse: "He should not melt [*yimmas*] the heart of his brethren" (Deuteronomy 20:8). Here melt is understood to be a synonym of remove (Rivan).

With regard to the matter itself, since one is supposed to fear one's teacher as one fears Heaven, it is proper for students to serve their teacher through the performance of all sorts of tasks without intending to receive any recompense for doing so, just as one ought to do for God (*Iyyun Ya'akov*). Furthermore, through the performance of this service the student will often find himself in the company of his teacher, affording him the opportunity to learn from him both matters of *halakha* and matters of conduct. Therefore, if the teacher prevents the student from doing these things for him, he is withholding from him the kindness of the Torah and this will cause the student's fear of Heaven to decline (*Ir Binyamin*; see Rashi).

A widow who seized movable property – אַלְמָנָה שֶׁתָּפְסָה מִטַּלְטְלִין: The early commentaries argue over whether the Gemara is referring to a woman who seized property during her husband's lifetime or after his death. Rabbeinu Ḥananel holds that the seizure took place specifically during his lifetime, in keeping with the principle explained earlier that seizure following death is not considered legal seizure. This explains why, according to Mar bar Rav Ashi, the seizure of assets for payment for the marriage contract as well as for sustenance is effective. This is also the opinion of the Rid and others, who rule in accordance with Mar bar Rav Ashi, based on the principle that the *halakha* is in accordance with his opinion whenever he argues with Ravina, except for in three specific cases.

However, according to the Rif, the Rivan, and others, the Gemara is speaking of a seizure following the husband's death. They provide several explanations for why seizing assets after the husband's death to provide for the widow's sustenance is legally effective. One explanation is that a widow is unable to collect payment for her sustenance from liened property that was sold to a third party, whereas she can collect payment for her marriage contract from it. Therefore, if she could not seize assets she would lose out and never receive payment for her sustenance. Rabbeinu Crescas Vidal explains similarly. Since the heirs have the ability to mortgage their lands and avoid having to pay the widow money for her sustenance, she has the right to seize movable property. These commentaries further explain that since her goal is to be able to sustain her daily living, she is granted the right to seize assets from her husband's estate.

BACKGROUND

When Rav Dimi came – כִּי אֲתָא רַב דִּימִי: Rav Dimi was one of the Sages who descended, or who would often travel, from Eretz Yisrael to Babylonia, primarily to transmit the Torah of Eretz Yisrael to the Torah centers of the Diaspora, although occasionally he traveled for business as well. Many questions, particularly those concerning the Torah of Eretz Yisrael, remained unresolved in Babylonia until the messenger from Zion would arrive and elucidate the *halakha*, the novel expression, or the unique circumstances pertaining to a particular statement that required clarification.

LANGUAGE

Saddlebag [*diskayya*] – דִּיסְקָיָא: From the Greek δισάκκιον, *disakkion*, meaning double sack, a saddlebag placed on an animal.

Donkey with saddlebag

אֲמַר לֵיהּ רַב יִצְחָק בַּר נַפְתָּלִי לְרָבִינָא: הָכִי אָמְרִינַן מִשְׁמֵיהּ דְּרָבָא כְּוָותֵיךְ.

Rav Yitzḥak bar Naftali said to Ravina: We say this *halakha* in the name of Rava, in accordance with your teaching that if she seized movable property as payment of her marriage contract, it is removed from her possession.

אָמַר רַבִּי יוֹחָנָן מִשְׁמֵיהּ דְּרַבִּי יוֹסֵי בֶּן זִימְרָא. אַלְמָנָה שֶׁשָּׁהֲתָה שְׁתַּיִם וְשָׁלֹשׁ שָׁנִים וְלֹא תָּבְעָה מְזוֹנוֹת – אִיבְּדָה מְזוֹנוֹת.

Rabbi Yoḥanan said in the name of Rabbi Yosei ben Zimra: A widow who waited[N] **two or three years** after her husband's death **and did not demand sustenance**[H] from the heirs **has forfeited** the right to receive **sustenance** from them. Since she did not demand her sustenance, it is assumed that she must have forgone this right.

הָשְׁתָּא שְׁתַּיִם אִיבְּדָה, שָׁלֹשׁ מִיבָּעְיָא?! לָא קַשְׁיָא; כָּאן – בַּעֲנִיָּה, כָּאן – בַּעֲשִׁירָה.

The Gemara discusses the language of Rabbi Yosei ben Zimra's statement: **Now** that it was stated that after **two** years **she forfeited** her rights to receive sustenance, **is** it **necessary** to state that she also forfeited her rights after **three** years? The Gemara answers: This is **not difficult. Here,** the first statement is referring **to a poor woman** for which two years is a long time. If she does not demand sustenance for two years, it is clear that she has forgiven the heirs this obligation. **There,** the second statement is referring **to a rich woman** who can support herself for two years. It is only clear after three years that she forgave the obligation.

אִי נַמִי: כָּאן – בִּפְרוּצָה, כָּאן – בִּצְנוּעָה.

Alternatively, here it is referring **to an unabashed woman,** who is not ashamed to demand her rights from the heirs. If she does not demand sustenance within two years, it is assumed that she has forgone this right. **There,** it is referring **to a modest woman,** who is embarrassed to demand sustenance from the heirs and who waits until the third year to claim this right.

אֲמַר רָבָא: לָא אֲמָרַן אֶלָּא לְמַפְרֵעַ, אֲבָל לְהַבָּא – יֵשׁ לָהּ.

Rava said: We said this *halakha* **only retroactively;**[H] the widow cannot demand to be reimbursed for the past years in which she paid for her own sustenance. **However, from** here **onward,** once she demands sustenance **she has** the right to receive it from the heirs.

בָּעֵי רַבִּי יוֹחָנָן: יְתוֹמִים אוֹמְרִים: נָתַנּוּ, וְהִיא אוֹמֶרֶת: לֹא נָטַלְתִּי, עַל מִי לְהָבִיא רְאָיָה?

Rabbi Yoḥanan raises a dilemma: If the **orphans say: We gave** her sustenance, **and she says: I took none, upon whom** is it incumbent **to bring proof** to support his argument?

NOTES

A widow who waited, etc. – אַלְמָנָה שֶׁשָּׁהֲתָה וכו׳: This *halakha* is found in the Jerusalem Talmud with an important difference. The version there is: A widow who waited for two or three months, not years. Some commentaries point out that it makes sense to accept this formulation, since the widow's sustenance is paid on a monthly basis. The Ramban and his students ruled that this *halakha* applies specifically in the case of a widow, but not in the case of a married woman. It is possible that the widow has other sources of support and chose to delay demanding sustenance from the husband's estate. However, a married woman has no alternate sources of support. If she does not immediately demand sustenance from her husband, it is understood that she has forgiven him this obligation.

HALAKHA

A widow who waited…and did not demand sustenance – אַלְמָנָה שֶׁשָּׁהֲתָה...וְלֹא תָּבְעָה מְזוֹנוֹת: A poor widow who waited for two years without demanding sustenance, or a rich widow who waited for three years, has forfeited her right to receive sustenance for those years. If she waited even one day less than that period, she did not forfeit her rights. In addition, if she held a security for the payment of her sustenance in her possession or if she borrowed money for her support, she did not waive her rights. This ruling is in accordance with the opinion of Rabbi Yosei ben Zimra and the first explanation of the Gemara (*Maggid Mishne*).

According to the Vilna Gaon, the Rambam had a different version of the text, in which the distinction made between a rich and a poor widow appeared after the distinction between an unabashed and a modest widow. Based on the principles used in deciding the *halakha*, he ruled in accordance with the second distinction. According to other authorities, the *halakha* reflects both distinctions, and only a woman who is both poor and unabashed loses two years of her sustenance (Rosh; *Tur*; Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:26; *Shulḥan Arukh*, *Even HaEzer* 93:14).

We said this only retroactively – לָא אֲמָרַן אֶלָּא לְמַפְרֵעַ: A widow who waited and did not demand sustenance and lost two years of her support nevertheless retains her right to receive sustenance from the time that she finally comes to demand it. This *halakha* is in accordance with the opinion of Rava (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:26; *Shulḥan Arukh*, *Even HaEzer* 93:14).

נִכְסֵי בְּחֶזְקַת יְתֵמֵי קַיְימֵי, וְעַל אַלְמָנָה לְהָבִיא רְאָיָה. אוֹ דִלְמָא: נִכְסֵי בְּחֶזְקַת אַלְמָנָה קַיְימֵי, וְעַל הַיְתוֹמִים לְהָבִיא רְאָיָה?

The Gemara presents the different options: Does one say that **the property is in the possession of the orphans and** it is incumbent **upon the widow to bring proof**[N] of her claim, in accordance with the principle that the burden of proof rests on the claimant? **Or, perhaps** one says that the **property is in the widow's possession** given that it has a lien attached to it by virtue of her marriage contract, **and** it is incumbent **upon the orphans** to **bring proof**[N] of their claim.

תָּא שְׁמַע, דְּתָנֵי לֵוִי: אַלְמָנָה, כָּל זְמַן שֶׁלֹּא נִיסֵּת – עַל הַיְתוֹמִים לְהָבִיא רְאָיָה, נִיסֵּת – עָלֶיהָ לְהָבִיא רְאָיָה.

Come and **hear** proof from a *baraita* **that Levi taught:** In the case of **a widow, as long as she has not married** again, it is incumbent **upon the orphans to bring proof** that they provided sustenance for her. Once **she** has **married** and comes to demand the sustenance that she was supposed to receive in the past, it is incumbent **upon her to bring proof** that she never received anything.[H]

אָמַר רַב שִׁימִי בַּר אַשִׁי: כִּתְנָאֵי: מוֹכֶרֶת וְכוֹתֶבֶת ״אֵלּוּ לִמְזוֹנוֹת מָכַרְתִּי, וְאֵלּוּ לִכְתוּבָּה מָכַרְתִּי״, דִּבְרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסֵי אוֹמֵר: מוֹכֶרֶת וְכוֹתֶבֶת סְתָם, וְכֵן כֹּחָהּ יָפֶה.

Rav Shimi bar Ashi said: Rabbi Yoḥanan's question is **subject to** a dispute between ***tanna'im*** in the following *baraita*: A widow **sells** parts of her deceased husband's property **and writes: These I sold for** my **sustenance**[H] **and these I sold** as payment **for** my **marriage contract;** this is **the statement of Rabbi Yehuda. Rabbi Yosei says: She sells and writes** how much she sold **without specification** of the purpose for which it was sold. **And so her power** to support herself **is enhanced,**[N] as she will be able to decide if what she took was payment for her marriage contract or if it was for her sustenance, based on the status of other claims to her husband's property.

מַאי לָאו בְּהָא קָמִיפַּלְגִי; לְרַבִּי יְהוּדָה, דַּאֲמַר: בָּעֵי לְפָרוּשֵׁי – סָבַר: נִכְסֵי בְּחֶזְקַת יְתֵמֵי קַיְימֵי, וְעַל הָאַלְמָנָה לְהָבִיא רְאָיָה. וְרַבִּי יוֹסֵי סָבַר: לָא בָּעֵי לְפָרוּשֵׁי. נִכְסֵי בְּחֶזְקַת אַלְמָנָה קַיְימֵי, וְעַל הַיְתוֹמִים לְהָבִיא רְאָיָה.

What, is it not that **they disagree with regard to this** question? **According to Rabbi Yehuda, who said** that **she is required to specify** the purpose for which it was sold, it is implied that **he holds** that **the property is in the possession of the orphans, and** it is incumbent **upon the widow to provide proof.** This is why she needs to write precisely for what purpose the property was sold. **And Rabbi Yosei holds** that **she does not need to specify** the purpose for which it was sold because **the property is in the widow's possession, and** it is incumbent **upon the orphans to provide proof.**

HALAKHA

Upon whom is it incumbent to bring proof – עַל מִי לְהָבִיא רְאָיָה: If a widow demands sustenance from her husband's heirs, claiming that they never provided her with anything, and they claim that they already gave her what she is supposed to receive, until she remarries it is incumbent upon the heirs to provide proof that they provided her sustenance. Alternatively, she can take an oath of inducement and then take what she claims to be hers. If she makes this demand after she has remarried, it is incumbent upon her to provide proof that she never received sustenance. Alternatively, the heirs can take an oath of inducement that they have given her what is hers and thereby exempt themselves from having to pay. This ruling is in accordance with the opinion of Levi (Rambam *Sefer Nashim*, *Hilkhot Ishut* 18:27; *Shulḥan Arukh*, *Even HaEzer* 93:15).

Sells and writes: These I sold for my sustenance, etc. – מוֹכֶרֶת וְכוֹתֶבֶת אֵלּוּ לִמְזוֹנוֹת מָכַרְתִּי וכו': The Sages advised the widow to specify what she sells for her sustenance and what she sells as payment of her marriage contract. This is so that the heirs will not complain how gluttonous she is to sell so much for her sustenance. This directive is in accordance with the conclusion of the Gemara. If, however, she is not worried about this, then for several reasons it is better for her not to specify the purpose for which it was sold (*Tur*, *Even HaEzer* 103).

NOTES

And it is incumbent upon the widow to bring proof – וְעַל אַלְמָנָה לְהָבִיא רְאָיָה: There are some *ge'onim* who explain this entire issue in a different manner. In their opinion, the monetary dispute between the orphans and the widow pertains to her marriage contract. The orphans claim that they paid her marriage contract, and the widow claims that she never received it.

And it is incumbent upon the orphans to bring proof – וְעַל הַיְתוֹמִים לְהָבִיא רְאָיָה: All the halakhic authorities ruled that the widow must take an oath under these circumstances. However, they do debate which type of oath she takes. Some say that she needs to take only an oath of inducement, an oath instituted by the Sages in a case where a defendant completely denies a claim.

The Rambam, however, appears to hold that she is required to take an oath by Torah law. His reasoning seem to be as follows: Although the property is in the widow's possession, as long as she has not remarried her situation is not like that of someone who is in full possession of his own property, but like a claimant who wishes to appropriate property from another. This ruling is in accordance with the principle that as long as one does not claim ownership, regardless of any other rights or claims he or she may have, he is considered to be a claimant. Since the widow here is claiming only that she has a lien on the property, but not that she owns it, she is considered a claimant (see Rabbeinu Crescas Vidal).

And so her power is enhanced – וְכֵן כֹּחָהּ יָפֶה: Rashi explains that her position is strengthened by not stating why she sold her husband's property. Even if she sells her marriage contract, she can claim that she sold it for her sustenance and then claim payment for her marriage contract from liened properties.

Tosafot note that while that explanation may be true, it is discussed only later, with regard to the opinion of Abaye the Elder. Here, it can be explained that she has an advantage should the orphans come and say that she has not demanded sustenance and that she has waived her rights, as she can respond that she sold property for her sustenance.

It is explained in the Jerusalem Talmud that if someone who lent money to a widow's late husband after they were married, without a contract, comes and demands repayment from unsold property, the widow can claim that she sold the property as payment for her marriage contract, since her claim predates his. If someone who lent money to her late husband before they were married and received a promissory note from him comes and demands repayment, she can claim that she sold the property for her support, and he is not be able to appropriate from her what she has already taken (see Ramban and Jerusalem Talmud).

מִמַּאי? דִּלְמָא דְּכוּלֵּי עָלְמָא נִכְסֵי בְּחֶזְקַת אַלְמָנָה קַיְימֵי, וְעַל הַיְתוֹמִים לְהָבִיא רְאָיָה. וְרַבִּי יְהוּדָה – עֵצָה טוֹבָה קָא מַשְׁמַע לָן, דְּלָא לִיקְרוּ לָהּ רַעְבְתָּנוּתָא.

The Gemara rejects this proof: **From where** do you arrive at this conclusion? **Perhaps everyone** agrees that **the property is in the widow's possession and** it is incumbent **upon the orphans to provide proof. And Rabbi Yehuda** simply **teaches us** a measure of **good advice, so that they will not call her a glutton** if they think that she spends excessively on her sustenance. He therefore advises her to specify the purpose for which everything was sold so that she can prove that she did not spend excessively on her sustenance.

דְּאִי לָא תֵּימָא הָכִי – הָא דְּבָעֵי רַבִּי יוֹחָנָן תִּפְשׁוֹט לֵיהּ מִמַּתְנִיתִין: מוֹכֶרֶת לִמְזוֹנוֹת שֶׁלֹּא בְּבֵית דִּין, וְכוֹתֶבֶת "אֵלּוּ לִמְזוֹנוֹת מָכַרְתִּי"! אֶלָּא, מִמַּתְנִיתִין לֵיכָּא לְמִשְׁמַע מִינָּהּ, דְּעֵצָה טוֹבָה קָא מַשְׁמַע לָן. הָכִי נַמִי – עֵצָה טוֹבָה קָא מַשְׁמַע לָן.

As, if you do not say so, then with regard to **the dilemma raised** by **Rabbi Yoḥanan,** why not **resolve** the dilemma **from the mishna** that states (97b): A woman **sells** her husband's property **for** her **sustenance when not in court, and writes: These I sold for** my **sustenance?** Based on the reasoning used earlier, one could have resolved the question by proving from here that the property is in the possession of the orphans, and it is incumbent upon the widow to bring proof for her claim. **Rather,** it must be that this *halakha* **cannot be derived from this mishna, as it teaches us only good advice** to keep the heirs from complaining about her. **So too,** in the *baraita*, Rabbi Yehuda **teaches us** a measure of **good advice,** not a *halakha*.

אִי נַמִי: דְּכוּלֵּי עָלְמָא נִכְסֵי בְּחֶזְקַת יְתֻמֵּי קַיְימֵי, וְהַיְינוּ טַעְמָא דְּרַבִּי יוֹסֵי – כִּדְאַבַּיֵּי קַשִּׁישָׁא. דְּאָמַר אַבַּיֵּי קַשִּׁישָׁא: מָשָׁל לְרַבִּי יוֹסֵי לְמָה הַדָּבָר דּוֹמֶה? לְשָׁכִיב מְרַע שֶׁאָמַר "תְּנוּ מָאתַיִם זוּז לְפְלוֹנִי בַּעַל חוֹבִי", רָצָה – בְּחוֹבוֹ נוֹטְלָן, רָצָה – בְּמַתָּנָה נוֹטְלָן.

Alternatively, one can say the opposite: **Everyone** agrees that **the property is in the possession of the orphans, and this is the reasoning** of **Rabbi Yosei, as** explained by **Abaye the Elder,**[P] **as Abaye the Elder said a parable to** illustrate the opinion of **Rabbi Yosei: To what is this matter comparable? To** a person **on his deathbed**[B] **who said: Give**[H] **two hundred dinars to so-and-so, my creditor.** Because the word give is usually used in the context of a gift, the creditor can decide: If **he desires, he takes** the money **as payment of** the **debt** owed to **him.**[N] This gives the creditor the advantage of being able to collect his debt from liened properties that were sold to a third party. Or, if he so **desires, he takes** the money **as a gift.**

PERSONALITIES

Abaye the Elder – אַבַּיֵּי קַשִּׁישָׁא: This *amora*, mentioned only a few times in the Talmud, apparently lived during the second generation of Babylonian *amora'im*. The appellation: The Elder, was given to him in order to distinguish between him and Abaye, Rava's colleague, who was much younger than he and lived during the fourth generation of *amora'im*.

BACKGROUND

A person on his deathbed – שָׁכִיב מְרַע: According to Jewish law, someone on his deathbed is given exceptional powers to assign his property to others, without many of the ordinary requirements that such a transfer usually entails. The Sages recognized the unique physical and emotional state of a dying person and were concerned with the possibility that such a person would become distraught that his final wishes would not be fulfilled. To alleviate this concern, the Sages ruled that a deathbed gift is considered to have been signed and delivered. Therefore, the stated desire of someone on his deathbed for his property to be transferred would take effect even if witnesses were not formally appointed and an official act of acquisition was not performed.

HALAKHA

To a person on his deathbed who said: Give, etc. – שָׁכִיב מְרַע שֶׁאָמַר תְּנוּ וכו': If a man on his deathbed said: Give two hundred dinars to my creditor as befits him, the creditor receives both the money owed to him by the dying man as well as the two hundred dinars. If the dying man neither said: As befits him, nor mentioned that the money was payment for a debt owed, the creditor can choose whether to receive this money as a gift or as payment of the debt. This ruling is based on a combination of the conclusion of the Gemara in tractate *Bava Batra* (138b) and its conclusion here. Some disagree and say that if the dying man uttered generally: To so-and-so, my creditor, the money is a gift (*Tur*). The Rema concludes that the first opinion seems more reasonable (Rambam *Sefer Kinyan*, *Hilkhot Zekhiya UMattana* 11:19; *Shulḥan Arukh*, *Ḥoshen Mishpat* 253:8).

NOTES

If he desires, he takes the money as payment of the debt owed to him – רָצָה, בְּחוֹבוֹ נוֹטְלָן: According to most commentaries, one who is given money in this particular way takes both the money that is owed to him as a debt as well as this money that was given to him as a gift. However, according to some opinions, the creditor can decide if he wishes to take this sum as payment for his debt or as a gift. There are instances in which it is preferable for him to take the money as a gift, as then he need not take any oath. In other instances, e.g., when the debt owed to him precedes that which is owed to the other creditors, it is preferable for him to receive this money as payment for a debt in order to take precedence over the other creditors who succeeded him (Ra'avad; see Ritva). The Rashba explains that he takes the sum spoken on the deathbed, and if it is a larger amount than the amount owed to him, he takes the balance as a gift.