HALAKHA

To exclude a grown woman – פְּרָט לִבְוּגֶרֶת: It is a positive mitzva for a High Priest to marry a young virgin, and he is prohibited from marrying a grown woman, in accordance with the opinion of Rabbi Meir, as the *halakha* is decided in his favor in tractate *Yevamot*, 60a (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:13).

NOTES

There they disagree with regard to verses – הָתָם בִּקְרָאֵי פְּלִיגִי: It would appear that the dispute is dependent on the definition of the term "her virginity." Should it be understood in the sense of the physical sign of her virginity, i.e., the hymen, as Rabbi Meir understood it, or it should be understood as referring to a status, i.e., the status of a woman who has not engaged in sexual intercourse, as understood by Rabbi Elazar and Rabbi Shimon?

גמ׳ מַתְנִיתִין מַנִּי – רַבִּי שִׁמְעוֹן הִיא, דְּתַנְיָא: מָכְרָה כְּתוּבָּתָהּ, מְשָׁכְנָה כְּתוּבָּתָהּ, עָשְׂתָה כְּתוּבָּתָהּ אַפּוֹתֵּיקִי לְאַחֵר – אֵין לָהּ מְזוֹנוֹת, דִּבְרֵי רַבִּי מֵאִיר. רַבִּי שִׁמְעוֹן אוֹמֵר: אַף עַל פִּי שֶׁלֹּא מָכְרָה וְלֹא מִשְׁכְּנָה כְּתוּבָּתָהּ אֶלָּא מַחֲצִיתָהּ – אִבְּדָה מְזוֹנוֹתֶיהָ.

GEMARA The Gemara asks: **Whose** opinion is expressed in the **mishna?** The Gemara answers: **It is** in accordance with the opinion of **Rabbi Shimon, as it is taught** in a *baraita*: If **she sold** all of **her marriage contract,** or **mortgaged her marriage contract,** or if **she made her marriage contract designated repayment to another, she does not** receive **sustenance** any longer; this is **the statement of Rabbi Meir. Rabbi Shimon says: Although she has not sold or mortgaged her** entire **marriage contract, but only half of it, she has lost her** right to **sustenance.** Therefore, she can only sell the rest of her marriage contract in court.

לְמֵימְרָא דְּרַבִּי שִׁמְעוֹן סָבַר דְּלָא אָמְרִינַן: מִקְצָת כֶּסֶף כְּכֹל כֶּסֶף, וְרַבָּנַן סָבְרִי אָמְרִינַן: מִקְצָת כֶּסֶף כְּכֹל כֶּסֶף?

The Gemara asks: **Is this to say that Rabbi Shimon holds that we do not say** that **part of the money** has a status **like the entire** sum of **money?** Since she no longer has a claim to the entire sum of her marriage contract, it is as though she no longer has a marriage contract and loses her right to sustenance, **and the Rabbis hold that we** do **say part of the money is like the entire money.**

הָא אִיפְּכָא שָׁמְעִינַן לְהוּ, דְּתַנְיָא: ״וְהוּא אִשָּׁה בִּבְתוּלֶיהָ״ – פְּרָט לִבְוּגֶרֶת שֶׁכָּלוּ בְּתוּלֶיהָ, דִּבְרֵי רַבִּי מֵאִיר. רַבִּי אֶלְעָזָר וְרַבִּי שִׁמְעוֹן מַכְשִׁירִין בִּבְוּגֶרֶת.

Didn't **we hear them say the opposite? As it is taught** in a *baraita* concerning the verse that speaks about the High Priest (Leviticus 21:13): "**And he** shall take **a wife in her virginity," to exclude a grown woman**[H] **whose** sign of **virginity has diminished** because when a girl goes through puberty her hymen wears away; this is **the statement of Rabbi Meir. Rabbi Elazar and Rabbi Shimon declare as fit even a grown woman** for the High Priest. This implies that they are of the opinion that the absence of a part is not considered the absence of the whole, and although part of her sign of virginity has been diminished, it is still present.

הָתָם בִּקְרָאֵי פְּלִיגִי; רַבִּי מֵאִיר סָבַר: ״בִּבְתוּלֶיהָ״ – אֲפִילּוּ מִקְצָת בְּתוּלִים: ״בִּבְתוּלֶיהָ״ – עַד דְּאִיכָּא כּוּלְּהוּ בְּתוּלִים: ״בִּבְתוּלֶיהָ״ – בִּכְדַרְכָּהּ אִין, שֶׁלֹּא כִּדַרְכָּהּ – לָא.

The Gemara answers: **There they disagree** with regard to the interpretation of the **verses.**[N] **Rabbi Meir holds** that were it stated in the verse **a virgin,** this general term would have indicated that as long as she is a virgin, **even if** she has only **part** of her sign of **virginity,** she could marry the High Priest. However, since the verse states: "**In her virginity,**" it means to say **until there is** a sign of **virginity in its entirety.** The addition of the prefix "in" to the phrase "**in her virginity**" teaches that if she engaged in sexual intercourse **in the typical manner,** i.e., in the place where her sign of virginity lies, then **yes,** it is considered that she has engaged in sexual intercourse and is no longer considered a virgin. But if she engaged in **sexual intercourse in an atypical manner,** i.e., anal intercourse, then she is **not** considered to have engaged in sexual intercourse.

רַבִּי אֶלְעָזָר וְרַבִּי שִׁמְעוֹן סָבְרִי: ״בִּתוּלָה״ – שְׁלֵמָה מַשְׁמַע: ״בִּבְתוּלֶיהָ״ – אֲפִילּוּ מִקְצָת בְּתוּלִים,

By contrast, **Rabbi Elazar and Rabbi Shimon hold** that the word **virgin implies a complete virgin,** whose sign of virginity is completely intact. Therefore, when the verse says: "**Her virginity,**" it indicates that **even if** she has only **part of** her sign of **virginity,** in this regard she is still considered a virgin.

Perek **XI**
Daf **98** Amud **a**

״בִּבְתוּלֶיהָ״ – שֶׁיִּהוּ כָּל בְּתוּלֶיהָ קַיָּימִין, בֵּין בִּכְדַרְכָּהּ בֵּין שֶׁלֹּא כִּדַרְכָּהּ.

When the verse states "**in her virginity,**" the intent is **that her** sign of **virginity should be fully intact,** with her not having engaged in sexual intercourse of any kind, **whether in the typical manner**[H] **or through atypical** sexual intercourse. Therefore, this dispute is not relevant to the dispute with regard to whether part of the money can be considered akin to all of the money.

HALAKHA

Whether in the typical manner, etc. – בֵּין בִּכְדַרְכָּהּ וכו׳: A woman who has had intercourse, whether in the typical manner or through atypical intercourse, is no longer considered a virgin and is forbidden to a High Priest, in accordance with the opinion of Rav in tractate *Yevamot* (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:14).

הַהִיא אִיתְּתָא דְּתָפְסָה כָּסָא דִּכְסַפָּא בִּכְתוּבָּתָהּ, קָתָבְעָה מְזוֹנֵי. אֲתַאי לְקַמֵּיהּ דְּרָבָא. אֲמַר לְהוּ לִיתֵּימֵי: זִילוּ הֲבוּ לָהּ מְזוֹנוֹת, לֵית דְּחָשׁ לְהָא דְּרַבִּי שִׁמְעוֹן, דְּאָמַר: לָא אָמְרִינַן מִקְצָת כֶּסֶף כְּכָל כֶּסֶף.

§ The Gemara relates: There was **a certain woman who seized a silver cup** as partial payment of **her marriage contract** and who also **demanded sustenance. She came before Rava** for judgment. **He said to the orphans: Go and give her sustenance,** as there are **none who are concerned about the** ruling **of Rabbi Shimon, who said** that **we do not say that part of the money** has a status **like the entire** sum of **money.**

שָׁלַח לֵיהּ רַבָּה בְּרֵיהּ דְּרָבָא לְרַב יוֹסֵף: מוֹכֶרֶת שֶׁלֹּא בְּבֵית דִּין צְרִיכָה שְׁבוּעָה אוֹ אֵין צְרִיכָה שְׁבוּעָה? וְתִבָּעֵי לָךְ הַכְרָזָה?

§ **Rabba, son of Rava, sent** this question **to Rav Yosef:** Does a woman who **sells** her late husband's property **when not in court need** to take **an oath**[N] that she has not taken more than she deserves, **or does she not need** to take **an oath?** Rav Yosef replied to him: **But you should have raised the dilemma** if prior to the sale she needs to make **a public announcement**[N] in order to properly assess the value of the property.

אָמַר לֵיהּ: הַכְרָזָה לָא קָמִיבָּעֲיָא לִי, דְּאָמַר רַבִּי זֵירָא אָמַר רַב נַחְמָן: אַלְמָנָה שֶׁשָּׁמָה לְעַצְמָהּ – לֹא עָשְׂתָה וְלֹא כְלוּם.

He said to him in response: **I am not raising the dilemma** as to whether there needs to be **a public announcement, as Rabbi Zeira said** that **Rav Naḥman said: A widow who assessed** the property **for herself**[H] and took from the property according to her own calculation **has accomplished nothing.**

הֵיכִי דָּמֵי? אִי דְּאַכְרוּז – אַמַּאי לֹא עָשְׂתָה וְלֹא כְלוּם? אֶלָּא לָאו – דְּלָא אַכְרוּז, וּלְעַצְמָהּ הוּא דְּלָא עָשְׂתָה וְלֹא כְלוּם, הָא לְאַחֵר – מַה שֶּׁעָשְׂתָה עָשְׂתָה.

Now **what are the circumstances** here? **If they publicly announced** that this property was for sale and arrived at an agreed upon assessment of its value, **why** is it that **she has accomplished nothing?** The same *halakha* that applies to any purchaser should apply to her. **Rather, is it not that no public announcement was made; and** doesn't this teach that if she took it **for herself, she has accomplished nothing,** but if she sold it **to someone else,** then **her action is effective,** despite there not being any public announcement?[H]

לְעוֹלָם דְּאַכְרוּז, וּדְאָמְרִי לָהּ: מַאן שָׁם לֵיךְ?

The Gemara rejects this: **Actually,** this is a case **where they made a public announcement and where they said to her: Who assessed** this **for you?**[N] Although the sale was conducted publicly, there was still no assessment of the property value.

כִּי הַאי דְּהַהוּא גַּבְרָא דְּאַפְקִידוּ גַּבֵּיהּ כִּיסְתָּא דְּיָתְמֵי. אֲזַל שָׁמָהּ לְנַפְשֵׁיהּ בְּאַרְבַּע מֵאָה זוּזֵי, אַיְיקַר, קָם בְּשִׁית מֵאָה.

That case **is similar to this** incident **of a certain man with whom** someone **had deposited coral belonging to orphans. He went** and **assessed** the value of the coral **for himself at four hundred dinars** and then took it for himself. The coral **appreciated** in value and its value now **stood** at **six hundred dinars.**

אָתָא לְקַמֵּיהּ דְּרַבִּי אַמִּי. אֲמַר לֵיהּ מַאן שָׁם לָךְ?

He came before Rabbi Ammi to determine whether the profit belonged to the orphans or to him. Rabbi Ammi **said to him: Who assessed this for you?** Since you never had it assessed, neither the court nor the orphans sold it to you. Therefore, you never acquired the coral, and it remained in the possession of the orphans and the profit is theirs.

וְהִלְכְתָא: צְרִיכָה שְׁבוּעָה, וְאֵינָהּ צְרִיכָה הַכְרָזָה.

The Gemara concludes: **And the *halakha*** is that **she is required** to take **an oath, but she is not required** to make **a public announcement.**[H]

NOTES

Need to take an oath – צְרִיכָה שְׁבוּעָה: The early authorities disagreed about the nature of this oath. Rashi explains that she must take an oath that she has not collected more than she is entitled to. *Tosafot* explain that she is required to take an oath that she has not sold the properties for less than their market value.

There were some commentaries who asked: Since in any event she sells the property in the presence of three people, what concern is there that she has collected more than her fair share? The Ramban understands simply that the oath discussed here is the widow's oath. A widow is required to take an oath that she has taken nothing from her husband's property, as one does not collect debts from orphans without taking an oath. In his opinion, the question of the Gemara is not whether or not she is required to take an oath, but whether or not she can begin to sell property before taking the oath. The Rid explained the Gemara along similar lines.

But you should have raised the dilemma if she needs a public announcement – וְתִבָּעֵי לָךְ הַכְרָזָה: There are some who explain that the public announcement precedes the oath, and that is why Rabba should have inquired about that first. The Ra'ah and the Ritva explain that if a public announcement is made, there is no longer a need for an oath to be taken. The property value will be properly assessed, and there is no longer any concern that she may collect more than is rightfully hers.

Who assessed this for you – מַאן שָׁם לֵיךְ: The early authorities discuss the meaning of this phrase. According to Rashi and *Tosafot* it is not to be understood literally, but rather as follows: Who gave permission to this woman to take the property, as according to Rashi, she neither received the property from the court nor from the orphans? This seems to be the opinion of Rav Hai Gaon in *Sefer HaMikna* as well.

However, the *ge'onim* and the Rivan explain the phrase literally. The question is who assessed the value of this property, as perhaps it was worth more than the sale price you asked for. Alternatively, perhaps, since you assessed the value of this property in the presence of laymen, not experts, it could be that they were not so exact in their appraisal, thinking that you will be taking it for yourself in any event (see Ritva).

HALAKHA

A widow who assessed for herself – אַלְמָנָה שֶׁשָּׁמָה לְעַצְמָהּ: In the case of widow who sold properties out of court in order to collect payment of her marriage contract, if she assessed the property value and then claimed the property for herself, she has accomplished nothing and the sale is voided. This is true even if she made a public announcement prior to the sale. This *halakha* is in accordance with the conclusion of the Gemara. If there were three laymen present, the sale is effective (*Maggid Mishne*). Others say that even if there were three laymen in attendance, nothing has transpired until an expert court is present (*Tur*; see Rabbeinu Ḥananel; Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:14; *Shulḥan Arukh*, *Even HaEzer* 93:27–28, 103:5).

A widow who sold to someone else – אַלְמָנָה שֶׁמָּכְרָה לְאַחֵר: In the case of a widow who sold properties out of court to another in order to collect payment of her marriage contract, if she sold them for their market value, the sale is effective. Following the sale, she is required to take the widow's oath. This ruling is in accordance with the conclusion of the Gemara, and it applies to cases dealing with movable property. But in the case of land, neither her selling it nor her giving it away as a gift is effective unless its value was assessed by others, even by laymen (Rashba). Some say that the court has to collect for her (Rosh). The Rema writes that even in the case of movable property, if she did not take the oath beforehand, according to some opinions, the sale is voided, even if she took the oath afterward (*Halakhot Gedolot*; Rabbi Yosef Tuv-Elem; Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:14; *Shulḥan Arukh*, *Even HaEzer* 96:5).

She is not required to make a public announcement – אֵינָהּ צְרִיכָה הַכְרָזָה: A woman who sells out of court in order to collect payment of her marriage contract does not need to make a public announcement, although she does require the presence of three expert assessors. This is in accordance with the conclusion of the Gemara (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:13; *Shulḥan Arukh*, *Even HaEzer* 103:1).

HALAKHA

She sold property that was worth one hundred dinars for two hundred dinars, etc. – מָכְרָה שָׁוֶה מָנֶה בִּמְאָתַיִם וכו׳: If a widow whose marriage contract was worth two hundred dinars sold property worth one hundred dinars for two hundred dinars, or property worth two hundred dinars for one hundred dinars, she has received her marriage contract through these transactions. This ruling is in accordance with the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:15; *Shulḥan Arukh*, *Even HaEzer* 103:6).

She sold property worth one hundred dinars and a dinar for one hundred dinars – מָכְרָה שָׁוֶה מָנֶה וְדִינָר בִּמְנָה: If a widow sold property that was worth one hundred dinars and a dinar for one hundred dinars, the sale is voided. This is the case even if she says that she is willing to return the extra dinar to her husband's heirs. This is in accordance with the unattributed opinion of the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:15; *Shulḥan Arukh*, *Even HaEzer* 103:7).

If her marriage contract was four hundred dinars, etc. – הָיְתָה כְּתוּבָּתָהּ אַרְבַּע מֵאוֹת זוּז וכו׳: If her marriage contract was worth four hundred dinars and she sold plots of land at their correct value of one hundred dinars to three different individuals, and she then sold to a fourth person a plot of land worth one hundred dinars and a dinar for one hundred dinars, the first sales are effective while the last one is void, in accordance with the mishna (Rambam *Sefer Nashim*, *Hilkhot Ishut* 17:16; *Shulḥan Arukh*, *Even HaEzer* 103:8).

מתני׳ אַלְמָנָה שֶׁהָיְתָה כְּתוּבָּתָהּ מָאתַיִם, וּמָכְרָה שָׁוֶה מָנֶה בִּמְאתַיִם, אוֹ שָׁוֶה מָאתַיִם בְּמָנֶה – נִתְקַבְּלָה כְּתוּבָּתָהּ.

MISHNA In the case of **a widow whose marriage contract was** worth **two hundred** dinars **and she sold** property that was **worth one hundred dinars for two hundred** dinars,[H] **or** if she sold property **worth two hundred** dinars **for one hundred dinars, she has received** payment of **her marriage contract** and can demand nothing more.

הָיְתָה כְּתוּבָּתָהּ מָנֶה, וּמָכְרָה שָׁוֶה מָנֶה וְדִינָר בְּמָנֶה – מִכְרָהּ בָּטֵל. אֲפִילּוּ הֵיא אוֹמֶרֶת: אֲחֲזִיר דִּינָר לַיּוֹרְשִׁין – מִכְרָהּ בָּטֵל.

If **her marriage contract was** worth **one hundred dinars and she sold** property **worth one hundred dinars and a dinar for one hundred dinars,**[H] **the sale is void** because she sold property that did not belong to her. **Even** if **she says: I will return** the additional **dinar to the heirs,** the **sale is** nevertheless **void.**

רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר: לְעוֹלָם מִכְרָהּ קַיָּים, עַד שֶׁתְּהֵא שָׁם כְּדֵי שֶׁתִּשְׁתַּיֵּיר בְּשָׂדֶה בַּת תִּשְׁעָה קַבִּין, וּבְגִנָּה בַּת חֲצִי קַב. וּכְדִבְרֵי רַבִּי עֲקִיבָא: בֵּית רוֹבַע.

Rabban Shimon ben Gamliel says: Actually, the sale is valid. It is not considered an invalid sale **until there is** an error so extreme that had there been no mistake, **there would have remained in the field an area required for sowing nine *kav* of seed,**[B] the smallest area of land worth working. In that case, the orphans can reasonably claim that they are unwilling to give up on the land that belongs to them. However, if the error is less than this, it is enough if she returns the remainder to the orphans. **And** in the case of **a garden,** the sale is void if, had there been no error, there would have remained **an area required for sowing a half-*kav* of seed,** as this is the smallest size of garden worth working. **Or, according to the statement of Rabbi Akiva, an area required for sowing a quarter-*kav* of seed.**

הָיְתָה כְּתוּבָּתָהּ אַרְבַּע מֵאוֹת זוּז, וּמָכְרָה לָזֶה בְּמָנֶה וְלָזֶה בְּמָנֶה, וְלָאַחֵרוֹן יָפָה מָנֶה וְדִינָר בְּמָנֶה – שֶׁל אַחֲרוֹן בָּטֵל, וְשֶׁל כּוּלָּן – מִכְרָן קַיָּים.

If **her marriage contract was** worth **four hundred dinars,**[H] **and she sold** property **to this** one **for one hundred dinars, and** she sold property **to that** one **for one hundred dinars,** and again to a third one, **and** she sold property **to the last one worth one hundred dinars and a dinar for** only **one hundred dinars,** the sale **of the last** property **is void,**[N] as the price she charged was below the market value. **And all of the others, their sale is valid,** as they were sold for the correct price.

גמ׳ מַאי שְׁנָא שָׁוֶה מָאתַיִם בְּמָנֶה – דְּאָמְרִי לָהּ: אַתְּ אַפְסַדְתְּ, שָׁוֶה מָנֶה בְּמָאתַיִם נַמִּי, תֵּימָא: אֲנָא אַרְוַוחְנָא!

GEMARA The Gemara questions the first *halakha* mentioned in the mishna, which teaches that if the widow sold property worth two hundred dinars for one hundred dinars, or if she sold property worth one hundred dinars for two hundred dinars, in either case she can no longer demand any payment of her marriage contract. The Gemara asks: **What is different** about the case where she sold property **worth two hundred** dinars **for one hundred dinars,** where the *halakha* is that she has received her entire marriage contract, **as** the heirs can **say to her: You** caused yourself to **lose out** since you received from the estate the value of your entire marriage contract, but because you sold it improperly, you did not receive its full value. Why then, in the case where she sold property **worth one hundred dinars for two hundred** dinars, can she not **also say** to the heirs: **I profited** from the sale, but I received only the value of one hundred dinars from the estate, and I am entitled to another one hundred dinars?

אָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ:

Rav Naḥman said that **Rabba bar Avuh said:**

BACKGROUND

An area required for sowing nine *kav* of seed – בַּת תִּשְׁעָה קַבִּין: Measurements of area in the Talmud were based on estimating the area of a field sown with this amount of wheat seed. The ratio between the exact area and the seeds is based on one *beit se'a* equaling 2,500 square cubits. Accordingly, and in keeping with the different opinions as to the length of the cubit, the area of nine *kav* equals 950–1,400 sq m. The area of one half-*kav* equals 50–60 sq m.

NOTES

The sale of the last property is void – שֶׁל אַחֲרוֹן בָּטֵל: However, were this sale not to have been the last one, it would not have been void. It would then have been possible to say that what she sold was from property liened to her marriage contract, as stated in the first clause of the mishna in the case where she sold land worth two hundred dinars for one hundred dinars. However, since in this case there is nothing still owed to her as payment of her marriage contract, what she sold belonged to the orphans. Since she sold something that is not rightfully hers, the sale is void (Rivan; Meiri).

כָּאן שָׁנָה רַבִּי: הַכֹּל לְבַעַל הַמָּעוֹת. כִּדְתַנְיָא: הוֹסִיפוּ לוֹ אַחַת יְתֵירָה – הַכֹּל לַשָּׁלִיחַ, דִּבְרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסֵי אוֹמֵר: חוֹלְקִין.

Here Rabbi Yehuda HaNasi **taught,** i.e., it can be learned from this mishna that it is Rabbi Yehuda HaNasi's opinion that **everything** belongs **to the owner of the money.** If one earned a profit through the actions of his agent, the profit belongs to him and not to the agent, **as it is taught** in a *baraita* where the Sages debate this matter: In a case where one sent an agent to the marketplace to purchase merchandise at a certain price, if in addition to items that the agent purchased **they added for him one extra** item, **the entire** profit belongs **to the agent;** this is **the statement of Rabbi Yehuda. Rabbi Yosei says:** The owner of the money and the agent **split**[N] the profit.

וְהָתַנְיָא: רַבִּי יוֹסֵי אוֹמֵר: הַכֹּל לְבַעַל הַמָּעוֹת! אָמַר רָמִי בַּר חָמָא: לָא קַשְׁיָא; כָּאן – בְּדָבָר שֶׁיֵּשׁ לוֹ קְצָבָה, כָּאן – בְּדָבָר שֶׁאֵין לוֹ קְצָבָה.

The Gemara asks: **But isn't it taught** in a *baraita* that **Rabbi Yosei says: Everything** belongs **to the owner of the money? Rami bar Ḥama said:** This is **not difficult. Here** the *baraita* is referring to **an item that has a fixed** price. If the seller added something, it is clear that the additional item is a gift, but it is unclear if the gift is meant for the agent or for the owner of the money, so it is split between the two. Whereas **there,** the *baraita* is referring to **an item that does not have a fixed** price, and one can say that any additional items that were given were not intended for the agent, but were part of the overall deal and belong to the owner of the money.

אָמַר רַב פָּפָּא: הִלְכְתָא, דָּבָר שֶׁיֵּשׁ לוֹ קְצָבָה – חוֹלְקִין, דָּבָר שֶׁאֵין לוֹ קְצָבָה – הַכֹּל לְבַעַל הַמָּעוֹת. מַאי קָא מַשְׁמַע לָן? שִׁינּוּיָא דְּשַׁנִּינַן שִׁינּוּיָא הוּא.

Rav Pappa said: The *halakha* is that **an item that has a fixed** price[H] **is split,** and with regard to **an item that does not have a fixed** price, **the entire** profit belongs **to the owner of the money.** The Gemara asks: **What is he teaching us** with that statement? That is exactly what Rami bar Ḥama said. The Gemara explains: He wanted to say that **the answer that we taught is the** correct **answer,** and one can issue practical halakhic rulings based on it.

אִיבַּעֲיָא לְהוּ: אֲמַר לֵיהּ ״זַבֵּין לִי לִיתְכָא״ וַאֲזַל זַבֵּין לֵיהּ כּוֹרָא, מַאי? מוֹסִיף עַל דְּבָרָיו הוּא – וְלִיתְכָא מִיהָא קָנֵי, אוֹ דִלְמָא מַעֲבִיר עַל דְּבָרָיו הוּא – וְלִיתְכָא נַמִּי לָא קָנֵי?

§ **A dilemma was raised before** the Sages: If **one said to** his agent: **Sell** on **my** behalf **a half-*kor*, and** the agent **went and sold for him a *kor*, what** is the *halakha*? Is **he** considered to be **adding to the words** of his employer? In that case, though he also performed an action that he was not assigned to do, part of his action was performing his assigned agency, and the buyer **at least acquired a half-*kor*. Or perhaps he is** considered to be **disregarding his** employer's **words,** since he did not perform exactly what he was told to do, in which case the entire transaction was performed by his own volition, without the authorization of his employer, **and even the half-*kor* is not acquired** by the buyer.

אָמַר רַב יַעֲקֹב מִנְּהַר פְּקוֹד מְשֻׁמֵּיהּ דְּרָבִינָא, תָּא שְׁמַע: אָמַר בַּעַל הַבַּיִת לִשְׁלוּחוֹ ״תֵּן לָהֶן חֲתִיכָה לָאוֹרְחִין״, וְהוּא אוֹמֵר ״טְלוּ שְׁתַּיִם״, וְהֵן נָטְלוּ שָׁלֹשׁ – כּוּלָּן מָעֲלוּ.

Rav Ya'akov of Pekod River said in the name of Ravina: Come and **hear** proof from a mishna (*Me'ila* 20a): The mishna teaches with regard to the *halakhot* of misuse of consecrated property:[NB] **If the host said to his agent: Give the guests a piece**[H] of meat, **and** the agent went and **said** to the guests: **Take two** pieces, **and they** went and **took three,** and in the end it was ascertained that the meat was consecrated, **they are all guilty of misusing consecrated property.**

NOTES

Split – חוֹלְקִין: The early authorities disagree about Rabbi Yosei's reasoning. According to Rashi, the Rivan, and the Ramban, the reason that the employer and the agent split the additional item is due to the fact that it is unclear if the merchant intended it for the agent or for the employer. Because of this uncertainty, it is split between the two. The *ge'onim* and the Rif explain that the item is not split because of any uncertainty. Even if it is clear that the item was presented as a gift to the agent, it was given to him only because of the purchase that he made on behalf of the employer. Therefore, the employer and the agent are partners in this matter.

There are halakhic differences between these two opinions. The differences manifest themselves in cases where the merchant stated expressly that the additional item was for the agent, or if the agent misled the merchant. Another example is where the agent received the additional item because of an error on the part of the merchant, in a case where the buyer does not need to return the item due to such an error. According to Rashi, in all of these cases the item would belong to the agent as there is no uncertainty as to whether or not the additional item was intended for the employer. However, as the *ge'onim* clearly explain, since nothing would have happened if the agent had not been assigned by the employer to make the sale, the employer is a partner to the entire venture.

The later commentaries wrote that the opinion of the Rif is consistent with the discussion in the Jerusalem Talmud, tractate *Demai*, Chapter Six.

Misuse of consecrated property – מְעִילָה: There is a special principle with regard to misuse of consecrated property. Unlike with other transgressions, if one appoints an agent to perform a task that later proves to be an act of misuse of consecrated property, the employer is responsible for the misuse performed by the agent. The case here is one where both were completely unaware of the misuse being performed at the time, as the obligation to bring an offering applies only where the act was perpetrated unintentionally. However, as noted here in the Gemara, the employer is responsible only in the case where the agent performs exactly what he was assigned to do. If the agent did not follow his assignment in any way, the agent is responsible.

HALAKHA

An item that has a fixed price, etc. – דָּבָר שֶׁיֵּשׁ לוֹ קְצָבָה וכו': In a case where one sent an agent to purchase merchandise, and the store owner gave the agent more than what was requested, if the merchandise has a fixed price, then the additional items belong to them both and are split between the agent and the employer. If the item does not have a fixed price, then it belongs to the employer. This is in accordance with the opinion of Rav Pappa. The Rema writes, based on the Ramban and Rabbeinu Nissim, that if the store owner stated expressly that the additional items are for the agent, then they all belong to the agent (Rambam *Sefer Kinyan*, *Hilkhot Sheluḥin VeShutafin* 1:4; *Shulḥan Arukh*, *Ḥoshen Mishpat* 183:6).

Give the guests a piece, etc. – תֵּן לָהֶן חֲתִיכָה לָאוֹרְחִין וכו': One said to his agent: Give a piece of meat to each of the guests, and the agent went and said to them: Each of you take two pieces. If it is later discovered that the meat was consecrated, the host is guilty of the misuse of consecrated property, while the agent is viewed as one who merely added to the wishes of the host. If the agent said to them: Take two as per my request, then both the host and the agent are guilty of the misuse of consecrated property. If the guests happened to take three pieces in the latter case, then everyone is responsible for the transgression (see *Kesef Mishne*; Rambam *Sefer Avoda*, *Hilkhot Me'ila* 7:1).

BACKGROUND

Misuse of consecrated property – מְעִילָה: The *halakhot* of misuse of consecrated property are stated in the Torah (Leviticus 5:14–16) and discussed in greater detail in tractate *Me'ila*. The basic principle is that anyone who derives benefit from consecrated property unwittingly, i.e., without the knowledge that it was consecrated property, transgresses this prohibition. One who does so is obligated to bring an offering and pay to the Temple the value of the object from which he benefited. In addition, he must pay an extra one-fifth of the value as a fine. After one uses such an item, it loses its consecrated status, which is transferred to the money that he pays to the Temple.

The Torah does not discuss one who derives benefit intentionally. Therefore, such a person cannot atone for deriving benefit by sacrificing an offering or by paying the additional one-fifth of the value.

אִי אָמַרְתְּ בִּשְׁלָמָא: מוֹסִיף עַל דְּבָרָיו הָוֵי – מִשּׁוּם הָכִי בַּעַל הַבַּיִת מָעַל, אֶלָּא אִי אָמְרַתְּ: מַעֲבִיר עַל דְּבָרָיו הָוֵי – בַּעַל הַבַּיִת אַמַּאי מָעַל? וְהָתְנַן: הַשָּׁלִיחַ שֶׁעָשָׂה שְׁלִיחוּתוֹ – בַּעַל הַבַּיִת מָעַל, לֹא עָשָׂה שְׁלִיחוּתוֹ – שָׁלִיחַ מָעַל.

Granted, if you say that the agent **is adding to the words** of the host, this *halakha* is understandable, because then, when the agent said to the guests: Take two pieces, he presented one of the pieces as the agent of the host. It is **due to that** reason that **the host is guilty of misusing consecrated property. However, if you say** that the agent **is disregarding the words** of the host, **why** is **the host guilty of misusing consecrated property? Didn't we learn** in a mishna (*Me'ila* 20a): If **an agent who performed his** assigned **agency** caused consecrated property to be misused, it is **the host** who appointed him who **is guilty of misusing consecrated property;** however, if the agent **did not perform his** assigned **agency,** and did not act in accordance with his instructions, it is **the agent** who **is guilty of the misuse** and not the employer?

הָכָא בְּמַאי עָסְקִינַן – דַּאֲמַר לְהוּ "טְלוּ אַחַת מִדַּעְתִּי שֶׁל בַּעַל הַבַּיִת וְאַחַת מִדַּעְתִּי" וְשָׁקְלוּ אִינְהוּ תְּלָת.

The Gemara answers: **With what are we dealing here?** This is a case **where** the agent **said** explicitly **to** the guests: **Take one** piece **with the consent of the host, and one** piece **with my consent, and they took three** pieces. Since every piece of meat was taken with the consent of someone else, they are all guilty of the misuse of consecrated property.

תָּא שְׁמַע: הָיְתָה כְּתוּבָּתָהּ מָנֶה, וּמָכְרָה שָׁוֶה מָנֶה וְדִינָר בְּמָנֶה – מִכְרָהּ בָּטֵל.

The Gemara suggests: **Come** and **hear** an understanding of the mishna: If **her marriage contract was** worth **one hundred dinars, and she sold** property **worth one hundred dinars and a dinar for one hundred dinars, the sale is void.**

מַאי לָאו – דְּזַבִּין שָׁוֶה מָנֶה וְדִינָר בְּמָנֶה וְדִינָר, וּמַאי "בְּמָנֶה" – מָנֶה שְׁלָהּ, וּמַאי "אֲפִילּוּ" – אֲפִילּוּ הִיא אוֹמֶרֶת אַחֲזִיר אֶת הַדִּינָר לַיּוֹרְשִׁים, בְּדִינָר מְקַרְקְעֵי. וְקָתָנֵי: מִכְרָהּ בָּטֵל.

The Gemara interprets the case of the mishna: **What, is it not that she sold** property **worth one hundred dinars and a dinar for one hundred dinars and a dinar,** and there was no error in the sale? **And what** does it mean when the mishna says that she sold the property **for one hundred dinars?** It means that she sold it in order to receive the **one hundred dinars** owed to **her** because of her marriage contract. **And what** does it mean when it says in the mishna: **Even** if she says: I will return the one extra dinar to the heirs, nevertheless the sale is voided? It means that **even if she says: I will return the dinar to the heirs by** giving them **a dinar's** worth **from my land,** the heirs will not be losing anything at all. The Gemara concludes the proof: **And** the mishna **teaches** that even so the **sale is void,** implying that not just what she added is void, but the entire sale is voided.

אָמַר רַב הוּנָא בְּרֵיהּ דְּרַב נָתָן: לָא, בְּדְאוֹזִיל.

Rav Huna, son of Rav Natan, said: No, the correct understanding of the mishna is not that she sold the land for its proper price. Rather, the mishna is referring to a situation **where she reduced** its price[N] and sold the property for less than its worth, and there was an error in the sale itself.

NOTES

Where she reduced its price – בְּדְאוֹזִיל: Since she is considered an agent of the orphans, the sale is void. An agent who misrepresents his employer and causes him to suffer a loss is no longer considered his representative (Rivan).

Perek **XI**
Daf **99** Amud **a**

הָא מִדְּסֵיפָא בְּדְאוֹזִיל – הָוֵי רֵישָׁא בְּדְלָא אוֹזִיל, דְּקָתָנֵי סֵיפָא: הָיְתָה כְּתוּבָּתָהּ אַרְבַּע מֵאוֹת זוּז, מָכְרָה לָזֶה בְּמָנֶה וְלָזֶה בְּמָנֶה, וְלָאַחֲרוֹן יָפָה מָנֶה וְדִינָר בְּמָנֶה, שֶׁל אַחֲרוֹן – מִכְרָהּ בָּטֵל, וְשֶׁל כּוּלָּן – מִכְרָן קַיָּם!

The Gemara asks: **Since the last clause** of the mishna deals with a case **where she reduced** the price, it stands to reason that **the first clause** of the mishna **is** a case **where she did not reduce** the price. Why would the mishna repeat itself for no reason? **As it teaches** in **the last clause** of the mishna: If **her marriage contract was** worth **four hundred dinars** and **she sold** property **to this** one **for one hundred dinars, and** she sold property **to that** one **for one hundred dinars,** and again to a third one, **and** she sold property **to the last one worth one hundred dinars and a dinar for** only **one hundred dinars, the** sale **of the last** property **is void. And** as for **all of the others, their sale is valid** because they were sold for the correct price.