He Said She Said - Handout

# Babylonian Talmud – Ketubot 12b-13a

## Mishna 1.2

בתולה כתובתה מאתים ואלמנה מנה.

בתולה אלמנה גרושה וחלוצה מן האירוסין כתובתן מאתים. ויש להן טענת בתולים.

A virgin, her *ketubah* is two hundred. And a widow, it is a maneh.

A virgin who is a widow, or divorced, or has had *chalitza*, from betrothal, her *ketubah* is two hundred, and they are subject to the claim of virginity.

## Mishna 1.6

הנושא את האשה ולא מצא לה בתולים. היא אומרת משארסתני נאנסתי ונסתחפה שדך. והלה אומר לא כי אלא עד שלא ארסתיך. והיה מקחי מקח טעות.

רבן גמליאל ורבי אליעזר אומרים נאמנת. רבי יהושע אומר לא מפיה אנו חיין. אלא הרי זו בחזקת בעולה עד שלא תתארס והטעתו עד שתביא ראיה לדבריה.

If a man marries a woman and does not find her to be a virgin:

She says, “After you betrothed me I was raped, and so your field has been washed away”

And he says, “Not so, rather before I betrothed you and my acquisition was a mistaken acquisition”

Rabban Gamaliel and Rabbi Eliezer say: she is believed.

Rabbi Joshua says: We do not live by her mouth; rather she is in the presumption of having had intercourse before she was betrothed and having deceived him, until she brings proof for her statement.

## Gemara

1. It was stated: [One who says to another], “I have a maneh in your hand,” and the latter responds, “I do not know”: Rav Judah and Rav Huna say: He is liable. And R. Nahman and R. Yohanan say: He is exempt.

R. Huna and R. Judah say: He is liable - in the case of “certain” and “perhaps”, “certain” is preferable. R. Nahman and R. Yohanan say: He is exempt - leave the money in the possession of its present owner.
2. Abaye said to R. Joseph: The opinion of R. Huna and Rav Judah corresponds with that of Shmuel, for we have learned: She was pregnant and they said to her, “What is the nature of this fetus?’ And she answered, “It is from so-and-so and he is a priest.” Rabban Gamaliel and Rabbi Eliezer say: she is believed. And R. Judah said in the name of Shmuel: The halakhah follows Rabban Gamaliel.
3. And R. Shmuel b. Judah said to Rav Judah: Toothy one! You said to us in the name of Shmuel that the halakhah follows Rabban Gamaliel even in the first Mishnah.

[Now what does it mean]: “Even in the first Mishnah”? Even though one could say, “Leave the money in the possession of its owner” still Rabban Gamaliel would say: “certain” is preferable.
4. Shall we then say that R. Judah and R. Huna follow the opinion of Rabban Gamaliel, and R. Nahman and R. Yohanan follow the opinion of R. Joshua?

R. Nahman could say to you: I follow even the opinion of Rabban Gamaliel; only Rabban Gamaliel says it there because there is “migo”. But what “migo” is there here?
5. Alternatively: Rabban Gamaliel says it only there, because we say: “Leave her in her presumptive state,” but here what presumptive state has he got?
6. It is also reasonable, as we have answered, that R. Nahman follows the opinion of Rabban Gamaliel, for if it were not so, there would be a difficulty between one halakhah and another halakhah, for we hold that in civil matters the halakhah follows R. Nahman, whereas in this case R. Judah said in the name of Shmuel that the halakhah follows Rabban Gamaliel.

Rather, it is as we resolved, conclude from this.

## Mishna 1.7

היא אומרת מוכת עץ אני והוא אומר לא כי אלא דרוסת איש את.

רבן גמליאל ורבי אליעזר אומרים נאמנת. ורבי יהושע אומר לא מפיה אנו חיין. אלא הרי זו בחזקת דרוסת איש. עד שתביא ראיה לדבריה:

She says, “I was struck by a piece of wood”,

And he says, “No, you, rather you have been trampled by a man:”

Rabban Gamaliel and Rabbi Eliezer say: she is believed,

And Rabbi Joshua says: We do not live by her mouth, rather she is in the presumption of having been trampled by a man, until she brings proof for her statement.

## Gemara

1. What are their claims?
R. Yohanan says: Two hundred zuz and a maneh.
R. Elazar says: A maneh and nothing.
R. Yohanan says: Two hundred zuz and a maneh, he holds like R. Meir who says that whether he knew or did not know [she was a mukat etz] she gets as her kethubah two hundred zuz.
And R. Elazar says: A maneh or nothing, because he holds like the Rabbis who say that whether he knew of her or did not [she was a mukat etz], she gets a maneh.
2. It is understandable why R. Elazar does not say as R. Yohanan says because he interprets it according to the Rabbis.
But why does R. Yohanan not say as R. Elazar?
He holds that if he married her in the presumption of her being a virgin and she is found to have had intercourse, she has a ketubah of a maneh.
If so, here he would say “a maneh,” and she would say “a maneh,” and what difference would there be between his claim and her claim?
3. It is understandable, why, according to R. Elazar we have taught two cases [in the Mishnah] one to exclude the opinion of Rami b. Hama, and one to exclude the opinion of R. Hiyya b. Avin in the name of R. Sheshet.
But according to R. Yohanan why are two cases necessary?
4. One to show you the strength of Rabban Gamaliel, and one to show you the strength of R. Joshua. The first case to show you the strength of R. Joshua, that, although one could say there migo, she is not believed.
The second case to show you the strength of Rabban Gamaliel, that, although one cannot say there migo, she is believed.

R. Hiyya b. Avin: even if the husband presumed she was a virgin and it turns out she is not, she still receives a ketubah of a maneh

Rami b. Hama: if the husband did not know she was a mukat etz, she receives no ketubah whatsoever.

