Behold, days are coming – says the Lord God –
I will send a hunger to the land, not a hunger for bread
nor a thirst for water, but to hear the words of the Lord.

(AMOS 8:11)

The Noé edition of the Koren Talmud Bavli
with the commentary of Rabbi Adin Even-Israel Steinsaltz
is dedicated to all those who open its cover
to quench their thirst for Jewish knowledge,
in our generation of Torah renaissance.

This beautiful edition is for the young, the aged,
the novice and the savant alike,
as it unites the depth of Torah knowledge
with the best of academic scholarship.

Within its exquisite and vibrant pages,
words become worlds.

It will claim its place in the library of classics,
in the bookcases of the Beit Midrash,
the classrooms of our schools,
and in the offices of professionals and businesspeople
who carve out precious time to grapple with its timeless wisdom.

For the Student and the Scholar

DEDICATED BY LEO AND SUE NOÉ
Once upon a time, under pressure of censorship, printers would inscribe in the flyleaves of volumes of the Talmud:

Whatever may be written herein about gentiles does not refer to the gentiles of today, but to gentiles of times past.

Today, the flyleaves of our books bear a similar inscription, albeit an invisible one:

Whatever may be written herein about Jews does not refer to the Jews of today, but to Jews who lived in other times.

So we are able to sit down and study Torah, Talmud, books of ethics, or books of faith without considering their relevance to our lives.

Whatever is written there does not apply to us or to our generation, but only to other people, other times.

We must expunge from those invisible prologues the notion that the words are written about someone else, about others, about anyone but us.

Whether the book is a volume of Torah, a tractate of the Talmud, or a tract of faith, the opposite must be inscribed:

Whatever is written herein refers only to me; is written for me and obligates me.

First and foremost, the content is addressed to me.

— From a public address by Rabbi Adin Even-Israel Steinsaltz as quoted in חיי עולם (Talks on Parashat HaShavua) Maggid Books, 2011
Haskamot x
Message from Rabbi Adin Even-Israel Steinsaltz xv
Acknowledgments xvi
Introduction by the Editor-in-Chief xvii
Preface by the Executive Editor xix
Introduction by the Publisher xxi
Introduction to Bava Batra 1
Bava Batra, Part I 5
Common Acronyms 433
Index of Background 437
Index of Language 439
Index of Personalities 441
Image Credits 441
These new commentaries – which include a new interpretation of the Talmud, a halakhic summary of the debated issues, and various other sections – are a truly outstanding work; they can be of great benefit not only to those familiar with talmudic study who seek to deepen their understanding, but also to those who are just beginning to learn, guiding them through the pathways of the Torah and teaching them how to delve into the sea of the Talmud.

I would like to offer my blessing to this learned scholar. May the Holy One grant him success with these volumes and may he merit to write many more, to enhance the greatness of Torah, and bring glory to God and His word...

Rabbi Moshe Feinstein
New York, 7 Adar 5743

I have seen one tractate from the Talmud to which the great scholar Rabbi Adin Steinsaltz has added nikku (vowels) and illustrations to explain that which is unknown to many people; he has also added interpretations and innovations, and is evidently a talmid hakham. Talmidei hakhamim and yeshiva students ought to study these volumes, and synagogues and batei midrash would do well to purchase them, as they may find them useful.

Rabbi Moshe Feinstein
New York, Adar 5730
...I have just had the pleasant surprise of receiving tractate *Shabbat* (part one), which has been published by [Rabbi Steinsaltz] along with his explanations, etc. Happy is the man who sees good fruits from his labors. May he continue in this path and increase light, for in the matters of holiness there is always room to add – and we have been commanded to add – for they are linked to the Holy One, Blessed be He, Who is infinite. And may the Holy One grant him success to improve and enhance this work, since the greater good strengthens his hand...

Rabbi Menachem Mendel Schneerson  
The Lubavitcher Rebbe  
Brooklyn, 5 Marheshvan 5729
The translation of the books of our past into the language of the present – this was the task of the sages of every generation. And in Israel, where the command to “teach them repeatedly to your children” applies to all parts of the nation, it was certainly the task of every era. This is true for every generation, and in our time – when many of those who have strayed far are once again drawing near – all the more so. For many today say, “Who will let us drink from the well” of Talmud, and few are those who offer up the waters to drink.

We must, therefore, particularly commend the blessed endeavor of Rabbi Adin Steinsaltz to explain the chapters of the Talmud in this extensive yet succinct commentary, which, in addition to its literal interpretation of the text, also explicates the latter’s underlying logic and translates it into the language of our generation.

It appears that all those who seek to study Talmud – the diligent student and the learned adult – will have no difficulty understanding when using this commentary. Moreover, we may hope that the logical explanation will reveal to them the beauty of the talmudic page, and they will be drawn deeper and deeper into the intellectual pursuit which has engaged the best Jewish minds, and which serves as the cornerstone of our very lives…

Rabbi Moshe Zvi Neria
The Talmud in *Eruvin* 21b states: Rava continued to interpret verses homiletically. What is the meaning of the verse: “And besides being wise, Kohelet also taught the people knowledge; and he weighed, and sought out, and set in order many proverbs” (Ecclesiastes 12:9)? He explains: He taught the people knowledge; he taught it with the accentuation marks in the Torah, and explained each matter by means of another matter similar to it. And he weighed, and sought out, and set in order many proverbs; Ulla said that Rabbi Eliezer said: At first the Torah was like a basket without handles until Solomon came and made handles for it. And as Rashi there explains: And thus were Israel able to grasp the mitzvot and distance themselves from transgressions – just as a vessel with handles is easily held, etc.

Such things may be said of this beloved and eminent man, a great sage of Torah and of virtue. And far more than he has done with the Oral Torah, he does with the Written Torah – teaching the people knowledge. And beyond that, he also affixes handles to the Torah, i.e., to the Talmud, which is obscure and difficult for many. Only the intellectual elite, which are a precious few, and those who study in yeshiva, can today learn the Talmud and understand what it says – and even though we have Rashi, still not everyone uses him. But now the great scholar Rabbi Adin Steinsaltz has come and affixed handles to the Torah, allowing the Talmud to be held and studied, even by simple men. And he has composed a commentary alongside the text, a fine commentary in clear, comprehensible language, “a word fitly spoken” with explanations and illustrations, so that all those who seek to study the work of God can do so.

Rabbi Mordechai Eliyahu
Former Chief Rabbi of Israel, 7 Tishrei 5754
The Talmud is the cornerstone of Jewish culture. True, our culture originated in the Bible and has branched out in directions besides the Talmud, yet the latter’s influence on Jewish culture is fundamental. Perhaps because it was composed not by a single individual, but rather by hundreds and thousands of Sages in batei midrash in an ongoing, millennium-long process, the Talmud expresses the deepest themes and values not only of the Jewish people, but also of the Jewish spirit. As the basic study text for young and old, laymen and learned, the Talmud may be said to embody the historical trajectory of the Jewish soul. It is, therefore, best studied interactively, its subject matter coming together with the student’s questions, perplexities, and innovations to form a single intricate weave. In the entire scope of Jewish culture, there is not one area that does not draw from or converse with the Talmud. The study of Talmud is thus the gate through which a Jew enters his life’s path.

The Koren Talmud Bavli seeks to render the Talmud accessible to the millions of Jews whose mother tongue is English, allowing them to study it, approach it, and perhaps even become one with it.

This project has been carried out and assisted by several people, all of whom have worked tirelessly to turn this vision into an actual set of books to be studied. It is a joyful duty to thank the many partners in this enterprise for their various contributions. Thanks to Koren Publishers Jerusalem, both for the publication of this set and for the design of its very complex graphic layout. Thanks of a different sort are owed to the Shefa Foundation and its director, Rabbi Menachem Even-Israel, for their determination and persistence in setting this goal and reaching it. Many thanks to the translators, editors, and proofreaders for their hard and meticulous work. Thanks to the individuals and organizations that supported this project, chief among them the Matanel Foundation and the Noé family of London. And thanks in advance to all those who will invest their time, hearts, and minds in studying these volumes – to learn, to teach, and to practice.

Rabbi Adin Even-Israel Steinsaltz
Jerusalem 5773
Acknowledgments

We are indeed privileged to dedicate this edition of the *Koren Talmud Bavli* in honor of the generous support of Leo and Sue Noé of London.

The name Noé is synonymous with philanthropy. The family’s charitable endeavors span a vast range of educational projects, welfare institutions, and outreach organizations across the globe, with a particular emphasis on the “nurturing of each individual.” Among so many other charitable activities, the Noés have been deeply involved with Kisharon, which provides the British Jewish community with vital support for hundreds of people with learning difficulties and their families; they provide steadfast support of SEED, which stands at the forefront of adult Jewish education in the UK, and Kemach, an organization in Israel that “helps Haredi students sustain themselves in dignity,” providing both professional and vocational training for the Haredi community in Israel.

The Noés are not simply donors to institutions. They are partners. Donors think of a sum. Partners think of a cause, becoming rigorously and keenly involved, and giving of their time and energy. We are honored that they have chosen to partner with our two organizations, Shefa and Koren Publishers Jerusalem, enabling us to further and deepen learning among all Jews.

Leo and Sue are the proud parents and grandparents of five children and their families. The next generation has been taught by example that with life’s gifts come the responsibilities to be active within and contribute to society – both Jewish and non-Jewish – as is consistent with the noblest of Jewish values.

Rabbi Adin Even-Israel Steinsaltz
Matthew Miller, Publisher
Jerusalem 5773
The publication of tractate *Bava Batra*, part I, is another noteworthy achievement for the Koren Talmud Bavli project. With this, the third tractate of *Seder Nezikin*, the order of Damages, we take yet another step toward our goal, the completion of a new and unique translation of the Babylonian Talmud.

This remarkable accomplishment calls for celebration and congratulations. We congratulate the exceptional team that has helped the project reach this point. The team has brought excellence to every aspect of the daunting task of translating Rabbi Adin Even-Israel Steinsaltz’s masterful Hebrew translation of the Talmud into English. Rabbi Steinsaltz’s work is much more than a mere translation. It includes a coherent interpretation of the Mishna and the Gemara, and an expansion of the text that provides an array of intriguing marginal notes. Rendering this masterpiece into English called for talents that include biblical and talmudic scholarship, literary skills, linguistic expertise, editorial acumen, graphic and visual creativity, and most of all, teamwork and diligence. Congratulations to every member of the team are in order, and celebration of our achievement is well deserved.

Reaching this milestone grants us the opportunity to express our gratitude to the Almighty for giving us the strength to persevere at this sacred task for the past several years. These years have been difficult ones for the Jewish people, and especially for those of us who dwell in Eretz Yisrael. But the difficulties have not diminished our ability to succeed in our goals. For that we thank the Master of the Universe.

Students of this tractate will be both informed and inspired. They will be informed by a remarkable legal system that addresses an array of social and economic issues, including partnerships, neighborly relations, real estate law, and the laws of inheritance. They will be inspired by the extent to which our rabbinic Sages were able to develop societal guidelines that are pragmatic, creative, and humane. As always, we consider our efforts successful if the reader comes away from the text a better person, and not just a better-informed person. For it is our contention that Talmud study fosters lifelong ethical development and a profound sensitivity to the needs and concerns of other human beings.

We have now had the opportunity to survey hundreds of responses submitted by our readers. Naturally, these include constructive criticism and reports of errors that are inevitable in such an undertaking. We have
systematically preserved such responses so that we can correct them in future editions. Indeed, we have already begun to do so for the initial tractates in our series.

The most exciting result of our survey has been our discovery that “consumers” of Koren Talmud Bavli are a remarkably diverse group. They range from beginners who have never before been exposed to a blatt gemara, to accomplished scholars who have completed the study of the entire Talmud more than once. Beginners find our work not only a helpful introduction to Talmud study, but an impetus to the further study of rabbinic texts. Experienced scholars report that our work provides them with unexpected insights and fresh perspectives that enhance their appreciation of texts with which they have long been acquainted.

Tractate Bava Batra, part 1, is the twenty-seventh volume of the project. Like the preceding volumes, it includes the entire original text, in the traditional configuration and pagination of the famed Vilna edition of the Talmud. This enables the student to follow the core text with the commentaries of Rashi, Tosafot, and the customary marginalia. It also provides a clear English translation in contemporary idiom, faithfully based upon the modern Hebrew edition.

At least equal to the linguistic virtues of this edition are the qualities of its graphic design. Rather than intimidate students by confronting them with a page-size block of text, we have divided the page into smaller thematic units. Thus, readers can focus their attention and absorb each discrete discussion before proceeding to the next unit. The design of each page allows for sufficient white space to ease the visual task of reading. The illustrations, one of the most innovative features of the Hebrew edition, have been substantially enhanced and reproduced in color.

The end result is a literary and artistic masterpiece. This has been achieved through the dedicated work of a large team of translators, headed by Rabbi Joshua Schreier; the unparalleled creative efforts of the gifted staff at Koren; and the inspired and impressive administrative skills of Rabbi Jason Rappoport, managing editor of the Koren Talmud Bavli project.

It is an honor for me to acknowledge the role of Matthew Miller of Koren Publishers Jerusalem in this historic achievement. Without him this work would never have begun. Its success is attributable to his vision and supervision. I owe a great personal debt to him for selecting me as editor-in-chief, and I am continually astounded by his commitment to Jewish learning, the Jewish people, and the Jewish homeland.

The group of individuals who surround Rabbi Steinsaltz and support his work deserve our thanks as well. I have come to appreciate their energy, initiative, and persistence. And I thank the indefatigable Rabbi Menachem Even-Israel, whom I cannot praise highly enough. The quality of his guidance and good counsel is surpassed only by his commitment to the dissemination and perpetuation of his father’s precious teachings.

Finally, in humility, awe, and great respect, I acknowledge Rabbi Adin Even-Israel Steinsaltz. I thank him for the inspirational opportunity he has granted me to work with one of the outstanding sages of our time.

Rabbi Tzvi Hersh Weinreb
Jerusalem 5776
In the fifth chapter of tractate *Gittin* (60b), Rabbi Yohanan said: The Holy One, Blessed be He, made a covenant with Israel only for the sake of the words that were transmitted orally [*al peh*], as it is stated: “As on the basis of [*al pi*] these matters I have made a covenant with you and with Israel.”

In contrast to the Written Torah, which is clearly demarcated and to which there can be no additions, the Oral Torah is, and will always remain, a work in progress. Every novel idea conceived by one engaged in the study of Torah immediately becomes part of the Oral Torah. No matter one’s expertise in the Written Torah, the relationship between him and that Torah is the relationship of a subject to an object external to him. In contrast, the Oral Torah has no existence independent of those who study it. There is no duality between the Oral Torah and the one studying it. One who studies the Oral Torah becomes part of the Oral Torah, just as the Oral Torah becomes part of him. That is why the covenant with Israel is on the basis of the Oral Law.

Although much of the Oral Torah studied today is written, and the *Koren Talmud Bavli* is no exception, the *Koren Talmud Bavli* seeks to enhance the covenant that was made on the basis of the Oral Law by making its content available to all seekers of God and His Torah. Its user-friendly layout, together with its accessible translation, takes the Steinsaltz commentary on the Talmud one step further. It opens the doors to even more students who might have previously felt excluded from the exciting give-and-take of the study hall, enabling them to take their place as full-fledged participants in the world of Talmud study.

My involvement in the production of the *Koren Talmud Bavli* has been both a privilege and a pleasure. The Shefa Foundation, headed by Rabbi Menachem Even-Israel and devoted to the dissemination of the wide-ranging, monumental works of Rabbi Adin Even-Israel Steinsaltz, constitutes the Steinsaltz side of this partnership; Koren Publishers Jerusalem, headed by Matthew Miller, constitutes the publishing side of this partnership. The combination of the inspiration, which is the hallmark of Shefa, with the creativity and professionalism for which Koren is renowned and which I experience on a daily basis, has lent the *Koren Talmud Bavli* its outstanding quality in terms of both content and form.

I would be remiss if I failed to mention the contribution of Raphaël Freeman, who guided this project from its inception and is largely responsible for transforming the content of the Steinsaltz Talmud into the aesthetic *Koren Talmud Bavli* that is before you.
you. He was succeeded by Dena Landowne Bailey, who has facilitated a seamless transition and has continued to ensure that the Koren Talmud Bavli lives up to the lofty standards that are the hallmark of Koren Publishers.

I would like to express my appreciation for Rabbi Dr. Tzvi Hersh Weinreb, the editor-in-chief, whose insight and guidance have been invaluable. Rabbi Jason Rappoport, the managing editor, has added professionalism to this project, systematizing the work of the large staff, and it is thanks to him that the project is proceeding with efficiency and excellence. Rabbi Dr. Joshua Amaru, the coordinating editor, oversees the work of the translators and editors, and is largely responsible for ensuring the consistently high quality of their work. Rabbi Avishai Magence is the content curator, who, in addition to his general contributions to this project, is responsible for the accuracy of the realia and for the photographs and images that enhance the experience of Talmud study in the Koren Talmud Bavli. The contribution of my friend and colleague, Rabbi Dr. Shalom Z. Berger, the senior content editor, cannot be overstated; his title does not begin to convey the excellent direction he has provided in all aspects of this project. The staff of copy editors, headed by Aliza Israel, with Ita Olesker as production coordinator, pleasantly but firmly ensures that the finished product conforms to standards and is consistently excellent. The erudite and articulate men and women who serve as translators, editors, and copy editors generate the content that is ultimately the raison d’être of the Koren Talmud Bavli.

Thanks to my fellow occupants of the Koren beit midrash: Rabbi David Fuchs, Rabbi Hanan Benayahu, Rabbi Yinon Chen, Efrat Gross, and others. Their mere presence creates an atmosphere conducive to the serious endeavor that we have undertaken and their assistance in all matters, large and small, is appreciated.

At the risk of being repetitious, I would like to thank Rabbi Dr. Berger for introducing me to the world of Steinsaltz. Finally, I would like to thank Rabbi Menachem Even-Israel, with whom it continues to be a pleasure to move forward in this great enterprise.

Rabbi Joshua Schreier
Jerusalem 5775
The Talmud has sustained and inspired Jews for thousands of years. Throughout Jewish history, an elite cadre of scholars has absorbed its learning and passed it on to succeeding generations. The Talmud has been the fundamental text of our people.

Beginning in the 1960s, Rabbi Adin Even-Israel Steinsaltz שליט״א created a revolution in the history of Talmud study. His translation of the Talmud, first into modern Hebrew and then into other languages, as well the practical learning aids he added to the text, have enabled millions of people around the world to access and master the complexity and context of the world of Talmud.

It is thus a privilege to present the Koren Talmud Bavli, an English translation of the talmudic text with the brilliant elucidation of Rabbi Steinsaltz. The depth and breadth of his knowledge are unique in our time. His rootedness in the tradition and his reach into the world beyond it are inspirational.

Working with Rabbi Steinsaltz on this remarkable project has been not only an honor, but a great pleasure. Never shy to express an opinion, with wisdom and humor, Rabbi Steinsaltz sparkles in conversation, demonstrating his knowledge (both sacred and worldly), sharing his wide-ranging interests, and, above all, radiating his passion. I am grateful for the unique opportunity to work closely with him, and I wish him many more years of writing and teaching.

Our intentions in publishing this new edition of the Talmud are threefold. First, we seek to fully clarify the talmudic page to the reader – textually, intellectually, and graphically. Second, we seek to utilize today’s most sophisticated technologies, both in print and electronic formats, to provide the reader with a comprehensive set of study tools. And third, we seek to help readers advance in their process of Talmud study.

To achieve these goals, the Koren Talmud Bavli is unique in a number of ways:

- The classic tzurat hadaf of Vilna, used by scholars since the 1800s, has been reset for greater clarity, and opens from the Hebrew “front” of the book. Full nikkud has been added to both the talmudic text and Rashi’s commentary, allowing for a more fluent reading with the correct pronunciation; the commentaries of Tosafot have been punctuated. Upon the advice of many English-speaking teachers of Talmud, we have separated these core pages from the translation, thereby enabling the advanced student to approach the text without the distraction of the translation. This also reduces the number of volumes in the set. At the bottom of each daf, there is a reference to the corresponding English pages. In addition, the Vilna edition was read against other manuscripts and older print editions, so that texts which had been removed by non-Jewish censors have been restored to their rightful place.
• The English translation, which starts on the English “front” of the book, reproduces the menukad Talmud text alongside the English translation (in bold) and commentary and explanation (in a lighter font). The Hebrew and Aramaic text is presented in logical paragraphs. This allows for a fluent reading of the text for the non-Hebrew or non-Aramaic reader. It also allows for the Hebrew reader to refer easily to the text alongside. Where the original text features dialogue or poetry, the English text is laid out in a manner appropriate to the genre. Each page refers to the relevant daf.

• Critical contextual tools surround the text and translation: personality notes, providing short biographies of the Sages; language notes, explaining foreign terms borrowed from Greek, Latin, Persian, or Arabic; and background notes, giving information essential to the understanding of the text, including history, geography, botany, archaeology, zoology, astronomy, and aspects of daily life in the talmudic era.

• Halakhic summaries provide references to the authoritative legal decisions made over the centuries by the rabbis. They explain the reasons behind each halakhic decision as well as the ruling’s close connection to the Talmud and its various interpreters.

• Photographs, drawings, and other illustrations have been added throughout the text – in full color in the Standard and Electronic editions, and in black and white in the Daf Yomi edition – to visually elucidate the text.

This is not an exhaustive list of features of this edition; it merely presents an overview for the English-speaking reader who may not be familiar with the “total approach” to Talmud pioneered by Rabbi Steinsaltz.

Several professionals have helped bring this vast collaborative project to fruition. My many colleagues are noted on the Acknowledgments page, and the leadership of this project has been exceptional.

Rabbi Menachem Even-Israel, Director of the Shefa Foundation, was the driving force behind this enterprise. With enthusiasm and energy, he formed the happy alliance with Koren and established close relationships among all involved in the work.

Rabbi Dr. Tzvi Hersh Weinreb שליט״א, Editor-in-Chief, brought to this project his profound knowledge of Torah, intellectual literacy of Talmud, and erudition of Western literature. It is to him that the text owes its very high standard, both in form and content, and the logical manner in which the beauty of the Talmud is presented.

Rabbi Joshua Schreier, Executive Editor, assembled an outstanding group of scholars, translators, editors, and copy editors, whose standards and discipline enabled this project to proceed in a timely and highly professional manner.

Rabbi Meir Hanegbi, Editor of the Hebrew Edition of the Steinsaltz Talmud, lent his invaluable assistance throughout the work process, supervising the reproduction of the Vilna pages.

Raphaël Freeman created this Talmud’s unique typographic design which, true to the Koren approach, is both elegant and user-friendly.

It has been an enriching experience for all of us at Koren Publishers Jerusalem to work with the Shefa Foundation and the Steinsaltz Center to develop and produce the Koren Talmud Bavli. We pray that this publication will be a source of great learning and, ultimately, greater avodat Hashem for all Jews.

Matthew Miller, Publisher
Koren Publishers Jerusalem
Jerusalem 5773
Introduction to Bava Batra

Tractate Bava Batra was originally part of a large tractate called Nezikin, meaning damages, which was composed of what are now the first three tractates in the Order of Nezikin. Bava Batra was the third and last section of the super-tractate; from this placement it derived its name, which means the last gate. The first two parts of the original tractate Nezikin were tractate Bava Kamma, meaning the first gate, and tractate Bava Metzia, the middle gate. Each of these three parts has its own central topic.

Bava Batra differs from Bava Kamma and Bava Metzia in two major ways. These first two parts examine halakhot that at least in part relate to prohibitions, whereas Bava Batra is primarily occupied with civil law, including the halakhot of contracts, property, and estates. Furthermore, much of what is recorded in Bava Kamma and Bava Metzia is based on biblical verses and their rabbinic interpretations, whereas the halakhot discussed in Bava Batra are mostly rabbinic ordinances based on the Sages’ understanding of human nature, societal conventions, and the need to establish limits and guidelines to regulate business relationships.

The regulations established by the Sages are, of course, based on the fundamental principles underlying monetary law: The prohibition against taking what belongs to another person: “You shall not steal” (Leviticus 19:11), “You shall not defraud your neighbor, neither rob him” (Leviticus 19:13); the prohibition against deceiving one’s neighbor or causing him any type of pain: “You shall not deal falsely, neither lie one to another” (Leviticus 19:11), “You shall not exploit one another” (Leviticus 25:17); and the principles that guide all of the Sages’ enactments: “And you shall do that which is right and good in the sight of the Lord” (Deuteronomy 6:18), “You shall put the evil away from the midst of you” (Deuteronomy 13:6). By themselves, these principles do not create a basis for organizing economic and social life. The Sages, therefore, instituted a system of rules, on the basis of which the practical solutions to real-life problems can be established.

Since this tractate deals primarily with monetary law and monetary relationships, the principles governing these issues differ in their very essence from those governing ritual matters, or the halakhot and judgments of the Torah in general. One of the central components is the enormous authority granted to courts to ordain laws and enactments. By power of the principle that property declared ownerless by a court is ownerless, a court is authorized to declare one’s property ownerless or grant it to another person. Therefore, whatever is done by power of the court, and in great measure also that which is done by the community’s leaders, has the force of halakha, even when not explicitly stated in the Torah.

Another difference between Jewish monetary law and Jewish ritual law follows from the fact that one may give away his money or waive rights granted to him by halakha. For this reason, many of the laws and enactments in this tractate are directives for
deciding the halakha when no agreement has been reached between the parties. But when the parties are prepared to reach an agreement, they can decide monetary matters between them as they see fit.

Tractate Bava Batra addresses four principal issues: Relations between neighbors, the halakhot of presumption of ownership and deeds, the halakhot of sales, and the halakhot of inheritance.

Most of these halakhot are based on hazaka, a concept that has multiple meanings, some of which are clarified in this tractate in a comprehensive and profound manner. In its most general sense, a hazaka is a presumption with regard to the nature of reality, and in the special context of this tractate it is a presumption with regard to the nature and behavior of human beings, i.e., how an ordinary person behaves in a particular situation, and how an ordinary person understands and formulates agreements. With regard to the details, there is, of course, room for disagreement: Does one suffer when another can see into his property, and to what extent does he suffer? Is a foul odor or excessive noise beyond what an ordinary person is prepared to accept? At what point does one protest when an unauthorized person uses his property? How long does the average person hold on to written records?

Similar questions arise with regard to the halakhot of sales. When one buys or sells property, whether by way of a written or an oral agreement, how are his intentions to be understood? Of course, a precise and detailed contract prevents misunderstandings and disagreements. But in the absence of a clear contract, such matters must at times be decided by a court. This tractate provides the definition of certain items, e.g., house, vineyard, boat, and the like. What does each of these terms include, and what is not included? If one buys an item that turns out to be defective or deficient, can he cancel the transaction or demand compensation? When is it said that a defect is insignificant and no reasonable person would raise objections about it?

Another fundamental issue in commercial transactions relates to gemirut da’at, final intention or making up of the mind of the parties to a transaction. Here too, the matter is decided in accordance with normal human behavior: When is an action performed under compulsion considered void, and when does it have legal force?

Since the halakhot in these areas are not established according to objective criteria dictated by Torah law, they enjoy considerable flexibility. Much depends on regional custom and the manner in which the people of a particular place conduct their affairs. The principle that everything is in accordance with the regional custom is important with regard to these halakhot, because general agreement can establish the halakha in a particular place, whether it was reached through a formal decision of the local residents or expresses the general consensus without any explicit decision ever having been reached. Similarly, many of the matters discussed in this tractate are decided in practice in accordance with the discretion of the judges, who must take into account the circumstances of the time and place, and the particular parties.

The halakhot of inheritance differ slightly from the rest of the topics discussed in the tractate, because they are based on what is written in the Torah, and for this reason they do not depend solely on the intentions of the deceased and the heir. While the halakhet of inheritance are by Torah law and are not subject to change, they can be circumvented in various ways, e.g., through a deed of gift or through a deathbed declaration. The requirement that the marriage contract to a widow or a divorcée be paid, and the complex conditions attached to it with regard to providing for the needs of the widow and those of the sons and daughters of the deceased, create an
additional factor that must be addressed. Some of the discussions in the tractate come to resolve the problems, and occasionally the contradictions, stemming from this additional consideration.

The printed editions of tractate Bava Batra are longer than any other tractate in the Babylonian Talmud because most of the commentary to the tractate was written not by Rashi, whose writing is a shining example of brevity, but by his grandson and disciple Rabbeinu Shmuel ben Meir, the Rashbam, whose detailed and expansive style lies somewhere between that of Rashi and that of Tosefot.

Tractate Bava Batra is composed of ten chapters, the first five of which are printed in the present volume. While issues occasionally extend from one chapter to another, in general each chapter deals with a particular and well-defined set of problems.

Chapter One addresses the halakhot governing the division of jointly owned property, especially land.

Chapter Two delineates the actions one may not perform on his own property when they involve causing damage to his neighbor or to the public.

Chapter Three discusses the halakhot of presumptive status and proof of ownership, especially with regard to land.

Chapter Four explores sale agreements concerning land, houses, courtyards, fields, and cities.

Chapter Five deals with various aspects of the sale of movable property, ordinary sale agreements, leasing contracts, and appropriate business practices.

Tractate Bava Batra also contains sections of aggada that are connected to issues mentioned in the tractate. They are found primarily in the first and the fifth chapters.

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1 Various scholars, including Rabbi Raphael Natan Rabinowitz in Dikdukei Soferim, maintain that from 87a to 89b, and again from 130b to 131b, the commentary attributed to Rashbam was not written by him. They prove this by comparing quotes of the Rashbam as found in some early commentaries to the commentary attributed to the Rashbam, which reveals significant discrepancies. In light of this claim, the publisher of the classic Vilna edition printed an extra commentary on the page believed to be the authentic commentary of Rashbam, calling it Peirush HaRashbam Hakari, the primary commentary of the Rashbam. This commentary will be referred to in this volume as Rashbam Commentary. Plain references to Rashbam refer to the commentary attributed to Rashbam.
People generally live in a society, and therefore their personal properties are located one next to the other. This is true of houses in a courtyard, of courtyards in an alleyway, and of parcels of land in an expanse of fields. In many cases, properties are jointly owned by more than one person. Sometimes it is more convenient for people to live side by side with other people without marking a boundary between them; at other times people prefer to divide up jointly owned property and erect a barrier between them and their neighbors.

This chapter addresses issues concerning the division of jointly owned property and the erection of barriers. One series of questions relates to the separating wall: Are there fixed halakhot concerning the height or thickness of the wall, or the materials of which the wall must be constructed? Where exactly is the wall erected, and who enjoys the rights to the wall, both the right to use it and the right to possess the materials from which it is constructed, should it one day collapse?

When the two co-owners agree to build a barrier, the matter is relatively simple. But what is the halakha when only one of the co-owners wishes to divide the property and erect a barrier? Can one compel the other to contribute to the construction costs? There are even more basic questions: Can one party insist that jointly owned property be divided? Are all properties subject to the halakha of division, or are there certain properties that cannot be divided, whether the division is made unilaterally by one of the parties or with the consent of both parties?

These questions are to a certain degree connected to the issue of damage caused by sight, that is, whether the invasion of one’s privacy when he is exposed to the gaze of others is considered actual damage, or merely a matter of personal sensitivity.

Over and beyond the discussion of the division of jointly owned property and the preservation of privacy, a general question arises: What can neighbors, in a house, a courtyard, an alleyway, or a city, compel each other to do for the sake of their jointly owned property, or for the sake of the other neighbors?

These are the basic issues that are addressed in this chapter.
HOSHEN MISHPAT

Perek I
Daf 2
Amud a

MISHNA Partners who wished to make a partition [mechitza]1⁴ in a jointly owned courtyard build the wall for the partition in the middle of the courtyard. What is this wall fashioned from? In a place where it is customary to build such a wall with non-chiseled stone [gevel], or chiseled stone [gazit], or small bricks [kefisin], or large bricks [levenim], they must build the wall with that material. Everything is in accordance with the regional custom.⁴⁹

If they build the wall with non-chiseled stone, this partner provides⁵⁰ three handbreadths of his portion of the courtyard and that partner provides three handbreadths, since the thickness of such a wall is six handbreadths. If they build the wall with chiseled stone, this partner provides two and a half handbreadths and that partner provides two and a half handbreadths, since such a wall is five handbreadths thick. If they build the wall with small bricks, this one provides two handbreadths and that one provides two handbreadths, since the thickness of such a wall is four handbreadths. If they build with large bricks,⁵¹ this one provides one and a half handbreadths and that one provides one and a half handbreadths, since the thickness of such a wall is three handbreadths. Therefore, if the wall later falls,⁵² the assumption is that the space where the wall stood and the stones belong to both of them, to be divided equally.

And similarly with regard to a garden,⁵³ in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. But with regard to an expanse of fields [babika],⁵⁴ in a place where it is customary not to build a partition between two people’s fields, and one person wishes to build a partition between his field and that of his neighbor, the court does not obligate his neighbor to build such a partition.

HALAKHA Partners who wished to make a partition – דַּיְּקָא חַיא בְּדַיְּקָא. If a courtyard is legally subject to the halakha of division, or if its joint owners wished to divide it although it is not subject to the halakha of division, each partner can compel the other to contribute to the construction of a wall. This is the halakha even if the courtyard stood for an extended period of time without any sort of partition; at any point, one partner can force the other to share in the building of the wall. The Rema writes that even if the local custom is not to make a partition, or if one of two partners claims that the other waived his privacy rights or sold them to him, the partner about whom it is claimed that he waived or sold his rights can still compel the other partner to participate in the building of the wall, unless the other partner can prove that the latter waived his rights. This applies even if no act of acquiescence was performed to formalize their agreement (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:14; Shulhan Arukh, Hoshen Mishpat 157:4).

This partner provides, etc. – כְּשֶׁהוֹ דַּיְּקָא. If the partners build the partition with non-chiseled stone each must provide three handbreadths of his portion of the courtyard. If chiseled stone is used, they must each provide two and a half handbreadths; for small bricks, two handbreadths; and for large bricks, one and a half handbreadths. These measures include the mortar and lime on the two sides of the wall. This is all in accordance with local custom. The costs are shared equally, even when one person’s area is larger than that of the other person (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:18; Shulhan Arukh, Hoshen Mishpat 157:3).

If the wall falls – מַגְּנָה שְׁאָל. Since the wall dividing a jointly owned courtyard presumably belongs to both owners, if it later falls the space where the wall stood and the stones belong to both of them, to be divided equally. This is the halakha even if the wall fell mostly onto one person’s property, or if the stones were cleared into his area. Some commentators claim that the stones are divided equally only if there are witnesses who can testify that the stones being divided had been part of the wall (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:18; Shulhan Arukh, Hoshen Mishpat 157:5, and see Shakh).

And similarly with regard to a garden – מַגְּנָה שְׁאָל. The halakha governing a garden is the same as the halakha governing a courtyard. If the joint owners divide the area and one wishes to build a partition, the other is obligated to join in its construction. Regional custom is followed where the custom is not to build a partition in a garden (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:16; Shulhan Arukh, Hoshen Mishpat 158:1).

With regard to an expanse of fields – מַגְּנָה שְׁאָל. A partition is built in a grain field only if both owners agree to it or if that is the regional custom. If only one of the two wishes to build the partition he constructs it on his property with his own funds. He then makes a border mark on the outside of the wall to indicate that he paid for it. If both parties agree to build a partition, they divide the area, share the construction costs, and make a border mark on both sides of the wall. In this case, if the wall later falls, both the space where the wall stood and the stones belong to both of them (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:16; Shulhan Arukh, Hoshen Mishpat 158:1, 4).
A partition of a vineyard — יָרְדָן. If a partition separated a vineyard from a grain field was breached, the owner of the vineyard is admonished to repair the breach; if necessary, he is reminded a second time (Mahari Kurkus). As long as he is occupied in building the partition, the prohibition of diverse kinds planted in a vineyard does not apply. But if he decides not to build the partition, and the grain increases by 0.5 percent over its prior amount, the vineyard owner must remove his vines to a distance of four cubits from the wall.

He neglected — יָרְדָן. That is, it is apparent that he is making no effort to repair the breach. Tosafot write that this teaches that as long as the vineyard owner is occupied in repairing the barrier, the crop is not forbidden. This is so even if the barrier was breached the grain increased by 0.5 percent, the minimum amount of growth that creates a prohibition.

Rendered forbidden ( Kiddesh) — יָרְדָן. Rashi explains that the term Kiddesh means forbidden, as in the phrase: "Lev yehud beforid (Kiddeshe)" (Deuteronomy 22:9). This teaches that products of diverse kinds planted or maintained in a vineyard may not be eaten nor utilized for any benefit; rather, they must be burned (see Kiddushin 58b). This prohibition applies to the grain once it grows by 0.5 percent in a forbidden fashion.

The Gemara objects to this conclusion. But say that the term mehitza used in the mishna means a partition, one can infer: The reason that they build a wall is that they both wished to make a partition in their jointly owned courtyard. But if they did not both wish to do so, the court does not oblige the reluctant partner to build such a wall, although his neighbor objects to the fact that the partner can see what he is doing in his courtyard. Apparently, it may be concluded that damage caused by sight, that is, the discomfort suffered by someone because he is exposed to the gaze of others while he is in his own private domain, is not called damage.
The Gemara rejects this line of reasoning: If it is so that the term meḥitzah means a division, the words: Who wished to make a division, are imprecise, as the tanna should have said: Who wished to divide. Rather, what is the meaning of the term meḥitzah? A partition. The Gemara retorts: If so, the words: They build the wall, are imprecise, as the tanna should have said: They build it, since the wall and the partition are one and the same. The Gemara responds: Had the tanna taught: They build it, I would say that a mere partition of pegs [bīnseifos] would suffice. He therefore teaches us that they build an actual wall, all in accordance with the regional custom.

The Gemara answers: No, it is necessary to state this halakha in a case where one of the partners went ahead and convinced the other that they should build a partition. Lest you say that the second can later say to the first when the latter comes to begin construction: When I was persuaded by you to build a partition, it was with regard to the airspace. I agreed to the erection of a minimal barrier that would result in a loss of open space in the courtyard. But I was not persuaded by you with regard to the use of the courtyard. I did not agree to forfeit any usable space on the ground in my share of the courtyard for the building of a wall. To counter this, the mishna teaches us that since they agreed to make a partition, they must each contribute a part of the courtyard for the building of the wall.

After having determined that the wording of the mishna is unproblematic only if the term meḥitzah means a wall, it follows that damage caused by sight is not called damage. The Gemara asks: And is damage caused by sight in fact not called damage? The Gemara provides a mnemonic7 for the proofs, which follow, that challenge this assumption: Garden, wall, compels, and they divide, windows, as Rav Nahman.

The Gemara suggests: Come and hear that which the mishna teaches: And similarly with regard to a garden,8 in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. This indicates that invading one’s privacy by looking at him while he is in his private domain is called damage.

The Gemara answers: A garden is different9 with regard to the halakha governing invasion of privacy, in accordance with the statement of Rabbi Abba, as Rabbi Abba says that Rav Huna says: It is prohibited for a person to stand in another’s field and look at his crop while the grain is standing, because he casts an evil eye upon it and thereby causes him damage, and the same is true for a garden. Since the issue in this case is damage resulting from the evil eye, no proof can be brought with regard to the matter of damage caused by sight.

The Gemara objects: But the mishna teaches: And similarly with regard to a garden, which suggests that a garden and a courtyard are governed by the same rationale. The Gemara answers: The term: And similarly, is stated not with regard to the reason for the obligation to construct a wall, but with regard to the halakha concerning non-chiseled and chiseled stones. A partition in a garden is built with the same materials used for the building of a wall in a courtyard, in accordance with regional custom.

The Gemara explains that a meḥesefos is constructed out of short wooden pegs that are stuck into the ground, whereas Rabbeinu Gershon defines it as a temporary barrier of reeds. Rabbeinu Hananel and most of the early commentators explain that the term signifies an actual wall constructed from windows.

According to the opinion of Rashi, the second partner agreed to a thin partition which would limit his usage of the courtyard’s airspace, but he was not persuaded to give up land that would reduce the ground area available for his use. Rabbeinu Yona writes that he agreed to share in the expenses of the partition’s construction, but was not prepared to sacrifice land for the project.

The language of the mishna itself is no proof; rather, the proof is based on Rav Av’s understanding of the mishna (aai), according to which a partition should be built in every garden, unless the customary practice is not to do so, in order to prevent an invasion of privacy (Tosafot; Rabsha; Maharam).

It is prohibited for a person to stand – see Tosafot. In a responsum, the Rambam explains that this is not a matter of halakha but an act of piety. In his opinion the prohibition is not based on the fact that looking causes damage. Rather, when one gazes at another person’s crops, he harms himself because he becomes envious.

Partition of pegs [meseifos] – see Tosafot. The early commentators struggle to define this term, but there is no consensus with regard to its origins except that it is a foreign term. Some claim that the word is derived from the Greek μεσόπορος, meosporos, meaning something hollow through the middle of which something can pass, which fits the geonic understanding that it refers to a wall of windows. Others suggest that the word comes from the Latin septes, or saepes, meaning a fence or a barrier, or from the Greek πεζος, pezōs, meaning a small round stone or pebble. It might be related to the Greek word μεσος, mesos, meaning center or something that stands in the middle.

It is necessary where one went ahead – see Tosafot. One of the joint owners of a courtyard that is not governed by the halakha of division cannot claim that he agreed to build a partition only on condition that the other owner would provide the space for the wall and pay for the materials. Rather, both parties must contribute equally (Shulhan Arukh, Hoshen Mishpat 753).

It is prohibited for one to stand – see Tosafot. It is prohibited for one to stand in another’s field and look at his crop while it is fully grown, as his very gazing is likely to cause damage. This is certainly forbidden when the onlooker’s presence prevents the owner from performing his work (Shulhan Arukh, Hoshen Mishpat 378:5).

Because the Talmud was studied orally for many generations, mnemonic devices became necessary to enable students to remember a series of cases in the order in which they were taught.

Notes

Language

Partition of pegs [meseifos] – See Tosafot. The early commentators struggle to define this term, but there is no consensus with regard to its origins except that it is a foreign term. Some claim that the word is derived from the Greek μεσόπορος, meosporos, meaning something hollow through the middle of which something can pass, which fits the geonic understanding that it refers to a wall of windows. Others suggest that the word comes from the Latin septes, or saepes, meaning a fence or a barrier, or from the Greek πεζος, pezōs, meaning a small round stone or pebble. It might be related to the Greek word μεσος, mesos, meaning center or something that stands in the middle.

Background

Mnemonic – See Tosafot. Because the Talmud was studied orally for many generations, mnemonic devices became necessary to enable students to remember a series of cases in the order in which they were taught.
A wall in a courtyard that fell – halakha

A wall in a courtyard that fell – halakha. If a dividing wall in a jointly owned courtyard collapsed, each party can compel the other to contribute to the reconstruction of the wall up to a height of four cubits. The parties cannot be compelled to build it higher than that even if the height of the wall had been more than four cubits (Rambam, Sefer Haminhag, Hilukot Shekhemim 3:11, Shulhan Arukh, Hoshen Mishpat 137:10, 13).

Fell is different – notes

Rashi and others explain that since there was a wall there in the past the court compels the owners to rebuild it, as the assumption is that having a wall there was an established norm concerning this courtyard. Tosafot and others explain that since there was a wall there, the residents became accustomed to engage in private matters in the courtyard.

And he who asked the question – notes

Rashi and most of the commentators explain: Why did the questioner, who believes that invasion of privacy is called damage, ask the question? Clearly there is a difference if there was a wall there at the outset. On the contrary, the fact that the mishna states its ruling specifically in a case where the wall had fallen proves that in an ordinary situation there would be no obligation to build a wall (Tosafot). The Ri Migash explains that the question is asked concerning the tamo himself: The requirement to rebuild the wall after it had fallen is so obvious that it need not be stated.

It was necessary to teach the latter clause – notes

Rashi explains that according to the opinion that invasion of privacy is called damage, the latter clause of the mishna proves that the wall is not rebuilt to restore the status quo but to prevent invasion of privacy. The Ri Migash explains that the novelty of the ruling of the latter clause is that the wall can be rebuilt only to a height of four cubits, and that the neighbor cannot maintain he is prepared to contribute to the rebuilding of the wall only if it is returned to its prior state (see Rabbeinu Gershom).

Damage in one's house is different – notes

It is obvious that people engage in private actions in a house, and it is clear that damage will be caused if outsiders can look inside. Therefore, a ruling with regard to a house proves nothing with regard to a courtyard, which is an open space and therefore a place where it is less likely that people will engage in private acts.

The Gemara suggests: Come and hear a proof from a mishna (sa): In the case of a dividing wall in a jointly owned courtyard that fell, if one of the owners wishes to rebuild the wall, the court obligates the other owner to build the wall with him again up to a height of four cubits. This indicates that damage caused by sight is called damage. The Gemara rejects this proof: The case of a wall that fell is different; since a wall had already stood there, the court compels the owners to rebuild it as it was.

The Gemara expresses its astonishment: And he who asked the question, why did he ask it at all? The mishna is clearly referring to a wall that has fallen, which means that the joint owners have already agreed in the past to build a partition between their respective portions. The Gemara answers: He who asked the question maintains that the joint owners can be compelled to build a wall even in a case where a wall had not stood there before, to prevent any invasion of privacy. And the mishna does not address the case of a wall that fell to teach that only in such a case there is an obligation to build a wall. Rather, it was necessary to teach the latter clause, which states that even in a case where there had previously been a high wall the court does not obligate him to rebuild it higher than four cubits, because once there is a wall of four cubits there is no further invasion of privacy.

The Gemara suggests: Come and hear an additional proof that damage caused by sight is called damage. By contrast, a courtyard is out in the open and it is possible that the unwilling co-owner will be in it four cubits. By four cubits and see through which one can still see, it is possible the wall will prevent one neighbor from seeing the other. The Gemara answers: He who asked the question maintains that the wall that fell is not a proof to the damage caused by sight is called damage. The Gemara answers: This is not a proof to the halakha in the case of two neighbors, as the damage being exposed to the gaze of the general public, which has unimpeded sight of what is happening in the courtyard, is different and certainly called damage.

The Gemara asks: And is exposure to the sight of an individual not considered damage? Come and hear a proof that it is called damage from what is taught in a mishna (11a): One divides a courtyard at the request of one of the co-owners only if its area is sufficient so that there will be in it four by four cubits for this one and four by four cubits for that one, that is, the same minimal dimensions for each of the co-owners. This means that if there is enough for this one and enough for that one, they do divide the courtyard at the request of one of the owners. What, is it not so that the courtyard must be divided with a wall that will prevent one neighbor from seeing the other? The Gemara answers: No, perhaps it is divided with a mere partition of pegs through which one can still see.

The Gemara further suggests: Come and hear another proof that damage caused by sight is called damage from what is taught in a mishna (22a): One who desires to build a wall opposite the windows of a neighbor's house must distance the wall four cubits from the windows, whether above, below, or opposite. And a baraita is taught with regard to that mishna: Concerning the requirement of a distance above, the wall must be high enough so that one cannot peer into the window and see into the window; concerning the requirement of a distance below, the wall must be low so that he will not be able to stand on top of it and see into the window; and concerning the requirement of a distance opposite, one must distance the wall from the windows so that it will not darken his neighbor's house by blocking the light that enters the house through the window. This indicates that there is a concern about the damage caused by exposure to the gaze of others.

The Gemara rejects this argument: The damage of being exposed to the sight of others while in one's own house is different, as people engage in activities in their homes that they do not want others to see. By contrast, a courtyard is out in the open and it is possible that the residents are indifferent to being observed.
The Gemara challenges this distinction: Come and hear a proof, as Rav Nahman says that Shmuel says: If one's roof is adjacent to another's courtyard, he must make a parapet around the roof four cubits high so that he will not be able to see into his neighbor's courtyard. This indicates that the damage of being exposed to the eyes of others in a courtyard is called damage. The Gemara refutes this proof: The situation is different there, as the owner of the courtyard can say to the owner of the roof: I make use of my courtyard on a regular basis. You, by contrast, do not make use of your roof on a regular basis, but only infrequently. Consequently, I do not know when you will go up to the roof.

**HALAKHA**

If one's roof is adjacent to another's courtyard — The Gemara concludes stating the objection: If one's roof is adjacent to his neighbor's courtyard, the owner of the roof must build a parapet on his roof to a height of four cubits to avoid an invasion of privacy from the roof to the courtyard. The owner of the courtyard must contribute funds for ten handbreadths of the wall. The Rabbis write that this halakha applies to an ordinary roof that is not regularly used. If the roof is regularly used, it is treated like a courtyard and both residents must contribute equally to the wall's construction (Rambam Sefer Kinyon, Hilkhot Shekhenim 3:6; Shulhan Arukh, Hoshen Mishpat 159:2, 160:1).

**HALAKHA**

Since they wished to divide the jointly owned courtyard, they build — In the case of a jointly owned courtyard that is subject to the halakha of division where one party compels the other to divide the area, or in the case of a courtyard that is not subject to the halakha of division but where the two parties agree to divide the area (see Sma), each party can compel the other to build a proper wall, in accordance with regional custom (Rambam Sefer Kinyon, Hilkhot Shekhenim 3:14; Shulhan Arukh, Hoshen Mishpat 157:1).

The Gemara has so far presented one version of the discussion of the mishna. A different version relates the discussion as follows: The Sages initially assumed: What is the meaning of the term meḥitzat mentioned in the mishna? A division, not a partition, as it is written: "And the division of [meḥitzat] the congregation was" (Numbers 31:43). According to this interpretation, the mishna means to say: Since they wished to divide the jointly owned courtyard, they build a proper wall in the center even against the will of one of the partners. Apparently, it may be concluded that damage caused by sight is called damage.

The Gemara objects to this conclusion: But why not say: What is the meaning of the term meḥitzat mentioned in the mishna? It means a partition. This usage would be as we learned in a baraita: Consider the case where a partition of [meḥitzat] a vineyard which separates the vineyard from a field of grain was breached, resulting, if the situation is not rectified, in the grain and grapes becoming items from which deriving benefit is prohibited. The owner of the field of grain may say to the owner of the vineyard: Build a partition between the vineyard and the field of grain. If the owner of the vineyard did so, and the partition was breached again, the owner of the field of grain may say to him again: Build a partition. If the owner of the vineyard neglected to make the necessary repairs and did not properly build a partition between the fields, the grain and grapes are rendered forbidden due to the prohibition of diverse kinds planted in a vineyard, and he is liable for the monetary loss.

The Gemara concludes stating the objection: And according to the understanding that the term meḥitzat means a partition, one can infer: The reason that they build a wall is that they both wished to make a partition in their jointly owned courtyard. But if they did not both wish to do so, the court does not obligate the reluctant partner to build such a wall, although his neighbor objects to the fact that the partner can see what he is doing in his courtyard. Apparently, it may be concluded that damage caused by sight is not called damage.

The Gemara rejects this argument: If so, the words: They build the wall, are imprecise, as the tanna should have said: They build it, since the wall and the partition are one and the same. The Gemara retorts: Rather, what is the meaning of the term meḥitzat? A division. If it is so that the term meḥitzat means a division, the words: Who wished to make a division, are imprecise, as the tanna should have said: Who wished to divide. The Gemara answers: The phrasing of the mishna is as people commonly say: Come, let us make a division. Consequently, the mishna can also be understood as referring to two people who wished to divide a jointly owned area.
The Gemara asks: According to this understanding, what is the tanna teaching us? Is he teaching us that when a courtyard is not subject to the halakha of division, if they nevertheless wished to do so, they divide it? But we already learned this in the latter clause of a different mishna (11a): When do they not divide the courtyard because it is not large enough to compel division? When the joint owners do not both wish to divide it. But when both of them wish to divide it, they divide it even if it is smaller than this, i.e., smaller than four square cubits for each party. The Gemara answers: If we had learned this halakha only from there, I would say that they divide the courtyard even if it is smaller than this by constructing a mere partition of pegs, which does not prevent invasion of privacy. Therefore, the tanna teaches us here in this mishna that if they wish to divide the courtyard they can be compelled to build a proper wall.

The Gemara asks: If so, let the tanna teach this mishna and not teach that other mishna, as this mishna teaches more details than the latter one. The Gemara answers: It was necessary for the tanna to teach the other mishna to introduce the last clause of that mishna, which states: And jointly owned sacred writings that are contained in a single scroll should not be divided even if both owners wish to do so.

The Gemara brings a different version of the previous discussion: And if they wished to divide the courtyard, what of it? What forces them to build the wall? If one of the parties does not wish to build a wall, let him retract. Rav Asi said that Rabbi Yoĥanan said that the mishna is not discussing a case where they merely reached a verbal agreement to divide the courtyard, but rather with a case where each party performed an act of acquisition with the other, confirming their respective commitments. Therefore, neither side can retract.

The Gemara asks: Rather than teaching us a case where the courtyard is not subject to the halakha of division, but nevertheless they wished to divide it, let the mishna teach us a case where the courtyard is subject to the halakha of division, even if they did not both wish to divide it. The Gemara answers: Had it taught us only a case where the courtyard is subject to the halakha of division that applies even if they did not both wish to divide it, I would say that in a case where the courtyard is not subject to the halakha of division then even if they both wished to divide it, if one of the parties does not wish to build a proper wall he cannot be compelled to do so. Therefore, the mishna teaches us that he is compelled to participate.

The Gemara asks: But how can you say this? Doesn’t the latter clause of the mishna (11a) teach: When do they not divide the courtyard because it is not large enough to compel division? When the joint owners do not both wish to divide it. But when both of them wish to divide it, they divide it even if it is smaller than this. What, is this clause of the mishna not referring to the fact that either one can force the other to build a proper wall? The Gemara answers: No, it is referring to a mere partition of pegs and not to an actual wall.
The Gemara asks: If so, let the tanna teach this mishna and not teach that other mishna, as this mishna teaches more details than the later one. The Gemara answers: It was necessary to teach the other mishna for the last clause of that mishna, which states: And jointly owned sacred writings that are contained in a single scroll should not be divided even if both owners wish to do so. This concludes the alternative version of the discussion.

The Gemara continues its analysis of the mishna: To what case did you interpret the mishna to be referring? To a case where the courtyard is not subject to the halakha of division. But if there is no halakha of division, then if they wished to divide the courtyard, what of it; how can either one force the other to build a wall? If the parties no longer want to build a wall, let them retract. Rabbi Asi said that Rabbi Yoĥanan said: It is referring to a case where each party performed an act of acquisition with the other, confirming their respective commitments. Therefore, neither party can retract.

The Gemara asks: But even if each party performed an act of acquisition with the other, what of it? It is merely a verbal acquisition, meaning there was no actual transfer of property, but only a verbal agreement to act in a certain manner in the future and not a true act of acquisition. The Gemara answers: They performed an act of acquisition with the other with regard to directions, i.e., not only did they verbally agree to divide the courtyard, they also determined which of them would get which part of the courtyard. Consequently, the acquisition related to actual property, a particular plot of land. Rav Ashi said: For example, this one walked through his designated portion and performed an act demonstrating ownership there, and that one walked through his designated portion and performed an act demonstrating ownership there.

The mishna teaches: In a place where it is customary to build such a wall with non-chiseled stone [gəv'il], or chiseled stone [gāzit], or small bricks [kefsīn], or large bricks [levēnim], they must build the wall with that material. The Gemara identifies the various building materials: Gəv'il refers to stones that are not planed. Gāzit means stones that are planed, as it is written: “All these were of costly stones, according to the measures of chiseled stones [gāzit], sawed with saws, within and without” (1 Kings 7:9). This teaches that chiseled stones are those that have been planed and smoothened. Kefisin refers to small bricks. Leveanim means large bricks.

Rabba, the son of Rava, said to Rav Ashi: From where do you know that gəv'il refers to stones that are not planed, and this extra handbreadth that a wall of gəv'il has compared to what a wall of gāzit has is for the protruding edges? That is, a wall of gəv'il is six handbreadths thick because the stones have not been planed and smoothened, and therefore protrude somewhat outward. Perhaps gəv'il refers to planed stones that are half the thickness of gāzit, namely, just two and a half handbreadths, as compared to gāzit, which is five handbreadths thick; and this extra handbreadth in a wall of gəv'il is for the space between the two rows [urbei]. That is, a wall of gəv'il is actually two walls of planed stones that are each a half and a handbreadths thick; and the two walls are separated by one handbreadth, which is later filled in with mortar for added strength.

**NOTES**

But even if each party performed an act of acquisition with the other, what of it? – ימי בין ימי ימי ימי יום, referring to one day or more. In the case of a jointly owned courtyard that is not subject to the halakha of division but the two parties agree to divide the area, either one can later change his mind even if an act of acquisition had been performed, since the act is merely a verbal acquisition. But if the two parties determined their respective parts of the courtyard and an act of acquisition was performed, they cannot retract. Even if an act of acquisition was not performed, but each party went and took possession of his part, they cannot retract.

Some authorities suggest that even if only one party went and took possession of his part, the other party acquires the other part. The Ḥagahot Maimoniyot writes that the second party acquires his part only if the first party performed a proper act of taking possession. But if the merely walked the length and breadth of the area as a sign of ownership, the second party acquires his part only if he acts in similar fashion (Rambam Sefer Kinyan, Hilkhot Shekhenim 3:10; Shulhan Arukh, Hoshen Miktat 157:2).

**BACKGROUND**

Performing an act demonstrating ownership (hezetik) – הֶזֶתִיק. The term ḥazetik can be used in different senses: With regard to legal claims it refers to unchallenged possession of property. The physical possession of an item for a period of time enjoyed by someone, varying according to the nature of the item, serves as proof that the person in possession is, as he claims, the legal owner. One who is able to prove uninterrupted possession for the necessary period is no longer required to produce documentary evidence of his legal title to the item.

With regard to the transfer of ownership of immovable property, the term ḥazetik refers to the performance of an action that demonstrates ownership. The performance of that action constitutes the formal mode of acquisition through which one formally acquires property received as a gift or purchased from another person.

**SPACE BETWEEN THE ROWS**

The standard way of building with bricks involves filling the space between rows of bricks with a different material, such as mortar or stones, which creates a thick, strong wall and also adds insulation.

**LANGUAGE**

Gəv'il – כָּבָל. The source of this word is unclear, but the term means something that remains in its natural state without any noticeable change. Accordingly, gəv'il stones are non-chiseled and not planed. The same term is also used to describe hides which have not been processed to become parchment and remain in their original state.

Gāzit – צָוֵית. Various sources of this word, some of which derive from the Greek term ὑφάσκειν, orhkos, referring to a row of grapevines. Here the Gemara is describing a wall built of thin bricks constructed next to another similar wall, with the space between the two walls filled with various materials to add to its strength and insulation.

Leveanim – לְעֵנֵים. Some versions of the text read urbei, which derives from the Greek term ὑφάσκειν, orhkos, referring to a row of grapevines. Here the Gemara is describing a wall built of thin bricks constructed next to another similar wall, with the space between the two walls filled with various materials to add to its strength and insulation.

Double-layered wall
A proof for this explanation can be brought from what we say, i.e., that *kefsin* are small bricks, whereas *levanim* are large bricks, twice the thickness of small bricks. And this extra handbreadth of thickness that a wall of *kefsin* has compared to what a wall of *levanim* has is for the space between the two rows of small bricks.

Rav Ashi said to him: And according to your reasoning, from where do we derive that *kefsin* are small bricks? Rather, the Sages learned this as a tradition. And so too, they learned as a tradition that *gevil* refers to non-planed stones.

The Gemara presents a different version of the discussion. There are those who say that Rav Aha, son of Rav Aya, said to Rav Ashi: From where do you know that *kefsin* are small bricks, one-half the width of large bricks, and this extra handbreadth of thickness that a wall of *kefsin* has compared to what a wall of *levanim* has covers the space between the two rows of *kefsin*? Perhaps you should say what are *kefsin*? Stones that are not planed, and this extra handbreadth of thickness that a wall of *gevil* has in comparison to what a wall of *levanim* has is for the protruding edges. And proof for this explanation can be brought from what we say, i.e., that *gevil* refers to stones that are not planed, whereas *gazit* means planed stones, and this extra handbreadth of thickness that a wall of *gevil* has compared to what a wall of gazit has is for the protruding edges.

Rav Ashi said to him: And according to your reasoning, from where do we derive that *gevil* are stones that are not planed? Rather, the Sages learned this as a tradition. Here too, they learned as a tradition that *kefsin* are small bricks.

Abaye said: Learn from it that the space left between the two rows of a wall is always a handbreadth. The Gemara comments: This matter applies only when the two rows of the wall are filled in with mortar. But when they are filled in with gravel, *berikis*, more space is required. And there are those who say that this matter applies only when the two rows of the wall are filled in with gravel. But when mortar is used to fill in the space, not as much space is required, and less than a handbreadth suffices.

The Gemara asks: Is this to say that in the case of a wall of chiseled stone, if for every four cubits of height there are five handbreadths of thickness the wall will stand, and if not it will not stand, as this is the required ratio between a wall’s height and its thickness? But wasn’t there the one-cubit-thick wall separating the Holy of Holies from the Sanctuary? *Amah teraksin* separating the Holy of Holies from the Sanctuary, which was thirty cubits high and its thickness was only six handbreadths and nevertheless stood? The Gemara answers: Since there was an extra handbreadth of thickness, it was able to stand even to such a great height.

The Gemara asks: And what is the reason that in the Second Temple they did not fashion an *amah teraksin* to separate between the Holy of Holies and the Sanctuary, as they had done in the First Temple? The Gemara answers: When a partition stands even though it is only six handbreadths thick, it is able to remain standing up to thirty cubits in height. But it will not be able to stand if it is more than that height. The Second Temple was taller than the First Temple, and therefore the partition separating the Holy of Holies from the Sanctuary also had to be higher.

The Gemara comments: And from where do we derive that the Second Temple was taller than the First Temple? As it is written: “The glory of this latter house shall be greater than that of the former” (Haggai 2:9). Rav and Shmuel disagree about the meaning of this verse, and some say it was Rabbi Yohanan and Rabbi Elazar who disagreed as to its meaning. One of them said that it means that the Second Temple will be greater in the size of its structure, i.e., taller. And one of them said...
The Gemara answers: All of the measurements given for building a barrier include the thickness of the plaster (Rambam, Sefer Kinyan, Hilkhot Shekhenim 2:18).

The beam which they stated – The beam that is placed across an open alleyway for the sake of an eruv must be at least one handbreadth in width, but any amount in thickness. It must be strong enough to hold a small brick, i.e., one-half of a three-handbreadth brick (Rambam, Sefer Zemanim, Hilkhot Shabbat 11:3, Shulhan Arukh, Orah Hayyim 363:17).

The beam – The Gemara in tractate Eiruvot explains that a beam placed across the width of the entrance to an alleyway is considered a partition, which turns the alleyway into a private domain.

A dilemma was raised before the Sages: Do the measurements given in the mishna apply to the thickness of the materials themselves, and the plaster with which the materials were coated, or perhaps just to them without their plaster? Rav Nahman bar Yitzhak said: It is reasonable to say the measurements refer to them and their plaster, as, if it should enter your mind to say they refer to them without their plaster, then the tanna should have taught the measurements of the plaster as well. Rather, isn’t it correct to conclude from here that the measurements refer to them and their plaster? The Gemara rejects this conclusion: No, actually I could say to you that they apply to them without their plaster, and since the plaster does not have the thickness of one handbreadth the tanna did not teach such a small measurement.

The Gemara asks: But doesn’t the tanna teach with regard to bricks that this one provides one and a half handbreadths, and that one provides one and a half handbreadths? Evidently, the tanna lists even an amount less than one handbreadth. The Gemara answers: There mention is made of half-handbreadths because they are fit to be combined into a full handbreadth.

The Gemara suggests: Come and hear a solution to the question, from a mishna (Eiruv 3b) in which it is taught: The cross beam, which the Sages stated may be used to render an alleyway fit for one to carry within it on Shabbat, must be wide enough to receive and hold a small brick. And this small brick is half a large brick, the width of which is three handbreadths. That mishna is referring to a brick without the plaster.

The Gemara answers: There, the mishna in Eiruvot is referring to large bricks that measure three full handbreadths, whereas here the mishna is referring to bricks that measure slightly less than three handbreadths, and the measurement of three handbreadths includes the plaster with which they are coated. The Gemara comments: The language of the mishna there is also precise, as it teaches about a brick of three handbreadths, from which one can conclude by inference that there exists also a smaller-sized brick. The Gemara affirms: Learn from here that the mishna there is referring to large bricks.
Rav Hisda says: A person may not demolish a synagogue until he first builds another synagogue to take its place. There are those who say that the reason for this halakha is due to potential negligence, lest he fail to build a new structure after the old one has been razed. And there are those who say that the reason for this halakha is due to the disruption of prayer, for in the meantime there will be nowhere to pray.

The Gemara asks: What is the practical difference between these two explanations? The Gemara answers that there is a difference between them in a situation where there is another synagogue. Even though the community has an alternative place to pray there is still a concern that the new synagogue will never get built. It is related that Mareimar and Mar Zutra demolished and built a summer synagogue in the winter, and, in like manner, they built a winter synagogue in the summer, so that the community would never be left without a synagogue.

Ravina said to Rav Ashi: What is the halakha if money for the construction of a new synagogue has already been collected and it rests before us for that purpose? Is it then permitted to demolish the old synagogue before building the new one? Rav Ashi said to him: Even if the money has been collected there is still concern that perhaps an opportunity for redeeming captives will present itself, and they will hand over the money for that urgent requirement, and the community will be left without a synagogue.

Ravina continues: What is the halakha if the bricks to be used for the construction of the new synagogue are piled up, the boards are prepared, and the beams are ready? Is it permitted to demolish the old synagogue before building the new one? Rav Ashi said to him: Even so, sometimes an opportunity for redeeming captives will present itself, and they will sell the building materials and hand over the proceeds for this purpose. Ravina raises an objection: If so, that is, if you are concerned that they will sell the materials to redeem captives, then even in a case where they already built the synagogue there should be a concern that they might come to sell the structure for that purpose, and therefore one should never be permitted to destroy an old synagogue. Rav Ashi said to him: People do not sell their residences, and certainly not their synagogues.

The Gemara comments: And we said that an old synagogue must not be razed before its replacement is built only in a case where cracks are not seen in the old synagogue. But if cracks are seen they may first demolish the old synagogue and then build the new one. This is like the incident involving Rav Ashi, who saw cracks in the synagogue in his town of Mata Mehasya and immediately demolished it. He then brought his bed in there, to the building site, so that there should be no delays in the construction, as he himself required shelter from the rain, and he did not remove his bed from there until they finished building the synagogue and even affixed drainpipes to the structure.
The Gemara asks: How could Bava ben Buta have advised Herod to raze the Temple and build another in its place, as will be described later? But doesn’t Rav Hisda say that a person must not demolish a synagogue unless he first builds another synagogue to take its place? The Gemara answers: If you wish, say that he saw cracks in the old Temple structure. And if you wish, say that actions taken by the government are different, as the government does not go back on its decisions. Therefore, there is no need to be concerned about negligence, as there is in the case of ordinary people. As Shmuel says: If the government says it will uproot mountains, it will uproot mountains and not retract its word.

It is related that Herod preserved the girl’s body in honey for seven years to prevent it from decaying. There are those who say that he engaged in necrophilia with her corpse and there are those who say he did not engage in necrophilia with her corpse. According to those who say he engaged in necrophilia with her corpse, the reason that he preserved her body was to gratify his carnal desires. And according to those who say he did not engage in necrophilia with her corpse, the reason that he preserved her body was so that people would say he married a king’s daughter.

One from among your brothers you shall set as king over you – רַבָּא בֶּן בּוּטָא נוּחְנוּ יִשְׂרָאֵל. A convert or a judge or a priest – רַבָּא בֶּן בּוּטָא נוּחְנוּ יִשְׂרָאֵל. It is that the word bat refers here to the biblical liquid-volume measure of that name; accordingly, the phrase connotes a voice for those who measure up, i.e., a voice heard only by those who are worthy (Rosh; see Sefer Ha’azharon).

BACKGROUND

Divine Voice (בָּט קַלָּה) – בָּט קַלָּה. This term has been explained in various ways. Some expound that a Divine Voice is a subcategory of prophecy; although true prophecy had ceased before this time, this lower form of it remained (see Gelnim; Tosafot). Others suggest that a Divine Voice is a type of echo or sound whose source cannot be placed, e.g., a conversation about something that resolves another’s difficulty that happens to be overheard. Such cases are found in the Jewish Talmud (Mazar). Another possibility is that the word bat refers here to the biblical liquid-volume measure of that name; accordingly, the phrase connotes a voice for those who measure up, i.e., a voice heard only by those who are worthy (Rosh; see Sefer Ha’azharon).

HALAKHA

One from among your brothers you shall set as king over you – One from among your brothers you shall set as king over you. A convert or a priest: A convert or a judge or a priest. It is that the word bat refers here to the biblical liquid-volume measure of that name; accordingly, the phrase connotes a voice for those who measure up, i.e., a voice heard only by those who are worthy (Rosh; see Sefer Ha’azharon).

PERSONALITIES

Bava ben Buta – בָּבָא בֶּן בּוּטָא. One of the most important sages of his generation, Bava ben Buta was among Shammai’s greatest students. Nevertheless, he ruled according to the opinions of Beit Hillel on various important halakhic matters. Bava ben Buta was well known for his righteousness and wisdom. Many stories are told about his deep modesty, and how he waived his own honor for the sake of domestic peace or the glory of God. Known for his worldly knowledge, Bava ben Buta appears to have been a judge in Jerusalem. In Josephus’ opinion, Shammai predicted that Herod would rise to prominence. This might have been an additional reason why Herod spared Bava ben Buta.

Herod – הָרֹוד. Appointed to his position by the Roman senate, Herod ruled as king over Judea during the first century BCE, bringing to an end the Hasmonean dynasty. He was known for his excessive brutality; he executed those who stood in the way of his maintaining power, including members of his own family. Yet under Herod’s rule Judea prospered economically and benefited from his preoccupation with and investment in elaborate architectural projects. These include the port city of Caesarea, his summer palace at Herodium, and the fortress at Masada. His greatest achievement in this regard was the rebuilding of the Temple. The Sages of the Talmud report that Herod’s Temple was one of the most beautiful buildings ever constructed (see Sukka 51b). Herod employed thousands of workers, insisting that only priests who were ritually pure work on the inner areas of the Temple complex. Much of the information about Herod’s life is learned from the writings of Josephus. Herod died in 4 BCE.
You shall not curse — אַפּוּ בְּאֶנָּה: Whoever curses a fellow Jew using the name of God or one of His appellations transgresses a negative mitzva and is liable to receive lashes, provided he has been forewarned and there are witnesses to his deed, even if he curses himself or curses somebody whom he cannot hear him. If one curses the king or the head of the Sanhedrin he is also liable to receive two sets of lashes for violating the prohibition: “You shall not curse a leader among your people.” Some maintain that such an individual does not receive two sets of lashes (Shmuel, citing Tur).

If the offender was not forewarned, or if he uttered the curse without using the name of God, or if the curse was indirect, he is not liable to receive lashes, even though these actions are prohibited (Rambam Sefer Shoteiten, Hilkhot Sanhedrin 26:1; Shulchan Arukh, Hoshen Mishpat 27).

Herod said to him: That halakha stated with regard to “a leader among your people,” that is, to a fit Jew who acts as a member of your people, i.e., in accordance with Torah law, and this one does not do not the deeds of your people. Bava ben Buta said to him: Nevertheless, I am afraid of him. Herod said to him: There is nobody who will go and tell him, since you and I are sitting here alone. Bava ben Buta said to him: Nevertheless, it is written: “For a bird of the sky shall carry the sound, and that which has wings shall tell the matter” (Ecclesiastes 10:20).

Herod said to him: I am he. Had I known that the Sages were so cautious I would not have killed them. Now, what is that man’s remedy, i.e., what can I do to repent for my sinful actions? Bava ben Buta said to him: He who extinguished the light of the world by killing the Torah Sages, as it is written: “For the mitzva is a lamp, and the Torah is light” (Proverbs 6:23), should go and occupy himself with the light of the world, the Temple, as it is written with regard to the Temple: “And all the nations shall flow [venaharu] unto it” (Isaiah 2:2), the word venaharu alluding to light [nehora]. There are those who say that this is what he said to him: He who blinded the eye of the world, as it is written in reference to the Sages: “And if it be committed through ignorance by the eyes of the congregation” (Numbers 15:24), should go and occupy himself with the eye of the world, the Temple, as it is written: “I will desecrate my Temple, the pride of your strength, the delight of your eyes” (Ezekiel 24:21).

And they cried before him — אַרְוָא. The Rambam explains that this proof is based on the Aramaic translation of the verse, which renders the word arveh as: This is the father of the king, indicating that the term arveh in the compound av-rekh means king.
The Gemara asks: And how did Bava ben Buta do this, i.e., give advice to Herod the wicked? But doesn’t Rabbi Yehuda say that Rav says, and some say it was Rabbi Yehoshua ben Levi who says: For what reason was Daniel punished? Because he offered advice to Nebuchadnezzar, as after sharing a harsh prophecy with him, it is stated: “Therefore, O king, let my counsel be acceptable to you, redeem your sins with charity and your iniquities with graciousness to the poor, that there may be a lengthening of your prosperity” (Daniel 4:24). And it is written: “All this came upon King Nebuchadnezzar” (Daniel 4:25). And it is written: “And at the end of twelve months” (Daniel 4:26). Only after a year was the prophecy fulfilled but not before the Rabbis said to him: Leave it, and do not cover it, since it is more beautiful this way, as it looks like the waves of the sea.

The Gemara answers: If you wish, say that a slave like Herod is different since he is obligated in the mitzvot, and therefore Bava ben Buta had to help him repent. And if you wish, say the Temple is different, as without the help of the government it would not have been built.

The Gemara asks: And from where do we derive that Daniel was punished? If we say we know this because it is written: “And Esther called for Hatach, one of the king’s chamberlains, whom he had appointed to attend upon her” (Esther 4:5), and Rav said: Hatach is Daniel. This works out well according to the one who says Daniel was called Hatach because they cut him down [hatakh] from his greatness and turned him into a minor attendant. But according to the one who says he was called Hatach because all governmental matters were determined [hatakh] according to his word, what is there to say? What punishment did he receive? The Gemara answers: His punishment was that they threw him into the den of lions.

 NOTES

Because he offered advice –_REGNUM CREPUSCULORUM_ - The Rambam and the Maharal seem to say that one should not offer advice to someone who acts wickedly, because even the mitzvot that he observes are not performed for pure motives. The Ramah understands that the prohibition applies specifically to gentiles who harass Jews, lest they take the advice and grow in power. The Mei’ir explains that people should act as God does when He prevents excessively wicked people from repenting and punishes them by allowing them to stumble in sin. This is how God treated Pharaoh. Similarly, one is not required to assist a known sinner but rather should allow him to wallow in his wickedness.

Where it is customary to build out of palm and laurel branches –_REGNUM CREPUSCULORUM_ - If a wall separating the properties of neighbors collapsed into the domain of one of them, the materials and the space are divided equally. Such apportionment also applies where one of the neighbors cleared all the material into his own space, arguing that he had acquired it from his neighbor or that it had always belonged to him (Sma). The Shakh writes that the stones are divided equally only if witnesses attest that the stones were among those that had been jointly owned by the two of them (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:15; Shulhan Arukh, Hoshen Midpat 157:4).

Because he offered advice –_REGNUM CREPUSCULORUM_ - Some commentaries hold that even if people use a more transparent barrier than palm and laurel branches, that is an acceptable custom (Rambam). But Rabbeinu Tam maintains that anything less than palm and laurel branches is a foolish custom and should not be tolerated even in a place where people do so.

Where one of them cleared –_REGNUM CREPUSCULORUM_ - The reference here is to a case where the one who cleared the stones into his own domain claims that he purchased them from the neighbor. Consequently, the mishna teaches that this claim is ignored unless it is substantiated with proof.

HALAKHA

Palm and laurel branches –_REGNUM CREPUSCULORUM_ - In a place where it is customary to erect a partition between neighbors that is made of reeds, the partition may be built from this material provided that one cannot see through it and breach the other’s privacy. The Rema, citing the Tur, writes that some say that a less substantial barrier should be avoided even in communities where such a partition is customary. In locations where there is no fixed custom the partition should be built in accordance with the judge’s discretion. In any event the wall should not be narrower than the narrowest partition described in the mishna (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:18; Shulhan Arukh, Hoshen Midpat 157:4).

GREEN MARBLE

From what reason was Daniel punished –_REGNUM CREPUSCULORUM_ - It is prohibited to offer sound advice to a wicked gentile or slave. It is even prohibited to counsel him to observe a mitzva as long as he perseveres in his wickedness. Daniel was punished only because he advised Nebuchadnezzar to give charity (Rambam Sefer Kinyan, Hilkhot Rotze’aḥ Ushmira HaNe’efesh 12:5).

GREEN MARBLE

From the Greek marmaros, meaning marble or gleaming marble.
An ordinary garden and an ordinary expanse of fields—

An ordinary garden is treated like an area where it is customary to construct a partition. Therefore, if the joint owners of a garden wish to divide the area, each one can compel the other to erect a partition, even if there is no local custom to do so. If there is a definitive custom not to build such a partition, one cannot compel the other to build one (Sna, citing Tur). This barrier is not required to measure four cubits in height, as a partition of ten handbreadths suffices; the Ra’avad and the Ramban maintain that four cubits are necessary. As for an ordinary expanse of fields, the parties can be compelled to build a wall only if that is the local custom (Rambam Sefer Kiryan, Hilkhot Shekhenim 2:16–17; Shulhan Arukh, Hoshen Midrash 15:8).

HILKHA:

Mark — רשת: Rashi explains that according to the opinion of Rav Huna, this term means an edge or protrusion. The Anukh renders it a face or surface.

He bends the edge toward the outside — וְהָא ״מִבַּחוּץ״: Rashi explains that he should add stones and mortar so that the corner of the wall will protrude toward the neighbor’s yard, thereby indicating that he built the barrier. According to the opinion of Rabbeinu Gershon, he should stick reeds into the top of the wall and bend them outward. The latter understanding is more in keeping with the wording of the Gemara.

§ The mishna continues: And similarly with regard to a garden, in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. The Gemara comments: This matter itself is difficult. On the one hand, you said: And similarly with regard to a garden, in a place where it is customary to build a partition in the middle of a garden jointly owned by two people, and one of them wishes to build such a partition, the court obligates his neighbor to join in building the partition. One can infer that ordinarily, where there is no custom, the court does not obligate him to build a partition.

But say the latter clause of the mishna: But with regard to an expanse of fields, in a place where it is customary not to build a partition between two people’s fields, and one person wishes to build a partition between his field and that of his neighbor, the court does not obligate his neighbor to build such a partition. One can infer that ordinarily, where there is no custom, the court obligates him to build a partition. The Gemara explains the difficulty: Now that you said by inference that in an ordinary garden the court does not obligate him to build a partition, is it necessary to say that the court does not obligate him to build a partition in an ordinary field? Clearly in a field there is less of a need for a partition, as there is less damage caused by exposure to the gaze of others.

Abaye said that this is what the tanna is saying: And similarly with regard to an ordinary garden, and also in a place where it is customary to build a partition in an expanse of fields, the court obligates him to build a partition. Rava said to him: If so, what is the point of the word: But, mentioned afterward in connection with an expanse of fields, which seems to indicate that the issue of fields had not yet been addressed? Rather, Rava said that this is what the tanna is teaching: And similarly an ordinary garden is treated like a place where it is customary to build a partition, and therefore the court obligates him to build a partition. But an ordinary expanse of fields is treated like a place where it is customary not to build a partition, and therefore the court does not obligate him to build one.

§ The mishna teaches: Rather, if one person wishes to erect a partition, he must withdraw into his own field and build the partition there. And he makes a border mark on the outer side of the barrier facing his neighbor’s property, indicating that he built the entire structure of his own materials and on his own land. The Gemara asks: What is the meaning of a border mark? Rav Huna said: He bends the edge of the wall toward the outside. The Gemara suggests: Let him make it on the inside. The Gemara explains: In that case, his neighbor might also make a mark on the outside, that is, on the side facing his own property, and say: The wall is both mine and his. The Gemara responds: If so, that is, there is a concern about such deception, now also when the person who builds the wall makes a border mark on the outer side of the wall, his neighbor might cut it off and say: The wall is both mine and his. The Gemara answers: Such a cut is noticeable and the deception will not work.

There are those who say that in answer to the question: What is the meaning of a border mark, Rav Huna said: He bends the edge of the wall toward the inside. The Gemara suggests: Let him make it on the outside. The Gemara explains: In that case, his neighbor might cut it off and say: The wall is both mine and his. The Gemara asks: If so, that is, there is a concern for such deception, now also when the person who builds the wall makes a border mark toward the inside, his neighbor might add a border mark on his own side and say: The wall is both mine and his. The Gemara answers: An addition is noticeable and the deception will not work. The Gemara asks: But doesn’t the mishna teach that he makes the border mark on the outside and not on the inside? The Gemara comments: This is a difficulty.

Rabbi Yoḥanan said:
The party who builds the wall should smear it with clay up to a cubit\(^1\) at the top of the wall on the outside.\(^2\) The Gemara suggests: Let him do this on the inside. The Gemara explains: In that case, his neighbor might also do it on the outside, that is, on the side facing his own property, and say: The wall is both mine and his. The Gemara responds: If so, that is, if there is a concern for such deception, now also when the person who builds the wall smears it with clay on the outside, his neighbor can peel it off and say: The wall is both mine and his. The Gemara explains: Peeling clay is noticeable and the deception will not succeed.

The Gemara asks: If he builds a partition of palm branches, how does he make a border mark? Rav Nahman said: He directs the tips of the branches\(^3\) to the outside.\(^4\) The Gemara suggests: Let him do this to the inside. The Gemara states: If he so directs the branches, his neighbor might also do the same to the outside, that is, to the side facing his own property, and say: The partition is both mine and his. The Gemara objects: If so, that is, if there is concern for such deception, now also when the one who builds the partition directs the tips of the branches to the outside, the neighbor can cut off the tips and throw them away, and say: The partition is both mine and his. The Gemara counsels: He should smear the tips of the palm branches with clay. The Gemara comments: Now also, the neighbor might come and peel the clay off. The Gemara answers: Peeling clay is noticeable.

Abaye said: One who builds a partition of palm branches has no remedy\(^5\) to prove who erected it, except with a written document. The neighbor should draw up a document stating that he has no claim to the space or to the partition, because they belong exclusively to the other neighbor.

The mishna teaches: Nevertheless, in a place where it is not customary to build a partition between two people’s fields, if they made such a partition with the agreement of the two of them, they build it in the middle, i.e., on the property line, and make a border mark on the one side and on the other side. Therefore, if the wall later falls, the assumption is that the space where the wall stood and the stones belong to both of them, to be divided equally. Rava from Parzika said to Rav Ashi: Neither this one nor that one should make a border mark.\(^6\) Rav Ashi said to him: No, this ruling is necessary in a case where one of them went ahead and made a border mark for himself, so that if his neighbor does not make one as well, the first one will say that it is entirely his.

HALAKHA

He should smear it up to a cubit – The party who builds the wall should smear it with clay up to a cubit\(^1\) at the top of the wall on the outside.\(^2\) If one wishes to build a partition out of palm branches, he should direct the tips of the branches toward his neighbor, as this signals that he built the wall on his own. If the wall later collapses, the material and the ground where the partition stood belong to the one who built it. This is in accordance with the opinion of Rav Nahman (Tur, Hoshen Mishpat 158:4).

Neither this one nor that one should make a border mark – If both owners of neighboring fields contribute land and materials for the construction of a partition, neither one should make a border mark. According to the opinion of Rashi, the materials with which the partition was built belong to both of them, even if it collapsed into the property of one of them. Rabbeinu Yona rules that in such a situation the materials belong to the owner of the property into which the partition collapsed (Shuṭhan Arukh, Hoshen Mishpat 158:5).

NOTES

Should smear it – In the opinion of most early commentators, Rabbi Yohanan and Rav Huna disagree as to the nature of the mark. Rabbeinu Yona and others maintain that there is no dispute; each propose a different way to make the border mark.

Up to a cubit on the outside – The mark should not be less than a cubit, because then the mark would not be noticeable.

The tips of the branches – Rashi explains that this refers to the tips of the palm branches, which should be turned toward the neighbor’s yard to serve as a border mark. Rabbeinu Hananel maintains that the reeds placed to support the barrier should be put on the outside. Some commentators explain that the reference here is to the ropes used to tie the palm branches, which should be tied on the outside as a mark (Rabbeinu Gershon; Ra’adav).

A partition of palm branches has no remedy – This partition is made of woven palm branches. The border mark is fashioned by directing the tips of the branches to the outer side of the partition.
One who surrounds another — רֹאֵשׁ אֲחֵר — רְשׁוֹם. If one's field or garden is surrounded on all sides by another person's fields or gardens, and the owner of the outer property builds a partition on the first, second, and third sides, the owner of the inner field is not obligated to contribute to the construction costs. If the latter builds a partition on the fourth side, he must pay half the cost of the entire partition. If the owner of the outer property builds a partition around the fields on the outside, while the inner border between the fields remains open, the owner of the inner field is not required to pay anything even if the partition surrounds his fourth side.

**Rav Huna said:** Here, for the sake of the principle, the owner of the inner field may pay half the cost. The owner of the outer field is required to pay only his share of the cost of that type of partition for all four sides, even if the other three partitions were constructed out of stone (Shulḥan Arukh, Ḥoshen Mishpat 158:6).

## Gemara

**Rav Yehuda** says: The halakha is in accordance with the opinion of Rabbi Yosei, who says that if he arose and built a partition on the fourth side of the field, the court imposes upon the owner of the inner field the responsibility to pay his share for all of the partitions.

**Rav Huna** says that when Rabbi Yosei said the court obligates the owner of the inner field to pay his share for all of the partitions, he pays in accordance with what the other person actually spent when he built the partitions. That is, the owner of the inner field must contribute his share according to the cost of the partition his neighbor built. Hiyya bar Rav says: He must pay his share for all of the partitions in accordance with a reduced assessment of the price of reeds, and no more. The owner of the surrounded field can claim he had no desire for a more substantial partition.

### Notes

One who surrounds another — רֹאֵשׁ אֲחֵר — רְשׁוֹם. There are various opinions with regard to the meaning of this mishna. The Meiri lists four possibilities. According to Rashi and the Rambam, Shimon's field is surrounded on all sides by the fields of his neighbor Reuven. These fields are located in a place where it is not customary for neighbors to build partitions between their respective fields, but Reuven built partitions to separate his land from Shimon's land. The Bial HaMaor understands that these fields are found in a place where it is customary for neighbors to build partitions, but until the partitions are complete the owner of the inner field is not required to pay anything. The Ramban and Rabbeinu Yona put forward a third opinion, according to which the mishna is not referring to a partition separating the inner field from the outer fields. Rather, Reuven builds a partition on three of the outer borders of his fields to separate his property from the public domain, and that partition also protects the inner field owned by Shimon, leaving only one side open.

According to the opinion of the Meiri, these three opinions all address the function of the partition as a barrier against invasion of privacy, whether by the neighbor or by the people passing in the public domain. By contrast, according to the opinion of the Ra'avad, the mishna is not dealing with invasion of privacy but is discussing a low partition intended to prevent animals from entering the fields. He agrees with the Ramban and Rabbeinu Yona, however, that the mishna is describing the construction of a partition on the outer borders of Reuven's fields, but he understands that Reuven, the owner of the outer fields, owns land only on three sides of Shimon's property and he builds a partition only on those three sides. If a fourth partition were built it would be for the benefit of Shimon alone.

The court does not obligate him — רבא רַבַּי: Rashi provides two explanations for this. First, the court does not obligate the owner of the inner field because according to Hakelka there is no obligation to erect a partition, and this owner claims he has no desire for one. Second, he can maintain that as long as the fourth side remains open the partitions do not help him at all.

In accordance with what he spent when he built the partition — כְּמַה מַצְדָּא מַגָּדַר. This is too has limitations, because if the owner of the inner field built a partition on the fourth side with less expensive material than what the neighbor had used to construct the other three partitions, the owner of the inner field cannot be forced to pay his full share in those partitions. His share is based only on the cost of the materials that he himself used for the partitions he built (see Ramban).

A reduced assessment of the price of reeds — הָכִּי אֲלֵיהוּ מַגָּדְרִין. The Rashbam comments (146b) that the Sages use the term reduced to indicate a price one-third less than what is usually paid, since this is the usual amount of a large discount. Some commentaries challenge this generalization.

### Background

The surrounding field and the surrounded field — רֹאֵשׁ אֲחֵר. If Reuven wishes to construct a partition between his field and the field of his neighbor Shimon, he cannot force Shimon to pay for the partition even if he builds a partition on three sides. But if Shimon erects a partition on the fourth side, he must contribute his share of the cost of the entire partition.

Rava from Parzika asked him: And is the tanna of the mishna teaching us a remedy to be used against a swindler? Rav Ashi said to him: But isn't the former clause of the mishna's ruling also a remedy to be used against a swindler? That clause teaches that one who builds a wall should make a border mark to indicate that the wall is his.

Rava from Parzika said to him: Granted, in the former clause the tanna taught the halakha that if one wishes to build a partition between his own field and that of his neighbor, he does so at his own expense and on his own land, and due to the need to teach that halakha he also taught a remedy to be used against a swindler. But does he teach a halakha in the latter clause, so that he also teaches a remedy to be used against a swindler? Ravina said: Here, in the latter clause, we are dealing with a barrier made of palm branches. This is to the exclusion of the opinion of Abaye, who said: One who builds a partition of palm branches has no remedy to prove who erected it, except with a written document. He teaches us that a border mark suffices.

**Mishna** With regard to one who surrounds another on three sides, that is, he owns parcels of land on three sides of the other person's field, and he built a partition on the first, second, and the third sides, the court does not obligate the neighbor who owns the inner field to contribute to the construction of the partition if he does not wish to do so. Rabbi Yosei says: If he arose and built a partition on the fourth side of the field, the court imposes upon the owner of the inner field the responsibility to pay his share for all of the partitions.
The Gemara attempts to bring a proof from what we learned in the mishna: With regard to one who surrounds another on three sides, that is, he owns parcels of land on three sides of the other person’s field, and he built a partition on the first, the second, and the third sides, the court does not obligate the neighbor who owns the inner field to contribute to the construction of the partition. By inference, if he also built a partition on the fourth side of the field, the court imposes upon the owner of the inner field the responsibility to pay his share for all of the partitions. The first tanna and Rabbi Yosei seem to be stating the same ruling.

Granted, according to Rav Huna, who says that the owner of the inner field pays for all of the partitions in accordance with what the other person actually spent when he built the partitions, this is the difference between the first tanna and Rabbi Yosei: The first tanna maintains that yes, he pays his share for all of the partitions in accordance with a reduced assessment of the price of reeds, but not a larger sum in accordance with what the other person actually spent when he built the partitions. And Rabbi Yosei maintains that he pays his share for all of the partitions in accordance with what the other person actually spent when he built the partitions.

But according to Hiyya bar Rav, who says he pays his share for all of the partitions in accordance with the value of a partition fashioned from inexpensive reeds, what difference is there between the first tanna and Rabbi Yosei? If according to the first tanna he does not give him his share for all of the partitions in accordance with a reduced assessment of the price of reeds, what does he give him?

The Gemara answers: If you wish, say there is a practical difference between them with regard to the wage of a watchman. The first tanna maintains that yes, since his field is safeguarded by the partition which surrounds it, the one who built the partition can demand payment of the wage of a watchman. He cannot, however, demand the cost of building the partition, not even the other’s share for all of the partitions in accordance with a reduced assessment of the price of reeds. And Rabbi Yosei maintains that he can demand the other’s share for all of the partitions in accordance with a reduced assessment of the price of reeds.

And if you wish, say there is a practical difference between them with regard to the partitions built on the first, second, and third sides of the inner field. The first tanna maintains that the owner of the inner field must give to his neighbor money for the partition built on the fourth side, but he is not required to give him money for the partitions built on the first, second, and third sides. And Rabbi Yosei maintains that he must also give him money for the partitions built on the first, the second, and the third sides.

The Gemara suggests another difference between the two opinions: If you wish, say there is a practical difference between them with regard to the issue of whether the partition on the fourth side was built by the owner of the surrounding field or by the owner of the surrounded field. This is because the first tanna maintains that the reason the owner of the surrounded field must contribute his share of the entire expense is that he arose and built a partition on the fourth side of his field. Therefore, the court imposes upon him the responsibility to pay his share for all of the partitions, because his actions demonstrate that he wants the partition between their fields. But if the owner of the surrounding field arose and built a partition on the fourth side of the field, the owner of the surrounded field must give him only his share of the value of the partition of the fourth side.

NOTES

The wage of a watchman – שכר צופין: This refers to the minimum wage paid to a watchman to prevent animals from entering a field and eating the crops. The cost of such protection is even less than that of a partition fashioned from reeds.
Therefore, a written document should be drawn up definitively stating:

In accordance with what he spent when he built the partition –

The court does not obligate him –

the partitions do not help him at all.

The Gemara reports another version of this last answer: There is a practical difference between them with regard to the issue of whether the partition on the fourth side was built by the owner of the surrounding field or by the owner of the surrounded field. The first tanna maintains that even if the owner of the surrounding field built a partition on the fourth side, the owner of the surrounded field also gives him his share of the cost of the partitions. And Rabbi Yosei maintains that only if the owner of the surrounded field arose and built a partition on the fourth side does he give the owner of the surrounding field his share of the cost of the partitions. Why is that? Because he reveals that he is pleased with the partitions. But if the owner of the surrounding field built a partition on the fourth side, the owner of the surrounded field does not give him anything, as he can continue to claim that he has no interest in the partitions.

It is related that a man named Ronya had a field that was surrounded by fields belonging to Ravina on all four sides. Ravina built partitions around his fields and said to him: Give me your share of the expense in accordance with what I actually spent when I built the partitions, i.e., half the cost of the partitions. Ronya did not give it to him. Ravina said to him: Give me then at least your share of the expense in accordance with a reduced assessment of the price of reeds. Ronya did not give it to him. Ravina said to him: Give me then at least the wage of a watchman. But he did not give even this to him.

One day, Ronya was harvesting dates. Ravina said to his sharecropper: Go take a cluster [kibura] of dates from him. The sharecropper went to bring them, but Ronya raised his voice at him in protest, whereupon Ravina said to him: You have revealed that you are pleased with the partitions and the protection that they provide you. Even if it were only a goat that entered your field, wouldn’t the field need safeguarding, to prevent the goat from eating the dates? Ronya said to him: If it were only a goat, doesn’t one need merely to chase it away [leakhlayei]? No partition is required. Ravina said to him: But wouldn’t you need a man to chase the goat away? Pay me then at least the wage of a watchman.

Ravina came before Rava to adjudicate the matter. Rava said to Ronya: Go appease Ravina with what he expressed his willingness to be appeased with, namely, the wage of a watchman. And if not, I will judge you in accordance with the ruling of Rav Huna in accordance with the opinion of Rabbi Yosei, and you will be required to pay half the cost of the partition based on what Ravina actually spent on it.

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Cluster [kibura] – קִבּוּרָא: From the Aramaic, meaning tuber. The word has been appropriated to describe a large cluster of dates that resembles a tuber.

To chase it away [leakhlayei] – לִאַכְּחַלְכֵי: Based on the Aramaic translation of the Prophets and the Writings, some commentators understand this to mean shout (see Rashi and Rabbeinu Hanane). That is, one could raise one's voice and thereby prevent the goat from entering the field. Others suggest that the word denotes removal or preventing something from arriving, as in the kala-are which kept birds away from the Temple (Arulk; Ri Migash). Leakhlayei and kala share the same root.
In the case of a dividing wall in a jointly owned courtyard that fell, if one of the owners wishes to rebuild the wall, the court obligates the other owner to build the wall with him up to a height of four cubits. If after the wall was built one of the neighbors claims he alone constructed it and the other did not participate in its building, the latter is nevertheless presumed to have given his share of the money, unless the claimant brings proof that the other did not give his part.

The court does not oblige the reluctant neighbor to contribute to the building of the wall higher than four cubits. But if the reluctant neighbor built another wall close to the wall that had been built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall, even though he has not yet set a roof over it. Since he has demonstrated his desire to make use of what his neighbor built, he must participate in the cost of its construction. If the builder of the first wall later claims that he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall.

Reish Lakish says: If a lender set a time for another to repay the loan that he had extended to him and when the debt came due the borrower said to the lender: I already repaid you within the time, he is not deemed credible, as people do not ordinarily repay their debts before they are due. The lender would be happy if the borrower would only repay his debt on time. Abaye and Rava disagree with Reish Lakish, as they both say: A person is apt to repay his debt within its time, i.e., before it is due. This is because sometimes he happens to have money and the borrower says to himself: I will go and repay my debt.

A wall in a courtyard that fell – A wall in a jointly owned courtyard fell, each party can compel the other to rebuild the wall up to a height of four cubits even if the previous wall was higher than that (Sim). Either party can subsequently raise the height at his own expense. If one neighbor built the dividing wall higher than four cubits and afterward the other built another wall next to it in order to set a roof over the room that was thereby created, the latter can be compelled to contribute to the cost of the additional height of the first wall (Rambam Sefer Kinuyan, Hilkhos Shechenim 3:2; Shulhan Arukh, Hoshen Mishpat 157:10).

Four to a large hide (tzalla), etc. – Four for a large hide (tzalla), four for a small hide (tzela). Since Ronya also owned land bordering the desired parcel, you cannot remove him even though his plot of land is smaller than yours.

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Four for a large hide (tzalla), etc. – Four for a large hide (tzalla), four for a small hide (tzela). Since Ronya also owned land bordering the desired parcel, you cannot remove him even though his plot of land is smaller than yours.
Each and every row – קושי ANSWER: The Arukh has a version of the text that reads safah, meaning a row. The Rif and the Rambam have a version of the text that reads שערה, meaning that each one owes the money at each step throughout the construction.

Even from orphans – קושי ANSWER: Rashi explains that if the borrower died before the loan became due, the lender can collect the debt from his orphans, and there is no concern that the father might have paid back the debt before its time. Rabbenu Gamliel explains that before he died, the borrower claimed that he repaid the debt prematurely and the orphans as well state that this is what their father told them.

Because the time to pay is upon the completion of each and every row – קושי ANSWER: If one neighbor in a jointly owned courtyard claims that the other neighbor did not pay his share of the cost of building the wall separating their properties, while the other claims he paid his share before the wall was completed, or he paid it even before the construction began, he is deemed credible and is exempt from paying after he takes an oath (Shulkan Arukh, Hoshen Mishpat 157:8 and Smo there).

And the halakha is in accordance with Reish Lakish – קושי ANSWER: If one lends a person money and sets a date when the debt must be repaid, and then attempts to collect the money before the due date, and the borrower asserts that he already repaid the debt or that the debt was forgiven (Rema), the borrower is not deemed credible. The lender can collect his money without taking an oath. If the borrower died, the lender can collect the debt even from the borrower’s minor orphans as long as the debt is substantiated with a document or if there were witnesses to the loan and to the setting of a time. The Rema writes that this halakha applies both to loans and to wages. By contrast, a bailee safeguarding a deposit can claim that he returned it before its time (Rambam Sefer Mishpatim, Hilkhhot Malve V’Lovoah 14:9, Shulkan Arukh, Hoshen Mishpat 178:8).

One who comes to collect from the property of orphans – קושי ANSWER: One can collect a debt from orphans, even if they are adults, only after taking an oath. If the borrower died before the debt was due, or if he admitted at the time of death that he still owed money, or if he had been placed under a ban to force him to pay a debt and he died while still under the ban, the debt can be collected from the heirs even without taking an oath (Rambam Sefer Mishpatim, Hilkhhot Malve V’Lovoah 14:9, Shulkan Arukh, Hoshen Mishpat 128:1, 15).

Background

Presumption – קושי This halakhic term connotes different meanings depending on the context. Most often, it refers to an accepted presumption based on facts, circumstances, custom, or behavioral tendencies of people. For example, there is an accepted presumption that an agent carries out his agency, or that children who are treated as family members are, in fact, their parents’ offspring. Unless the facts prove otherwise these presumptions are accepted as truth, to the extent that they may even serve as the basis for administering corporal punishment.

Because the time to pay is upon the completion of each and every row – קושי ANSWER: So that he will not trouble me later by constantly demanding the money.

The Gemara attempts to bring a proof in support of the opinion of Abaye and Rava from what we learned in the mishna (5a): If after the wall was built one of the neighbors claims he alone constructed it and the other did not participate in its building, the latter is nevertheless presumed to have given his share of the money, unless the claimant brings proof that the other did not give his part.

The Gemara clarifies the matter: What are the circumstances of the case under discussion? If we say that he said to him: I paid you at the time when the payment became due, when the wall was completed, it is obvious that he is presumed to have given his part. Rather, is it not that he said to him: I paid you within the time before the payment became due, while the wall was still under construction? And with regard to such a case the mishna states that he is presumed to have given his share. Apparently, a person is apt to repay his debt within its time, in accordance with the opinion of Abaye and Rava. The Gemara rejects this proof: Here it is different, because the time to pay is upon the completion of each and every row. Payment does not become due specifically at the completion of the entire wall.

The Gemara further suggests: Come and hear a proof in support of the opinion of Reish Lakish from the continuation of the mishna (5a): The court does not obligate the reluctant neighbor to contribute to the building of the wall higher than four cubits. But if the reluctant neighbor built another wall close to the wall that had been built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall, even though he has not yet set a roof over it. If the builder of the first wall later claims he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall.

The Gemara clarifies the matter: What are the circumstances of the case under discussion? If we say that he said to him: I paid you at the time that the payment became due, when the wall was completed, why is he not deemed credible? Rather, is it not that he said to him: I paid you within the time before the payment became due, and therefore he is not deemed credible? Apparently, a person is not apt to repay his debt within its time, in accordance with the opinion of Reish Lakish. The Gemara rejects this proof: Here it is different, since the reluctant neighbor says: Who says that the Rabbis will obligate me to pay for this wall? In such a case he certainly does not pay before the payment becomes due.

Rav Pappa and Rav Huna, son of Rav Yehoshua, acted in such a case in accordance with the opinion of Abaye and Rava. Mar bar Rav Ashi acted in accordance with the opinion of Reish Lakish. The Gemara concludes: And the halakha is in accordance with the opinion of Reish Lakish that one is not deemed credible when he says that he repaid a loan after it became due. And if the debtor dies, the court collects payment even from his orphans based on this assumption. And even though the Master said that one who comes to collect money from the property of orphans cannot collect unless he first takes an oath that he did not already collect the debt from the deceased, here he can collect without taking an oath because there is a presumption that a person is not apt to repay his debt within its time.
A dilemma was raised before the Sages: What is the halakha if the lender stipulated a time with the borrower for repayment of the debt, and he demanded payment of the money after the time? The court does not oblige the reluctant neighbor to contribute to the building of the part of the wall that is above four cubits. But if the reluctant neighbor built another wall close to the wall that was built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall, even though he has not yet set a roof over it. If the builder of the first wall later claims that he did not receive payment from his neighbor, the neighbor is presumed to have given his share of the money, unless the claimant brings proof that the other did not give his share.

The Gemara clarifies: What are the circumstances of the case? If we say that one partner demanded that the other party pay the money after the time that the payment became due, i.e., after the wall was rebuilt, and the other partner said to him: I paid you at the time that the payment became due, it is obvious that he is presumed to have given him the money. Rather, is it not a case where he said to him: I paid you within the time, i.e., before the payment became due? Apparently, even where there is a presumption against a person’s claim, we say that the defendant can claim: Why would I lie? The Gemara rejects this proof: Here it is different, because the time to pay is upon the completion of each and every row. Therefore, it is as if he said: I paid you at the time that the payment became due.

The Gemara clarifies: What are the circumstances of the case? If we say that one partner demanded that the other party pay the money after the time that the payment became due, and the latter, said to him: I paid you at the time that the payment became due, why is he not deemed credible? Rather, is it not that he said: I paid you within the time, before the payment became due? And with regard to this case, the mishna states that he is not deemed credible. Accordingly, where there is a presumption against a person’s claim, we do not say that the defendant can claim: Why would I lie? The Gemara rejects this proof: Here it is different, since the reluctant neighbor says: Who says that the Rabbis will obligate me to pay for this additional part of the wall? In such a case he certainly does not pay before the payment becomes due. The mishna does not provide a proof one way or the other.

He demanded payment after the time – קבע Wochen
If one claims a debt recorded in a document after its due date has passed and the debtor disputes the claim, insisting that he paid the debt before it was due or when it came due, the creditor can collect his money only after taking an oath. If the loan was not recorded in a document, the debtor takes an oath and is exempt from payment (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 14:1; Shulhan Arukh, Hoshen Mishpat 78:5).
HALAKHA

I have one hundred dinars in your possession – מַאי לָא בְּיָדְךָ מְנַהַלְּי. If one claims money from another individual who admits to the debt before witnesses or a court (Sima) and the next day the creditor demands the money, at which time the debtor says that he already has paid it after he admitted owing it (Nittel Hol mishpat), the latter can take an oath and is then exempt from paying. If he said that he never owed the money, he is confirmed as a liar, and the creditor can collect from him even without taking an oath (Rambam Sefer Mishpatim, Hilkhot Tolen VeNitan 6:6; Shulhan Arukh, Hoshen Mishpat 79:10).

Anyone who says, I did not borrow – לָא אֵם אָמַר לֵיהּ רַב אַחָא בְּרֵיהּ דְּרָבָא לְרַב: Anyone who says, I did not borrow – מָנֶה לִי בְּיָדְךָ. If an individual demands money that he lent to another and the latter denies having borrowed any money from him, and subsequently witnesses come and testify that he did indeed borrow money but repaid it, the debtor must pay, because if one claims that he did not borrow money, he is treated as if he said that he did not repay anything (Rambam Sefer Mishpatim, Hilkhot Tolen VeNitan 6:3; Shulhan Arukh, Hoshen Mishpat 79:1).

With regard to that which he built close, he built it close – סְמַךְ לָא סְמַךְ לַלָא סְמַךְ. If the wall between two neighbors in a courtyard fell and one of them rebuilt the wall, extending it higher than four cubits, and the other one subsequently built another wall close by whose height or length was less than that of the rebuilt wall, the latter is obligated to contribute to the costs of the first wall only to the height or length of the second wall (Rambam Sefer Kinyan, Hilkhot Shekhemim 3:1; Shulhan Arukh, Hoshen Mishpat 15:710).

The Gemara clarifies the matter: What, is it not that when he says: I already gave it to you, he is saying to him: I repaid you at the time that the payment became due; and when he says: Nothing of yours is in my possession, he is saying to him: I repaid you within the time, before the payment became due? And yet, the mishna teaches with regard to the latter case that he is liable. Apparently, there where is a presumption against a person’s claim, we do not say that the borrower can claim: Why would I lie? The Gemara rejects this proof: No, what does he mean when he says: Nothing of yours is in my possession? He is saying: There were never such matters; i.e., the purported loan never occurred. As the Master says: Anyone who says: I did not borrow is treated as one who says: I did not repay, and since it is known by his own admission that he borrowed money, he is liable to pay.

The mishna teaches: But if the reluctant neighbor built another wall close to the wall that was built higher than four cubits, in order to set a roof over the room that was thereby created, the court imposes upon him the responsibility to pay his share for all of the rebuilt wall. Rav Huna says: If he built another wall close to the first wall that was half the length or height of the wall that was built higher than four cubits, it is as if he rebuilt the wall built his height and length of the entire wall. Since he can easily add to his wall so that it will be equal in length or height to the wall the neighbor rebuilt, he must therefore pay half the cost of the entire rebuilt wall. And Rav Nahman says: With regard to that which he built close, he built it close with regard to that which he did not build close, he did not yet build it close. Accordingly, he is required to pay an additional share only for the part of the wall corresponding to the new wall he built.

BACKGROUND

If he built close to half the wall he built close to the entire wall – סְמַךְ לָא סְמַךְ סְמַךְ לְמַאי דִּסְמַךְ סְמַךְ. In these three diagrams, the rear wall has been built on the boundary between the properties by one neighbor. The front wall is built by the second neighbor on his own property, close to the boundary wall. By building a new wall close to the original, the second neighbor has created a space bounded by the two walls that he can enclose, thus making use of all or part of the wall built by the first neighbor.
And Rav Huna concedes with regard to an attachment to the corner of his house that he is not required to pay half the cost of the entire rebuilt wall. If he built the extension of his house in this manner, it is not considered as if he built it close to the entire wall, as it is unlikely that he will add to it. And Rav Nahman concedes that in a case in which he places a heavy beam [be’afrika] on the wall that can support a roof, or carves into the wall indentations to fix beams in place, then even if he has not yet made use of the entire height of the wall, he has demonstrated his desire to do so in the future, and therefore he must pay half the cost of the entire wall.

The mishna teaches that if the builder of the first wall later claims that he did not receive payment from his neighbor, the neighbor is presumed not to have given his share of the money, unless he brings proof that he did in fact give money for the building of the wall. Rav Huna says: Even if openings in the wall were built on the side facing the reluctant partner and these openings are suited to serve as beam rests, this does not create a presumption that the reluctant partner contributed his share to the building of the wall. And this is the halakha even if the builder of the wall made sills for these openings. As the builder of the wall can say to his neighbor: I said to myself that when you will appease me and pay me for the construction of the wall, you might want to attach beams to it, and I do not want the foundations of my wall to be damaged by your fashioning new openings in it. Therefore, from the outset, I built the wall with these openings.

With regard to the use of a neighbor’s wall, Rav Nahman says: If one acquired the privilege to place thin beams [l’hora] on his neighbor’s wall, i.e., if one had used the wall in that manner in the past and the owner did not protest, so the one using it can maintain that he had acquired from the owner the right to do so, he has not acquired the privilege to place thick beams there. But if he acquired the privilege to place thick beams on the wall, he has acquired the privilege to place thin beams there. Rav Yosef says: If he acquired the privilege to place thin beams, he also has acquired the privilege to place thick beams.

With regard to an attachment to the corner – רן אמים. Rashi interprets these words as a single concept, an addition to a house that is attached (lufta) to the house’s wall at the corner (karna), where it is evident from the construction that he wishes merely to juxtapose the corner with the neighbor’s wall. Other commentators understand these words as referring to two different elements. Tosafot, citing Rabbeinu Tam, explain that karna signifies an angle he creates at the end of the wall to indicate that he has no intention of extending the wall any further. Lufta denotes an indicator that he leaves near the top of the wall, e.g., a tapering toward the top that shows that he does not intend to make the wall any higher. Rabbeinu Hananel and the Rambam propose additional interpretations.

Sills – סילוסים. Rashi explains that the builder of the wall inserts small boards into the openings to protect the beams. Some commentators explain that he constructs a small structure of bricks around the hole (גרובון; Rabbeinu Gershom). Others write that the term denotes mortar, which is put into the opening (גרובון; Arukh). The Ramah maintains that the term is referring to a beam upon which other beams are placed.

Acquired the privilege to place thin beams – רבי שלמה קפוא. The early commentators disagree about this privilege. Rashi and many other early commentators explain that this privilege does not relate to a shared wall but to the right of one individual to use another’s wall. The fact that the owner failed to protest indicates that he granted his neighbor the right to use the wall, either because he paid him for that privilege or simply persuaded him to grant it to him. Rabbeinu Yona and other early commentators understand that this right is like other rights, and therefore the claimant must maintain that he had acquired the right and prove that he enjoyed the right for three full years.

Some explain that it relates to the mishna, which is discussing a jointly owned wall, and that the placement of thin beams on a wall higher than four cubits indicates that the neighbor paid his share of the construction of the entire wall, including additional height. For this reason, he is allowed to use it even for thick beams (Rambam, citing Rabbeinu Tam; Ramah).

In a case in which he places a beam or carves indentations to fix beams in place – רני את אמים. If the neighbor did not build another wall close to the partition wall but rather made grooves in that wall for the purpose of placing beams there, or a single groove for a large beam the length of the wall, thereby demonstrating that he is pleased with the construction of the wall, he must pay half the cost of the entire wall above the height of four cubits. Similarly, if he built another wall close to the partition wall and made grooves at its top, he must contribute to the construction of the entire partition wall (Tur; Sm. The Rema adds that the halakha is the same if he demonstrated in any way that he is pleased with the entire height or height of the partition wall (Rambam Sefer Kinyan, Hilkhot Shekhenim 3:3; Shulhan Arukh, Hoshen Mishpat 157:10).

Openings in the wall do not create a presumption – סילוסים. If one extended his wall beyond a height of four cubits and placed beams on it pointing in the direction of his courtyard, and in the direction of his neighbor he prepared grooves for the placement of beams, which might be construed as an indication that the neighbor contributed toward the construction of the wall, the neighbor has no share in the extension of the wall beyond four cubits. The first one can claim that he made the grooves to protect the wall in case the other decided to later contribute to its construction and use it (Rambam Sefer Kinyan, Hilkhot Shekhenim 8:9; Shulhan Arukh, Hoshen Mishpat 153:19).

If one acquired the privilege to place thin beams – קפוא. If one of the neighbors built the partition wall by himself and the second neighbor made a groove in it and placed a beam there and the first neighbor did not protest, the second neighbor has acquired the privilege to place the beam there. It is even permitted for him to replace it with a thicker beam. Some disagree and say that he acquires the privilege only if the beams remained there for three years (Rema, citing Rosh and Rabbeinu Yona). This is in accordance with the opinion of Rav Yosef and the second version of Rav Nahman’s statement (Rambam Sefer Kinyan, Hilkhot Shekhenim 8:2; Shulhan Arukh, Hoshen Mishpat 153:16).

Wall with sockets to hold beams

Afriza on a wall, supporting beams

Notes:

Sils – סילוסים: Some commentaries explain that the placement of thin beams is a privilege related to the height of the wall while others explain that the privilege is related to the length of the wall. Rashi explains that the builder of the wall inserts small boards into the openings to protect the beams. Some commentators explain that he constructs a small structure of bricks around the hole (Gröbnern; Rabbeinu Gershom). Others write that the term denotes mortar, which is put into the opening (Gröbnern; Arukh). The Ramah maintains that the term is referring to a beam upon which other beams are placed.

Beam – רני את אמים: Most commentaries explain that this word relates to a shared wall while others explain that it relates to a single wall. Rashi writes that this is the large beam that supports the ceiling beams. The Gröbnern maintain that the word denotes a projection beneath the ceiling beams. Rabbeinu Yehonatan defines it as a beam, part of which rests on the wall and part of which protrudes from it to support other beams. By contrast, Tosafot write that the term refers to the length of the wall, the stones at the end of which are not left even, rather, some of them are left jutting out, suggesting that the owner intends to continue building it further.
Let water drip (natfei) – מַטָּחֵי: The gemara and the Rambam explain that natfei refers to water dripping from the shingles in various places along the length of the roof and falling to the courtyard, whereas shakhei refers to water draining off from a gutter and drainpipe onto one area of the courtyard.

A hut whose roof is composed of willow branches – תַּרְבַּץ אֲדוּרְבָּנֵי: Rashi explains that this term refers to a sukkah-like structure covered with willow branches. In such a case, the water does not drip down in isolated places, but rather along the entire length of the wall. Others expound that since the structure is not covered with shingles that absorb some of the water but rather with willow branches that release all the water, the neighbor might not give his consent (Rabbeinu Gershom; Responsa of the gemara). The Rabah explains that a roof covered with willow branches drips water for an extended period of time. Most early commentaries contend that the Gemara is describing a structure with a slanted roof that allows rainwater to run off in a relatively strong stream.

Acquired the privilege to let water pour – מִטָּחֵי: If one acquired the privilege to let water drip from his house through a drainpipe into his neighbor's courtyard, he has the privilege to let water drip to there from his roof. The Shulhan Arukh states that this privilege is acquired immediately, whereas the Rema says that it is acquired by doing this for three years. He can even increase the strength of the flow by increasing the slope of his roof, provided that this does not cause greater damage to the courtyard (Rambam Sefer Kinyan, Hilkhos Shekhinen 8:6; Shulhan Arukh, Hoshen Mishpat 153:10).

He may make use of the projections – מַטָּחֵי: If one rents a room in another's house, he may use the outer sides of the building's walls and the projections from those walls up to a distance of four cubits from the room he rented. He may also use the garden in the courtyard; the Sima states that he may use only the walls of the garden. He may also use the yard at the back of the house (Rambam Sefer Mishpatim, Hilkhos Shekhinit 6:1; Shulhan Arukh, Hoshen Mishpat 313:1).

Garden (tarbatz) – תָּבָּטְצָ: This word, meaning courtyard or garden, is most likely of Semitic origin, in the form of the Akkadian word tarbatu.

Of the projections – מַטָּחֵי: He may use the projections protruding from the wall to hang items on them even if they are four cubits from his apartment (Rashi).

And of the thickness of the wall – לְמַאי? אָדוֹרְבָּנֵי: Rashi explains that this means that he can use the top surface of the wall if his apartment is on the upper story. Other commentaries expound that he can place items in the window openings of the wall as long as he does not damage it (Rabbeinu Hananel; Raavaad).

There are those who say that Rav Yosef says: If one acquired the privilege to place thin beams on his neighbor's wall, he has acquired the privilege to place thick beams there; and if he acquired the privilege to place thick beams, he has acquired the privilege to place thin beams. This version of Rav Yosef's statement accords with the statement of Rav Yosef.

With regard to a similar matter, Rav Yosef says: If one acquired the privilege to let water pour from his roof into his neighbor's courtyard, he has acquired the privilege to let the water pour there through a drainpipe. If the neighbor did not protest about the water dripping from the roof into his courtyard, he would certainly allow him to build a drainpipe, which would limit the water to a single place. But if he acquired the privilege to let the water pour through a drainpipe into his neighbor's courtyard, he has not acquired the privilege to let water drip there from his roof. And Rav Yosef says: Even if he acquired the privilege to let water pour there through a drainpipe, he also has acquired the privilege to let water drip there from his roof.

There are those who say that Rav Yosef said: If one acquired the privilege to let water pour through a drainpipe into his neighbor's courtyard, he has acquired the privilege to let water drip there from his roof; and if he acquired the privilege to let water drip from his roof into his neighbor's courtyard, he has acquired the privilege to let water pour there through a drainpipe. But he has not acquired the privilege to let water drip from a hut whose roof is composed of willow branches into his neighbor's courtyard. Rav Yosef said: He has acquired the privilege to let water drip there even from a hut whose roof is composed of willow branches. The Gemara comments: Rav Yosef performed an action, i.e., issued a practical ruling, with regard to a hut whose roof is composed of willow branches, allowing the neighbor to let water drip from there after he had acquired the privilege to use a drainpipe.

Rav Nahman says that Rabha bar Avuh says: If one rents a room to another in a large building with many residences, the renter may make use of the building's projections and of the cavities in its external walls up to a distance of four cubits from his room, and he may make use of the thickness of the wall in a place where it is customary to do so. But as for making use of the building's front garden [betarbatz], he may not do so. And Rav Nahman himself said: He may make use of even the building's front garden. But he may not use the yard that is at the back of the house. And Rava said: He may use even the yard that is at the back of the house.

He may make use of the projections – מַטָּחֵי: The meaning is, where it is customary for owners to use the thickness of the walls, since it would be unnecessary to say this if it were referring to the custom of renters (Rabbeinu Yona, citing Rabbi Shlomo min Haiar).

The building's garden – בְּתַרְבַּץ אֲדוּרְבָּנֵי: Rashi notes that this refers to a small ornamental garden that even the owner of the apartment does not ordinarily enter; therefore, it is prohibited for the renter to use it. The Raavaad states that the term does not refer to use of the garden itself, which was certainly not included in the rental, but to the use of the walls of the garden.
_beam for shade – אֶפְרָעַה יָקְבּא׃ If one of the neighbors places a beam with a covering for shade on top of the wall that divides two neighbors’ courtyards, during the first thirty days he does not acquire the privilege to leave the beam there because the other neighbor can claim that he had thought that the beam had been placed there temporarily. But after thirty days, he acquires the privilege to leave it there because it is no longer considered temporary. This is so even before three years have passed, and even without the claim of a formal acquisition or gift (sim). Similarly, if a sukka is erected for the Festival, during the first seven days there is no presumption that the neighbor granted any privilege to use his wall in that manner. Once those seven days have passed, there is such a presumption, according to some (Haggadah Asheri Ra’alav), the one using it for thirty days before the Festival does not acquire the privilege to continue using it until seven days after the Festival have passed (Rambam Sefer Kinyan, Hilkhot Shekhemin 8:7; Shulhan Arukh, Hoshen Mishpat 153:17).

HALAKHA

Apropos the use of a wall between neighbors, Ravina says: If one’s beam supporting a covering for shade was resting on his neighbor’s wall for up to thirty days, there is no acquired privilege for him to continue using it, since the neighbor can claim that he had assumed that the beam was there only temporarily and for that reason he did not protest. But after thirty days, there is an acquired privilege. And if it was for a sukka that was being used for the mitzva on the festival of Sukkot, for up to seven days there is no acquired privilege for him to continue using it, since it is assumed that it is there for the mitzva and that after the Festival it will be removed. But if after seven days the neighbor did not protest, there is an acquired privilege for him to continue using it. And if the one using the beam attached it with clay, there is immediately such an acquired privilege.

Abaye says: If there were two houses on two sides of a public domain, this one, the owner of one of the houses, must build a fence for half his roof, and that one, the owner of the other house, must build a fence for half his roof. They must position the fences so that one fence is not opposite the other fence, and each one must add to his fence a little beyond the midway point, so that each one should not be able to see the activity on the other’s roof.

The Gemara asks: Why discuss specifically the case of two houses on opposite sides of a public domain, considering that the same halakha should apply even if the two houses are separated by a private domain? The Gemara answers: It was necessary for Abaye to mention a public domain, lest you say that one neighbor can say to the other: Ultimately, you need to conceal yourself from people in the public domain. Since in any event you have to build a fence across your entire roof, you cannot compel me to build a fence on my roof.

To counter this, Abaye teaches us that this is not so, because the second homeowner can say to the first in response: The public can see me only during the day, when pedestrians pass by, but they cannot see me at night. You, by contrast, can see me both during the day and at night. Alternatively, he can say: The public can see me from the street only when I am standing, but they cannot see me when I am sitting. You, by contrast, can see me both when I am standing and when I am sitting. Furthermore, the public can see me only when they look specifically at me, but they cannot see them when they do not look specifically at me, since the average pedestrian does not look up to see what is happening on the roofs. You, by contrast, can see me in any case, because you live opposite me.

The Master, i.e., Abaye, said above: This one, the owner of one of the houses, must build a fence for half his roof, and that one, the owner of the other house, must build a fence for half his roof. They must position the fences so that one fence is not opposite the other fence, and each one must add to his fence a little beyond the midway point. The Gemara asks: Isn’t it obvious that each one must make a fence for half his roof?

NOTES

Up to thirty – עד תְּלָתִין: Until that point, the homeowner remains indifferent and does not protest, believing that the beam was placed there temporarily and will soon be removed. Tosafot, citing Rabbeinu Tam, write that the discussion here relates to the misha, where it is unclear whether or not a neighbor paid his share of a joint wall. Consequently, if he places the beam on the wall, the presumption is that he did pay for the wall and has full partnership in it. This explains why this passage appears here and not in the third chapter of this tractate, which addresses presumptions of usage. Other commentators explain that here too the issue is presumption of usage.

If it was a sukka for the mitzva – וֶאָם כְּשׁוּרָא דִּמְטַלַּלְתָא: If there were two houses of equal height (sim) on opposite sides of a public domain, whose rooftops are used, the residents of each house must build a fence four cubits high along slightly more than half the length of the roof. The two fences must not be aligned directly opposite each other. The Tur, citing Rabbeinu Yona, writes that if the roofs were low enough for passersby to see onto them, there is no privacy issue with regard to the neighbor (Rambam Sefer Kinyan, Hilkhot Shekhemin 3:5; Shulhan Arukh, Hoshen Mishpat 159:1).

BACKGROUND

Two houses on two sides of a public domain – בשָׁנֵי בָתִּים בִּשְׁנֵי: Two houses on two sides of a public domain. The section of the fence that is indicated with the broken lines is the supplement that each party must add to his fence beyond the midway point.

Hebrew to English translation
Expenditure [awinka] –Apparently derived from the Middle Iranian term uzenak, meaning a price or expense.

He can give an excuse – He can give the excuse that he dropped an item in the other’s property (Rashi), or that owing to the insignificance of the barrier he did not realize that it was a boundary marker (Rabbeinu Gershom), or that he simply did not pay attention and entered the area inadvertently.

He was stretching himself (mamtzurei) – The grammar and the Arukh explain that the neighbor claims that all he did was stretch his body, but it looked as if he had entered the other’s property. Rashi (Avoda Zara 70b) interprets the word mamtzurei in the sense of measurement; the neighbor claims that he had to measure something and therefore momentarily entered the other’s space. Others explain the term mamtzurei as connected to the word metzar, he was checking his boundaries.

He is not required to attend to it – לֵיהּ: The owner of the courtyard is not obligated make a partition and therefore momentarily entered the other’s space. Others explain the term mamtzurei as connected to the word metzar, he was checking his boundaries.

The Gemara answers: No, it is necessary in a case where one of them went ahead and constructed a fence on half his roof, lest you say that the other can say to him: Take from me compensation for the expenditure [awinka], and you build the entire fence, and in that way we will not invade one another’s privacy. Therefore, Abaye teaches us that the neighbor who built the fence for half his roof can say to him: What is the reason you do not want to build a fence? It is because the added weight will damage your house’s foundation. My foundation too will be damaged if I continue to build on my roof.

Rav Nahman says that Shmuel says: If one’s roof is adjacent to his neighbor’s courtyard, he must build a fence on the roof four cubits high, so that he will not be able to see into his neighbor’s courtyard, but he is not required to build a fence between one roof and another roof. And Rav Nahman himself says: He is not required to build a fence four cubits high on the roof, but he is required to build a partition that is ten handbreadths high.

Rav Nahman says that Shmuel says: If one’s roof is adjacent to his neighbor’s courtyard, he must build a fence on the roof four cubits high, so that he will not be able to see into his neighbor’s courtyard, but he is not required to build a fence between one roof and another roof. And Rav Nahman himself says: He is not required to build a fence four cubits high on the roof, but he is required to build a partition that is ten handbreadths high.

The Gemara asks: For what purpose, according to Rav Nahman, does the neighbor have to build such a partition? If it is to prevent damage caused by exposure to the sight of others, we require a partition of four cubits. If it is to catch the neighbor as a thief, i.e., to set a boundary between the two properties so that any trespass will be construed as attempted theft, a mere partition of pegs suffices. And if it is to prevent kid goats and lambs from crossing from one roof to the other, a low partition that is high enough so that the goat or lamb will not be able to leap headlong from one roof to the other. The Gemara answers: Actually, it is built to catch the neighbor as a thief.

The Gemara raises an objection to the opinion of Rav Nahman from a baraita: If his courtyard was higher than the other’s roof, he is not required to attend to it. What, is it not teaching that he is not required to attend to it at all, i.e., that he need not build any type of fence? The Gemara answers: No, it means that he is not required to attend to building a partition of four cubits, but he must attend to building a partition of ten handbreadths, as maintained by Rav Nahman.

HALAKHA

Where one of them went ahead and constructed – יזקך: If one neighbor waited until the other built the fence on half of his roof, the former cannot compel the latter to complete the construction to the end of the roof, even if he pays him (Shulhan Arukh, Hoshen Mishpat 159:3).

If one’s roof is adjacent to his neighbor’s courtyard – Those who stretch themselves: If one’s roof is adjacent to his neighbor’s courtyard and is not regularly used, the owner of the roof must construct a fence of four cubits on his roof to avoid damage by sight. The owner of the courtyard must contribute to the costs of the fence up to ten handbreadths (Rambam Sefer Kinyan, Hilkhon Shekhenim 3:6; Shulhan Arukh, Hoshen Mishpat 159:2).

But he is required to build a partition that is ten handbreadths: There is no requirement to build a partition between two adjacent roofs of the same height if they are not used. Rav Nahman states that a ten-handbreadth high barrier is sufficient to mark the boundary between them so that if one of the neighbors crosses the line he will be considered a thief. The Rama states that this applies only to adjacent roofs, even when they are occupied, but not to roofs that are distant from each other, which require proper four-cubit-high fences (Rambam Sefer Kinyan, Hilkhon Shekhenim 3:6; Shulhan Arukh, Hoshen Mishpat 159:2).

If his courtyard was higher than the other’s roof: If one’s courtyard is higher than his neighbor’s roof, the owner of the roof must build a wall on it that is four cubits higher than the ground of the courtyard. If the roof is at least four cubits lower than the courtyard, some say that the owner of the roof must still build a wall four cubits higher than the ground. Others say that he is not required to build a wall at all (Shulhan Arukh, Hoshen Mishpat 161:1).

He is not required to attend to it – לֵיהּ: The Rambam states that if a one’s courtyard is higher than his neighbor’s roof, the owner of the courtyard is not required to assist the other in the construction of the wall. Some maintain that if the courtyard is less than ten handbreadths higher than the roof, its owner must contribute to the construction of the wall up to ten handbreadths from ground level. The Gra holds that the Rambam agrees with this (Rambam Sefer Kinyan, Hilkhon Shekhenim 3:7; Shulhan Arukh, Hoshen Mishpat 160:2).
It was stated that amoraim disagree about the following case: If there are two adjoining courtyards, one higher than the other, Rav Huna says that the owner of the lower courtyard builds the wall separating the courtyards from his level and upward, and the owner of the upper courtyard builds the wall from his level and upward. And Rav Hisda says: The owner of the upper courtyard assists the owner of the lower courtyard and builds from below, even including that part of the wall which is opposite the lower courtyard.

The Gemara notes that it is taught in a baraita in accordance with the opinion of Rav Hisda: If there were two adjoining courtyards, one higher than the other, the owner of the upper courtyard cannot say: I will build from my level and upward, but rather he assists the owner of the lower courtyard and builds from below. And if his courtyard is higher than the roof of his neighbor, he is not required to attend to it. The owner of the upper courtyard need not build a partition because people do not ordinarily use their roofs.

It is related that two people were living in a two-story building; one was living in the upper story, and one was living in the lower one. The lower story began to collapse, its walls sinking into the ground to the point that it was no longer fit for dwelling. The owner of the lower story said to the owner of the upper story: Come and let us demolish the whole building and rebuild it together. The owner of the upper story said to him: I am living comfortably and am under no obligation to rebuild your residence.

The owner of the lower story said to him: I will dismantle the structure and rebuild it. The owner of the upper story said: But then I will have no place to live while you are renovating. The owner of the lower story said to him: I will rent a place for you to live for the duration. The owner of the upper story said to him: I do not want to bother with moving. The owner of the lower story said to him: But I cannot live in my apartment in this condition, as the walls have sunk into the ground. The owner of the upper story said to him: That is not my problem. Crawl on your stomach to go in, and crawl on your stomach to go out.

Rav Hama said: By law, the owner of the upper story can prevent his downstairs neighbor from rebuilding. The Gemara comments: And this statement applies only when the beams supporting the second story have not reached lower than ten handbreadths from the ground. But if those beams have reached lower than ten handbreadths from the ground, the owner of the lower story can say to the owner of the upper story: Below ten handbreadths is my domain and my domain is not bound to you to support your residence.
If they made a stipulation with each other — if the owners of the two stories stipulated with each other from the outset that should the beams supporting the upper story sink they would rebuild the house, and the ceiling of the lower story sink to such an extent that one could no longer bring in a medium-sized bundle of reeds on his head, they must dismantle the house and rebuild it. This is in accordance with the opinions of Rav Nahman and Rav Huna, son of Rav Yehoshua (Rambam Sefer Kinyan, Hilkhot Shekhenim 4:7; Shulĥan Arukh, Hoshen Mishpat 154:13).

He built a wall outside the windows of his neighbor — if they made a stipulation with each other, to what extent must the ceiling of the lower story drop before they implement the stipulation? The Sages said before Rabba in the name of Mar Zutra, son of Rav Nahman, who said in the name of Rav Nahman: Like that which we learned in a mishna (98b): If one takes upon himself to build a house for another person, without stipulating its dimensions, its height must be equal to the sum of half its length and half its width. Rabba said to them: Did I not tell you not to hang empty pitchers on Rav Nahman, meaning not to attribute foolish opinions to him? Rather, this is what Rav Nahman said: As people normally live, and no more. And how much space is that? Rav Huna, son of Rav Yehoshua, said: The ceiling of the lower story must be high enough so that one could bring in bundles of reeds of the type made in Meĥoza and be able to turn around.

If they made a stipulation with each other — if the owners of the two stories stipulated with each other from the outset that should the beams supporting the upper story sink they would rebuild the house, and the ceiling of the lower story sink to such an extent that one could no longer bring in a medium-sized bundle of reeds on his head, they must dismantle the house and rebuild it.

The Gemara asks: And if they made such a stipulation with each other, to what extent must the ceiling of the lower story drop before they implement the stipulation? The Sages said before Rabba in the name of Mar Zutra, son of Rav Nahman, who said in the name of Rav Nahman: Like that which we learned in a mishna (98b): If one takes upon himself to build a house for another person, without stipulating its dimensions, its height must be equal to the sum of half its length and half its width. Rabba said to them: Did I not tell you not to hang empty pitchers on Rav Nahman, meaning not to attribute foolish opinions to him? Rather, this is what Rav Nahman said: As people normally live, and no more. And how much space is that? Rav Huna, son of Rav Yehoshua, said: The ceiling of the lower story must be high enough so that one could bring in bundles of reeds of the type made in Meĥoza and be able to turn around.

One new wall — according to Rashi: One who built the wall in his new house can prevent his neighbor from building a wall in front of them. This is even if the neighbor promises to make him new windows higher up on his wall, to build a building above his wall. Furthermore, this halakha holds even if the structure is used only to store straw or wood, but only if it would present a hardship to the owner of the windows to move out during the period of construction. Otherwise, he must accede to his neighbor (Rambam Sefer Kinyan, Hilkhot Shekhenim 7:18; Shulĥan Arukh, Hoshen Mishpat 154:15).

The Gemara asks: This case is identical to that case; this case is very similar to the previous case of the owner of the upper story who can prevent the owner of the lower story from rebuilding. Why do I need this additional case? The Gemara answers: This teaches us that even if he uses the house only for storing straw and wood, he can still maintain that blocking the light causes him damage and can prevent the neighbor from erecting the wall.

To what extent — do we: If neighbors agree that if their house sinks into the ground they will both contribute to its reconstruction, how much must the house sink before the resident of the upper story is required to pay? Presumably, a minor shift in the house is not that bothersome and could be ignored. The height of a room must be the sum of half the length and half the width (Rashi). Rabbeinu Gershon explains that the Gemara is asking to what height the resident of the lower story can demand that the house be raised.

Bundles of reeds of Meĥoza — according to Rashi: The Ramah writes that this measurement was specific to the location where the statement was performed, and that every place has to base the measurement on large items that are ordinarily carried into homes.

By law the neighbor can prevent him — according to Rashi: The early commentaries state that this halakha applies only when the party preventing the building has a good reason for doing so. But if the structure being blocked by the wall was empty and unused, the owner of the structure cannot protest, without stating a cogent reason, if his neighbor offers to completely rebuild it. Such behavior is termed conduct characteristic of Sodom and we compel people to refrain from such conduct (Ramah). By contrast, the Rambam writes that an individual can never be compelled to have his structure destroyed.
I am building on my property – אֲמַר לֵיהּ רָבִינָא לְרַב אַשִׁי, מַאי שְׁנָא אֲנִי לִי, הָשְׁתָּא מְשַׁוֵּית לִי אִידְרוֹנָא! אֲמַר רַב חָמָא אֲזַל הַהוּא דְּמָטְיֵיה תַּרְבִּיצָא וְאֶחָד מֵהֶן נָטַל שְׂדֵה כֶרֶם וְאֶחָד מֵהֶן נָטַל שְׂדֵה בְּדִידִי כּוֹר עָרָא אָלָּא מָכַר לוֹ עַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן, שֶׁעַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן שֶׁעַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן.

Rav Ashi said to him: There, the reason is that they made an assessment with each other with regard to the value of the fields, arranging for compensation if one received more than the other, and they took the work area into account. Ravina asked: But what did they do here? Did they not make an assessment with each other? Are we dealing with fools, that this one took the valuable hall and the other took the much less valuable garden without making an assessment with each other? Rav Ashi said to him: Although they assessed with each other the value of the bricks, the beams, and the boards, they did not assess with each other the value of the airspace. With regard to that, each one retained full rights to his respective airspace.

The Gemara says: And let the one who received the hall say to the other: Initially, you gave me a well-lit hall; now you are making it into a small dark room [idrona].

Rav Ashi continues: Isn’t it taught in a baraita: In the case of one who says to another: I am selling you a beit kor of dirt, it becomes his even if it is only a letekh, i.e., a half-kor, and the sale is not void, because he sold him only a place that is called a beit kor by name. The Gemara comments: And this ruling applies only as long as the land he is selling is actually called a beit kor. Similarly, if he says to him: I am selling you an orchard, it becomes his even if it lacks pomegranates, because he sold him only a place that is called an orchard by name. The Gemara comments: And this applies only as long as the land he is selling is actually called an orchard. And similarly, if he says to him: I am selling you a vineyard, it becomes his even if it lacks grapevines, because he sold him only a place that is called a vineyard by name. The Gemara comments: And this applies only as long as the land he is selling is actually called a vineyard.

The Gemara further relates: There were two brothers who divided their father’s estate between them. One received a garden [aspelida], in his share and one received a garden. The one who received the garden went and built a wall in front of the opening of the hall. His brother said to him: You are blocking the light with your wall and darkening my house. The one who received the garden said to him: I am building on my property. Rav Hama said: By right he said that to him, as it is permitted for him to build there.

The Gemara comments: What is the space needed for the animals and tools needed to work the vineyard, so that the owner can easily enter and plow the area (Rabbeinu Tamh: Rashii). The Rina writes that this does not mean that he receives an extra four cubits, but that he is entitled to use these four cubits for his work.

They assessed with each other the value of the bricks, the beams, and the boards – אְשִׁיתָא אֲמַר לֵיהּ רָבִינָא לְרַב אַשִׁי שֶׁלֹּא מָכַר לוֹ עַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן, שֶׁעַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן. They divided an inheritance, one receiving an orchard and the other a field of grain, the one who inherited the orchard receives four cubits in the grain field alongside his orchard. This need not be stated explicitly, as it is something that is well known (Rambam Sefer Kinyan, Hilchot Mekhira 24:10; Shulhan Arukh, Hoshen Mishpat 173:4).

A beit kor of dirt – אֲמַר לֵיהּ רָבִינָא לְרַב אַשִׁי שֶׁלֹּא מָכַר לוֹ עַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן, שֶׁעַל מְנָת כֵּן חָל בִּשְׂדֵה לָבָן. A beit kor of dirt – A beit kor is the space needed for the sowing of a kor, or 30 se’ahs, of grain. The space required for the sowing of a se’ah is 2,500 square cubits. A beit kor is therefore an area of 75,000 square cubits, which is approximately 18,750 sq m.
The Ritva writes that this does not mean that he receives an extra four cubits. If, for example, the structure cannot protest, without stating a cogent reason, if the wall is blocked by the wall and the owner agrees, then the measurement was specific to the location where the state of the structure was empty and unused, the owner – the owner offers to completely rebuild it. Such behavior is termed halakha.

According to Rambam, if the house was divided among brothers, neither one retains a right-of-way through the other’s property, nor the right to erect a ladder, nor the right to pass an irrigation channel, even if such was the arrangement when the father was still alive, in accordance with the opinion of Shmuel (Rambam Sefer Kinuyim, Hilkhوت Shekhenim 2:12; Shulhan Arukh, Hoshen Mishpat 173:3). A promissory note by orphans against which a receipt was produced – ר”ם אס״לידא: If orphans inherited a promissory note from their father, and the debtor produced a receipt against the note, the orphans cannot collect the debt since there is a receipt. The note itself is not torn up because upon reaching adulthood, the orphans might be able to bring proof that the receipt was forged. Because the receipt was not produced during the father’s lifetime, the court suspects it is a forgery. This is in accordance with the opinion of Rav Hama and Mar Zutra, son of Rav Mari. The early commentators disagree as to whether this halakha applies only when the debt became due during the father’s lifetime and witnesses attest that the father demanded his money, but if the debt did not become due during the father’s lifetime, the note is torn up immediately (Ramah; Shakh); or whether it applies even if the father died before the debt became due (Rambam Sefer Mishpatim, Hilkhות Malve Velosef 17:8; Shulhan Arukh, Hoshen Mishpat 173:6).

The Gemara rejects this argument: Are these cases comparable? There, the seller can say to the buyer: I sold you only a place that is called that by name; here, the one who received the hall can say to his brother: I took this portion as my share on condition that I would live there the way our fathers lived there, and that you would not change that by blocking the light entering through the windows.

With regard to Rav Hama’s ruling that it is permitted for the brother who received the garden to build a wall in front of the hall, they said to him, i.e., Mar Yenuka and Mar Kashisha, sons of Rav Hisda, said to Rav Ashi: The Sages of Nedarim follow their usual line of reasoning, as Rav Hama, who was from Nedarim’s, issued his ruling in accordance with the opinion of Shmuel, who was also from that city. As Rav Nahman says that Shmuel says: In the case of brothers who divided their father’s estate, they do not have a right-of-way against each other. Although the father would traverse the outer field from the inner field to access the public domain, the brother who received the inner field as an inheritance does not have the right to traverse his brother’s outer field.

Shmuel continues: Nor do they have the right of windows against each other, i.e., the right to prevent the other from building a wall facing his windows; nor do they have the right of ladders against each other, i.e., the right to set up a ladder in the other’s property in order to get to his own; nor do they have the right of a water channel against each other, i.e., the right to pass a water channel through the other’s property. And be careful with these, since they are established halakhot. Rav says: The brothers do have all of the aforementioned rights. Rav Hama agrees with Shmuel’s opinion, that each brother can do as he pleases on his own property without the other one preventing him from doing so.

Since Rav Hama’s rulings were mentioned, the Gemara cites another halakhic ruling in his name. There was a certain promissory note inherited by orphans from their father, stating that somebody owed them money, against which a receipt was produced by the borrower, stating that the debt was already paid. Rav Hama said: We cannot use the note to collect the debt on behalf of the orphans, nor can we tear it up. The Gemara explains: We cannot collect with the note because a receipt against it was produced by the borrower; and we cannot tear the note up because perhaps when the orphans grow up they will bring proof that the receipt was forged and undermine it.

Rav Aha, son of Rava, said to Ravina: What is the halakha? Ravina said to him: In all the cases in this discussion, the halakha is in accordance with the opinion of Rav Hama, except for the case of the receipt, because we do not presume that the witnesses are liars. Since witnesses signed the receipt, the court trusts that the debt was paid and they tear up the promissory note.

Mar Zutra, son of Rav Mari, said: In this case as well, the halakha is in accordance with the opinion of Rav Hama, because the validity of the receipt is in doubt. As, if it is so that it is a valid receipt, the borrower should have produced it during their father’s lifetime. And since he did not produce it at the proper time, we learn from this that he may have forged it. Even though this is not an absolute proof, it is sufficient reason not to tear up the promissory note.
MISHNA The residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the joined owned courtyard. Rabban Shimon ben Gamliel disagrees and says: Not all courtyards require a gatehouse, and each courtyard must be considered on its own in accordance with its specific needs. Similarly, the residents of a city can compel each inhabitant of that city to contribute to the building of a wall, double doors, and a crossbar for the city. Rabban Shimon ben Gamliel disagrees and says: Not all towns require a wall.

With regard to this latter obligation, the mishna asks: How long must one live in the city to be considered like one of the people of the city and therefore obligated to contribute to these expenses? Twelve months. But if he bought himself a residence in the city, he is immediately considered like one of the people of the city.

GEMARA The Gemara asks: Is this to say that making a gatehouse is beneficial? But wasn’t there a pious man, with whom the prophet Elijah was accustomed to speak, who built a gatehouse, and afterward Elijah did not speak with him again? The objection to the building of a gatehouse is that the guard who mans it prevents the poor from entering and asking for charity. The Gemara answers: This is not difficult: This, the case presented in the mishna, is referring to a gatehouse built on the inside of the courtyard, in which case the poor can at least reach the courtyard’s entrance and be heard inside the courtyard; that, the story of the pious man and Elijah, involves a gatehouse that was built on the outside of the courtyard, completely blocking the poor’s access to the courtyard’s entrance.

And if you wish, say instead that in both cases the gatehouse was built outside the courtyard, and yet this is not difficult: In the one case, there is a door to the gatehouse, so that the poor cannot be heard inside the courtyard, while in the other case there is no door. Or if you wish, say that in both cases there is a door, and still this is not difficult: In the one case, there is a key needed to open the door, and the key is not available to the poor people, whereas in the other case, there is no key needed. Or if you wish, say that in both cases there is a key needed, and even so this is not difficult: In the one case the key is on the inside, so that the poor cannot reach it, while in the other case of the mishna, the key is on the outside.

HALAKHA Building a gatehouse and a door to the courtyard – The residents of a courtyard can compel each other to build a gatehouse for the courtyard and to build other items required for the courtyard or customarily found there. They cannot compel each other to pay for ornaments or other unnecessary items (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:1; Shulhan Arukh, Hoshen Mishpat 15:11).

Building a wall…for the city – The residents of a city can compel each to contribute to the building of a wall, double doors, and a crossbar for the city. Moreover, the minority can force the majority to do so (Rabbeinu Yeruĥam even if the town is not on the border (Sna), in accordance with the opinion of the anonymous first tanna (Rambam Sefer Kinyan, Hilkhot Shekhenim 6:1; Shulhan Arukh, Hoshen Mishpat 16:3).

How long must one live in the city? If one lives in a city for twelve months or buys a house in a city, he is considered one of the residents of the city and can be compelled to contribute to all the municipal costs. The Rema adds that if one rents a house in a city and demonstrates that he wishes to live there permanently, or if he rents a house for twelve months in advance, he is immediately considered a resident. If he did not rent or buy a house in the city but received a dwelling as a gift or as an inheritance, he is not considered a resident until he demonstrates that he wishes to be one (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:6; Shulhan Arukh, Hoshen Mishpat 15:12 and Sna there).

PERSONALITIES Elijah – The prophet appears to people, especially to the Sages, and resolves their dilemmas. As stated in 1 Kings 2:11, Elijah did not die, and he continues to serve as an emissary of God. On the one hand, he is the zealous angel of the covenant. On the other hand, he alleviates problems in the world.
They collect based on the number of people – יבר לשוות. The question here is whether the main concern with potential assailants is that they might harm people, in which case they collect based on the number of people, or that they might loot, in which case they collect based on wealth (Ritva).

They collect based on the proximity of the houses – יבר לשוות. Most early commentaries explain that the invading troop that comes to loot stops first at the houses close to the wall. Consequently, the houses farther away from the wall are less vulnerable. Tosafot explain that this does not mean that they collect based exclusively on proximity to the wall, as wealth is also taken into account. This is because an empty house near the wall will not be looted. The Ritva Migash states that the collection is based primarily on wealth but that proximity is also a factor. The Ramah expresses an altogether different opinion. He concludes that those further away from the city center must pay more because their location demands the building of a longer wall to encompass their properties. Consequently, the residents who pay more are those who live further from the center and those with bigger homes.

HALAKHA

Based on what do they collect – יבר לשוות. With regard to funds collected from the residents of a city for the building of a wall, some say that the collection is based on the proximity of the houses to the wall so that those people who live closer to the wall pay more, in accordance with the later version of Rabbi Yoĥanan’s statement (Rif). The Ritva Migash rules that the individual’s worth is also taken into account. Consequently, if two homeowners are equally wealthy and live at equal distances from the wall, they pay the same amount of wall tax. If a poor person with no means lives near the wall and a wealthy person lives farther away, only the latter is required to pay, if two people are of equal means, but live at different distances from the wall, the one who lives closer pays more. This is in accordance with both versions of Rabbi Yoĥanan’s statement (Rambam Sefer Kinyan, Hilkhot Shekhemim 5:4, Shulhan Arukh, Hoshen Mishpat 163:3).

The mishna teaches that the residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the jointly owned courtyard. It is taught in a baraita that Rabban Shimon ben Gamliel says: Not all courtyards require a gatehouse. Rather, a courtyard that adjoins the public domain requires a gatehouse to prevent people from peering in. But a courtyard that does not adjoin the public domain does not require a gatehouse. The Gemara asks: And why don’t the Rabbis make this distinction? The Gemara answers: Even if a courtyard does not adjoin the public domain, people in the public domain sometimes are forced toward the courtyard due to crowding in the public domain, and come and enter the courtyard.

The mishna teaches that the residents of a city can compel each inhabitant of that city to contribute to the building of a wall, double doors, and a crossbar for the city. The Sages taught in a baraita: The residents of a city can compel each inhabitant of that city to build double doors and a crossbar for the city. And Rabban Shimon ben Gamliel says: Not all cities require a wall. Rather, a city that adjoins the state border requires a wall, whereas a city that does not adjoin the state border does not require a wall. The Gemara asks: And why don’t the Rabbis make this distinction? The Gemara answers: Even if a city does not adjoin the border, it sometimes happens that invading troops come into the area. Therefore, it is always good for a city to be protected by a wall.

With regard to this issue, Rabbi Elazar asked Rabbi Yoĥanan: When the residents of the city collect money to build a wall, do they collect based on the number of people living in each house, or perhaps they collect based on the net worth of each person? Rabbi Yoĥanan said to him: They collect based on the net worth of each person, and Elazar, my son, you shall fix nails in this, i.e., this is an established halakha, and you must not veer from it.

There are those who say that Rabbi Elazar asked Rabbi Yoĥanan: When they collect money to build a wall, do they collect based on the proximity of the houses to the wall, or that those people who live closer to the wall pay more? Or perhaps they collect based on the net worth of each person. Rabbi Yoĥanan said to him: They collect based on the proximity of the houses to the wall, and Elazar, my son, you shall fix nails in this.

Rabbi Elazar – רבא בנו של רבא: In the Gemara, citations of Rabbi Elazar with no patronymic refer to Rabbi Elazar ben Pedat, a second-generation amora in Eretz Yisrael. In many cases in the Gemara, he is referred to as Rabbi Eliezer, but this is probably a textual corruption. He was born in Babylonia, where he was a student of both Rav and Shmuel. In his youth, he immigrated to Eretz Yisrael, where he married and became one of Rabbi Yoĥanan’s most important students. The connection between them was so close that at times the Gemara makes a contradiction between the statement of one and the statement of the other, under the assumption that it was unlikely that they would hold different opinions in matters of halakha. This relationship is reflected by Rabbi Yoĥanan’s referring to Rabbi Elazar as: My son.

Rabbi Yoĥanan – רבא בנו: Rabbi Yoĥanan bar Nappaha was one of the greatest amoraim. His statements are fundamental components of both the Jerusalem Talmud and the Babylonian Talmud. He resided in Tiberias and lived to an advanced age. Almost nothing is known of his family background. He was orphaned at a young age, and although his family apparently owned considerable property, he devoted virtually all of his resources to the study of Torah. He eventually became impoverished.

In Rabbi Yoĥanan’s youth, he had the privilege of studying under Rabbi Yehuda HaNasi, the redactor of the Mishna, but most of his Torah study was accomplished under Rabbi Yehuda HaNasi’s students: Hilkia ben Hiyya, Rabbi Oshaya, Rabbi Hanina, and Rabbi Yannai, who lavished praise upon him. In time, he became the head of the yeshiva in Tiberias, at which point his fame and influence increased greatly.

For a long time, Rabbi Yoĥanan was the leading rabbinic scholar in the Jewish world, in Eretz Yisrael as well as in Babylonia, where he was respected by the Babylonian Sages. Many of them came to Eretz Yisrael and became his outstanding students. He was a master of both halakha and aggada. In recognition of his intellectual and spiritual stature, the halakha follows his opinion in almost every case, even when Rav or Shmuel, the preeminent amoraim of Babylonia, whom he treated deferentially, disagreed with him. Only in disputes with his teachers in Eretz Yisrael, such as Rabbi Yannai and Rabbi Yehoshua ben Levi, does the halakha not follow his opinion.
It is related that Rabbi Yehuda Nesiya* once imposed payment of the tax for the wall even on the Sages. Reish Lakish said to him: “The Sages do not require protection,” as it is written: “How precious are your dear ones to me, O God… If I should count them, they are more in number than the sand” (Psalms 139:17–18). If I should count whom? If we say this is referring to the righteous, and the verse is saying that they are greater in number than the grains of sand, this is difficult. Now if it is written about all of Israel: “As the sand which is upon the seashore” (Genesis 22:17), can the righteous themselves, who are a part of Israel, be greater in number than the grains of sand? How can they possibly outnumber the grains of sand upon the seashore?

Rather, this is what the verse is saying: If I should count the deeds of the righteous, they are greater in number than the grains of sand. And it follows by an a fortiori inference: If the grains of sand, which are fewer in number, protect the shore from the sea, barring it from flowing inland (see Jeremiah 5:22), do not all the more so the deeds of the righteous, which are greater in number, protect them? Consequently the Sages do not need additional protection.

When Reish Lakish came before Rabbi Yoḥanan and reported the exchange to him, Rabbi Yoḥanan said to him: What is the reason that you did not quote this verse to him: “I am a wall and my breasts are like towers” (Song of Songs 8:10), which may be explained as follows: “I am a wall; this is referring to the Torah. And my breasts are like towers”;

Notes

These are Torah scholars, and towers do not require additional protection? The Gemara comments: And Reish Lakish, who did not cite this verse, holds in accordance with the way that Rava expounded the verse: “I am a wall”; this is referring to the Congregation of Israel. “And my breasts are like towers”; these are the synagogues and study halls.

It is similarly related that Rav Naḥman bar Rav Ḫisda once imposed payment of the poll tax (karga), even on the Sages. Rav Naḥman bar Yitzḥak said to him: You have transgressed the words of the Torah, the Prophets, and the Writings.

You have transgressed the words of the Torah, as it is written: “Even when He loves the peoples, all His holy ones are in Your hand” (Deuteronomy 33:3), which is understood to mean that Moses said to the Holy One, Blessed be He: Master of the Universe, even when you hold the other nations dear and grant them dominion over Israel, let “all His holy ones,” meaning the Torah scholars, be exclusively in Your hand and free from the authority of the nations, and therefore be exempt from paying taxes. The continuation of that verse can also be understood as referring to Torah scholars, as it states: “And they sit [ittku] at Your feet, receiving Your words” (Deuteronomy 33:3), and Rav Yosef teaches: These are Torah scholars who pound [mekhetatin] their feet from city to city and from country to country to study Torah; receiving [jissa] Your words,” to discuss [lissa velitten] the utterances of God.

* Rabbi Yehuda Nesiya

HALAKHA

The Sages do not require protection – ולְ׳ִי נְ׳ָשׁוֹת גּוֹבִין This is the Congregation of Israel – חֹדֶד מָעָנוּיִם כַּרְגָּא אַדְּרַבָּנַן This is related to Rabbi Yehuda Nesiya’s statement that the Torah Sages are exempt from paying taxes to protect the city because their learning protects them (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:6; Shulhan Arukh, Hoshen Mishpat 165:4 and Yoreh De’a 243:2).

NOTES

Tax (karga) – יษיא: The origin of this term is the Persian yarakh or arak, which also led to the Arabic خيار. All of Israel are surrounded and protected, as it were, by a wall, and they do not assimilate among the nations (Rashi).

Language

These are Torah scholars – לתיאר הנשים: These people provide Torah to others as breasts nourish a baby (see Rabbeinu Gershom). The early commentaries disagree about the definition of a Torah scholar in this context: Does the term signify someone who occupies himself exclusively with Torah, or does it include somebody whose primary occupation is the study of Torah but who also devotes a minimal portion of his time to earning a living?

The Sages are exempt from paying taxes to protect the city because their learning protects them (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:6; Shulhan Arukh, Hoshen Mishpat 165:4 and Yoreh De’a 243:2).

PERSONALITIES

Rabbi Yehuda Nesiya – רבי יהודה נסייה: Based on the chronology of the generations, this name seems to refer to Rabbi Yehuda Nesiya II, who was the grandson of Rabbi Yehuda Hasiya, who redacted the Mishna. In the days of Rabbi Yehuda Nesiya, the position of Nasi was merely a public office, the leading Torah authorities headed the academies and the courts. Rabbi Yehuda Nesiya studied with Rabbi Yoḥanan and was subordinate to Rabbi Yoḥanan’s students, Rabbi Abbahu and Rabbi Ami. Many anecdotes about Rabbi Yehuda Nesiya are recorded in the Jerusalem and Babylonian Talmuds, including his recording with the Roman emperor, Diocletian.

Tax on the Sages – בֵּית שַׁעַר When building a wall…for the city – רַבָּנַן לָא צְרִיכִי It is related that Rabbi Yehuda Nesiya once imposed payment of the tax for the wall even on the Sages. Reish Lakish said to him: “The Sages do not require protection,” as it is written: “How precious are your dear ones to me, O God… If I should count them, they are more in number than the sand” (Psalms 139:17–18). If I should count whom? If we say this is referring to the righteous, and the verse is saying that they are greater in number than the grains of sand, this is difficult. Now if it is written about all of Israel: “As the sand which is upon the seashore” (Genesis 22:17), can the righteous themselves, who are a part of Israel, be greater in number than the grains of sand? How can they possibly outnumber the grains of sand upon the seashore?

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This is referring to the head tax — arnona. Many early commentators explain that this tax exemption applies only in a situation where a tax is imposed on the entire community based on the number of its members, but scholars are not exempt when the tax is imposed directly upon each individual. The Ramah does not accept this distinction, asserting that a tax imposed directly upon each individual is the very definition of a head tax.

The digging of cisterns (karya patya). — Rabbi Simon and Rabbi Pappa. Rashi explains that karya refers to digging a cistern for drinking water, and patya means a clay utensil used for drinking water or for cooking. Others explain that this term describes the digging of an aqueduct (Rav Shershah Gaon), or even the paving of a town square (Rif; Ri Migash).

And you have transgressed the words of the Prophets, as it is written: “Though they have hired lovers [yitnu] among the nations, now I will gather them, and they will begin to be diminished by reason of the burden of kings and princes” (Hosea 8:10). With regard to this verse, Ulla says: Part of this verse is stated in the Aramaic language; the word yitnu should be understood here in its Aramaic sense: ‘To learn. And the verse should be interpreted as follows: If all of Israel learns Torah, I will gather them already now; and if only a few of them learn Torah, they will be excused from the burden imposed by kings and princes. This indicates that those who study Torah should not be subject to paying taxes.

And furthermore, you have transgressed the words of the Writings, as it is written: “It shall not be lawful to impose tribute, impost or toll upon them” (Ezra 7:24), i.e., upon the priests and Levites who serve in the Temple. This halakha would apply to Torah scholars as well. And Rav Yehuda says: “Tribute”; this is referring to the king’s portion, a tax given to the king. “Impost”; this is referring to the head tax. “Toll”; this is referring to a tax [aronona] paid with property that was imposed from time to time.

It is related that Rav Pappa once imposed a tax for the digging of a new cistern on orphans. Rav Sheisha, son of Rav Iddi, said to Rav Pappa: Perhaps they will dig, but in the end they will not draw any water from there, and it will turn out that the money will have been spent for nothing. The rest of the townspeople can relinquish their rights to their money, but orphans who are minors cannot do so. Rav Pappa said to him: I shall collect money from the orphans; if they draw water, they will draw water, and if not, I will return the money to the orphans.

Rav Yehuda says: All of the city’s residents must contribute to the building and upkeep of the city gates [le’aglei gappa], and for this purpose money is collected even from orphans. But the Sages do not require protection and are therefore exempt from this payment. All of the city’s residents must contribute to the digging of cisterns [lekarya patya], and for this purpose money is collected even from the Sages, since they too need water. The Gemara comments: And we said this only when the people are not required to go out en masse [be’akhluza]; and do the actual digging, but are obligated merely to contribute money for that purpose. But if the people are required to go out en masse and actually dig, the Sages are not expected to go out with them en masse, but rather they are exempt from such labor.

**Language**

Tax (aronona) — Aronah: From the Latin aronna, which was a forced labor tax imposed by governments for public works or the army. Work animals were also seized, temporarily or permanently, for this purpose. A sizable portion of this tax was collected when troops passed from place to place, and the local residents had to provide them with food and assist them with their animals.

The city gates (aglei gappa) — Gate. Aglei is related to the word gall, which is derived from the Aramaic root gimmel, lamed, and means gate. Gappa, or gafa, means wall; another version reads agla, meaning enclosure.

The digging of wells (karya patya) — Karya patya. Some understand that the term patya derives from the Assyrian patu, meaning a water channel. Consequently, this refers to the digging of a water channel to the city.

En masse (akhluza) — Aklha. Some commentaries read this as okhlo, which comes from the Greek okhlos, meaning the masses.

**Halakha**

A tax for the digging of a new cistern on orphans — arnona. Money may be collected from orphans for the digging of cisterns or the channeling of rivers for the good of the town. If water is not discovered, their money is refunded (Rambam Sefer Kinyan, Hilkhut Shekheninim 6:6; Shulhan Arukh, Hoshen Mishpat 163:4 and Yoreh De’ah 243:2).

All contribute to the digging of cisterns — arnona. Everyone, including Torah scholars and orphans, is required to contribute funds for repairing roads or water sources. But if the work is to be carried out by the residents themselves, Torah scholars are not obligated to participate in the efforts and are not required to pay others to do the work on their behalf (Rambam Sefer Kinyan, Hilkhut Shekheninim 6:6; Shulhan Arukh, Hoshen Mishpat 163:4 and Yoreh De’ah 243:2).
It is related that Rabbi Yehuda HaNasi once opened his storehouses to distribute food during years of drought. He said: Masters of Bible, masters of Mishna, masters of Talmud, masters of halakha, masters of aggada may enter and receive food from me, but ignoramuses should not enter. Rabbi Yoḥanan ben Amram, whom Rabbi Yehuda HaNasi did not know, pushed his way in, and entered, and said to him: Rabbi Yehuda HaNasi, sustain me. Rabbi Yehuda HaNasi said to him: My son, have you read the Bible? Rabbi Yoḥanan ben Amram said to him, out of modesty: No. Rabbi Yehuda HaNasi continued: Have you studied Mishna? Once again, Rabbi Yoḥanan ben Amram said to him: No. Rabbi Yehuda HaNasi then asked him: So, by what merit should I sustain you? Rabbi Yoḥanan ben Amram said to him: Sustain me like a dog and like a raven, who are given food even though they have not learned anything. Rabbi Yehuda HaNasi was moved by his words and fed him.

After Rabbi Yoḥanan left, Rabbi Yehuda HaNasi sat, and was distressed, and said: Woe is me, that I have given my bread to an ignoramus. His son, Rabbi Shimon bar Rabbi Yehuda HaNasi, said to him: Perhaps he was your disciple Yoḥanan ben Amram, who never in his life wanted to materially benefit from the honor shown to the Torah? They investigated the matter and found that such was the case. Rabbi Yehuda HaNasi then said: Let everyone enter, as there may also be others who hide the fact that they are true Torah scholars.

Commenting on Rabbi Yehuda HaNasi’s opinion, the Gemara notes that Rabbi Yehuda HaNasi conformed to his standard line of reasoning, as Rabbi Yehuda HaNasi says: Suffering comes to the world only due to ignoramuses. This is like the incident of the crown tax [kelila] that was imposed on the residents of the city of Tiberias. The heads of the city came before Rabbi Yehuda HaNasi and said to him: The Sages should contribute along with us. Rabbi Yehuda HaNasi said to them: No, the Sages are exempt. They said to him: Then we will run away and the entire burden will fall on the Torah scholars. Rabbi Yehuda HaNasi said to them: Run away as you please. Half of the city’s residents ran away. The authorities then waived half the sum that they had initially imposed on the city.

The half of the population that remained in the city then came before Rabbi Yehuda HaNasi, and said to him: The Sages should contribute along with us. Rabbi Yehuda HaNasi said to them: No, the Sages are exempt. They said to him: Then we too will run away. Rabbi Yehuda HaNasi said to them: Run away as you please. They all ran away, so that only one launderer was left in the city. The authorities imposed the entire tax on the launderer. The launderer then ran away as well. The crown tax was then canceled in its entirety. Rabbi Yehuda HaNasi said: You see from this that suffering comes to the world only due to ignoramuses, for as soon as they all fled from the city, the crown tax was completely canceled.

**PERSONALITIES**

Rabbi Yehuda HaNasi – ידוּ השבִּיל הָאָרֶץ. The period of tanna/m concluded with Rabbi Yehuda HaNasi’s redaction of the Mishna. The son of Rabbi Shimon ben Gamliel ii, Rabbi Yehuda HaNasi lived from 153 to 220 C.E. When he was thirty years old, he was appointed Nasi, or prince, but due to his great scholarship the Talmud refers to him simply as Rabbi. Rabbi Yehuda HaNasi spoke Greek, which was the language of the elite in Eretz Yisrael, and he was friendly with the Roman emperor, Antoninus. Rabbi Yehuda HaNasi’s knowledge of Hebrew was legendary, to the extent that the Sages learned the meaning of difficult words from servants who worked in his house. According to the Gemara (Gitin 59a) Rabbi Yehuda HaNasi combined the qualities of Torah scholarship and prominent leadership more than any other individual since the time of Moses. Rabbi Yehuda HaNasi’s lifework was the collection of oral traditions and opinions that he wove into the Mishna, which serves as the basis for the Talmud that is studied to this day. Rabbi Yehuda HaNasi’s students were the Sages of the first generation of amoraim, including Rabbi Yoḥanan, Rabbi Hyya, bar Kappara, and Rav.**

Rabbi Yoḥanan ben Amram – ישוע בן יוחנן. Rabbi Yoḥanan ben Amram belonged to the last generation of amoraim. This episode describes his great modesty and refusal to derive any benefit from the honor of the Torah. A different source indicates that he was a student of Rabbi Yehuda HaNasi and was close to Rabbi Hyya. The Talmud cites only one halakha in the name of Rabbi Yoḥanan ben Amram.
A donkey caravan or a camel caravan – ḥamër ve-gamél. The halakha of an idolatrous city is described in Deuteronomy 13:13–19. If all the inhabitants of a city worship idolatry, they are put to death by the sword and their property is destroyed. The Gemara here considers people not included among the city’s inhabitants, but who participated in the idol worship. If they are considered inhabitants of the city, they suffer the same fate as the other people of the city, but if not, they are treated as individuals who worshipped idolatry. The latter are liable to the more severe punishment of stoning, but their property is not destroyed. With regard to this matter, the Torah emphasizes “the residents of that city,” which teaches that residency is the critical factor.

The Gemara asks: And do we require that one live in a city for twelve months for all matters? But isn’t it taught in a baraita: If one lives in a city for thirty days, he must contribute to the charity platter from which food is distributed to the poor. If he lives there for three months, he must contribute to the charity box. If he lives there for six months, he must contribute to the clothing fund. If he lives there for nine months, he must contribute to the burial fund. If he lives there for twelve months, he must contribute to the columns of the city. The mishna teaches: And how long must one live in the city to be considered like one of the people of the city? Twelve months. And we raise a contradiction from what is taught in a baraita. In the case of a donkey caravan or a camel caravan that was journeying from place to place, and it lodged inside an idolatrous city, and its members were led astray along with the other residents of the city, and they too engaged in idol worship; they, the members of the caravan, are liable to death by stoning like ordinary individual idolaters, and their property escapes destruction, i.e., they are not treated like the residents of an idolatrous city, who are liable to death by the sword and whose property is destroyed.

The baraita continues: And if the caravan members had remained in that city for thirty days, they are liable to death by the sword and their property is destroyed, just as it is for the rest of the residents of the city. This seems to indicate that once an individual has lived in a city for thirty days, he is already considered one of its residents.

Rava said: This is not difficult. This period, i.e., twelve months, is required in order to be considered one of the members of the city; and that period, i.e., thirty days, suffices in order to be considered one of the residents of the city. As it is taught in a baraita: One who is prohibited by a vow from deriving benefit from the people of a particular city is prohibited from deriving benefit from anyone who has stayed there for twelve months, but it is permitted for him to derive benefit from anyone who has stayed there for less time than that. By contrast, if he prohibited himself by way of a vow from deriving benefit from the residents of a particular city, he is prohibited from deriving benefit from anyone who has stayed there for thirty days, but it is permitted for him to derive benefit from anyone who has stayed there for less time than that.

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And Rabbi Asi says that Rabbi Yoḥanan says: All are required to contribute to the columns of the city, and money is collected for that purpose even from orphans. But the Sages are not required to contribute, since the Sages do not need protection. Rav Pappa said: Money is collected even from orphans for the city wall, for the city horseman, and for the guard (akelat zina) of the city armory, but the Sages do not require protection. The principle of the matter is: Money is collected even from orphans for anything from which they derive benefit.

It is reported that Rabba imposed a contribution to a certain charity on the orphans of the house of bar Maryon. Abaye said to him: But didn’t Rav Shmuel bar Yehuda teach: One does not impose a charity obligation on orphans even for the sake of redeeming captives, since they are minors and are not obligated in the mitzva? Rabba said to him: I did this to elevate them in standing, i.e., so that people should honor them as generous benefactors; not in order that the poor should benefit.

Incidental to this story, the Gemara relates that Ifera Hurmiz, the mother of King Shapur, king of Persia, sent a purse (arnakot) full of dinars to Rav Yosef. She said to him: Let the money be used for a great mitzva. Rav Yosef sat and considered the question: What did Ifera Hurmiz mean when she attached a condition to the gift, saying that it should be used for a great mitzva? Abaye said to him: From what Rav Shmuel bar Yehuda taught, that one does not impose a charity obligation on orphans even for the sake of redeeming captives, learn from this...

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**NOTE:**
Precious in the sight of the Lord is the death of His pious ones (Psalm 116:15). And captivity is worse than all of them, as it includes all of them, i.e., famine, the sword, and death.

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**PERSONALITIES**
Ifera Hurmiz is mentioned several times in the Talmud as an admirer of Judaism and the Sages of Israel.

**HALKAKHA**
One does not impose a charity obligation on orphans – with the words of the Sages, as Rabbi Shmuel bar Yehuda taught. The court does not impose the obligation of charity on minor orphans even for the important mitzva of redeeming captives and even if the orphans are wealthy. But if the orphans do not have a good reputation and the judge wishes to improve their image, he may impose the obligation of charity upon them. This only applies if their steward does not object (Rambam Shefet Zan’in, Hilkhot Mattenot Aniyim 7:12; Shulhan Arukh, Yoreh De’a 248:3).

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**HALAKHA**
Redeeming captives is a great mitzva – with the words of the Sages. Redeeming captives is a great mitzva, which takes precedence over sustaining the poor and providing them with clothing. Therefore, if the community has collected money for any particular cause, they may use that money to redeem captives (Rambam Shefet Zan’in, Hilkhot Mattenot Aniyim 8:10; Shulhan Arukh, Yoreh De’a 253:3).

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**LANGUAGE**
Guard (zina) – אֲמַרְרָה. This has been explained as a contraction of neter zina, meaning he who guards the weapons of a city.

Purse (arnakot) – אֵלּוּ תַלְמִידֵי חֲכָמִים. From the Greek ἄρνακας, arnakis, which is a box or wallet for coins.

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**Fiqh Sebhes Meshi**
Money is collected from orphans for the digging of cisterns or the redemption of captives. If your wish, say: Let the money be used for a great mitzva. Rav Yosef sat and considered the question: What did Ifera Hurmiz mean when she attached a condition to the gift, saying that it should be used for a great mitzva? Abaye said to him: From what Rav Shmuel bar Yehuda taught, that one does not impose a charity obligation on orphans even for the sake of redeeming captives, learn from this...

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**Fiqh Sebehot**
Re redeeming captives is a great mitzva, which takes precedence over sustaining the poor and providing them with clothing. Therefore, if the community has collected money for any particular cause, they may use that money to redeem captives (Rambam Shefet Zan’in, Hilkhot Mattenot Aniyim 8:10; Shulhan Arukh, Yoreh De’a 253:3).

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**Fiqh Sebehot**
Precious in the sight of the Lord is the death of His pious ones (Psalm 116:15). And captivity is worse than all of them, as it includes all of them, i.e., famine, the sword, and death.

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**Fiqh Sebehon**
The sword is worse than death. If you wish, say that this is learned from a verse: if you wish, say instead that it is derived by way of logical reasoning. If you wish, say that this is derived by way of logical reasoning: This punishment, i.e., death by sword, mutilates the body, but that punishment, i.e., natural death, does not mutilate it. And if you wish, say that the fact that the sword is worse than death is learned from a verse: ‘Precious in the sight of the Lord is the death of His pious ones’ (Psalm 116:15).
Charity fund – הַחֶסֶן. Money for the charity fund is collected by two people and distributed by three people. Food for the charity platter is collected by three people and distributed by three people (Rambam Sefer Zera’im, Hilkhot Mattenot Aniyyim 4:9; Shulhan Arukh, Yeoreh De’ah 256:3).

Charity platter – הַחֶשְׁמֵךְ. Food for the charity platter is collected every day and distributed every day, while money for the charity fund is collected only once a week, on Shabbat eve. Food is distributed to all people, but money from the charity fund is given only to the poor of that city. It is permitted for the residents of a city to change the purpose toward which the charity will be used to whatever they want, in accordance with the needs of the community.

This is so even if no condition had been stipulated from the outset to allow the change (Rambam, Sefer Kinyan 14:9–10; Sefer Zera’im 9:6–7; Shulhan Arukh, Hilkhot Mattenot Aniyyim 9:6–7; Shulhan Arukh, Hoshen Mishpat 231:27–28, and in the comment of Rema).

Food for the charity platter is collected by three people and distributed by three people because its collection and its distribution take place on the same day. Food for the charity platter is collected and distributed every day, and therefore a third individual must participate in the collection so that he will be available to take part in the distribution without delay; whereas the money of the charity fund is distributed only once a week, on each Shabbat eve.

There are additional differences between these two types of charity operations: The food from the charity platter is distributed to the poor of the world, meaning, to any poor individual arriving in the city; the money of the charity fund is allocated exclusively to the poor of the city. But it is permitted for the residents of the city to use money that has been collected for the charity fund to purchase food for the charity platter to feed the poor; and similarly they may use food that had been collected for the charity platter for the charity fund. In general, it is permitted for them to change the purpose toward which charity will be used to whatever they want, in accordance with the needs of the community.

Similarly, it is permitted for the residents of the city to set the measures used in that city, the prices set for products sold there, and the wages paid to its workers, and to fine people for violating their specifications, in order to enforce observance of these halakhot. This marks the end of the baraita, the details of which the Gemara proceeds to analyze.

The Master said in the baraita: One does not appoint an authority over the community composed of fewer than two people. The Gemara asks: From where are these matters derived? Rav Nahman says that this is derived from a verse referring to those engaged in building the Tabernacle and weaving the priestly vestments, who received the community’s donations. The verse states: “And they shall take the gold, and the sky-blue wool, and the purple wool” (Exodus 28:3). The plural “they” indicates that the collection must be performed by two people.

And it is distributed by three people like in cases of monetary law – הַחֶשֶׁם. Three people are required for the distribution of charity because the distributors must examine each case and determine how much money the recipient is entitled to receive (Rashi). But three people are not required for the collection of charity because the amount that each person must give is fixed (Rabbeinu Gershom; Rabbeinu Hananel; Tosafot).

Its collection and its distribution on the same day – הַחֶשֶׁם. Rashi explains that both the collection and the distribution are performed on the same day, as is stated later in the baraita, as once food is collected it cannot be kept until Friday. And since the food is distributed every day, it is difficult to find a third person to participate in that distribution of the food platter. Some commentaries understand that there was no fixed amount collected for the charity platter, just as there was no fixed amount distributed from it, and therefore three people were required for the collection to determine how much each person should contribute (Rabbeinu Gershom; Rif).

$ In connection with the previous discussion concerning charity distribution, the Gemara cites a baraita in which the Sages taught: Money for the charity fund is collected by two people and distributed by three people. It is collected by two people because one does not appoint an authority over the community composed of fewer than two people. And it is distributed by three people, like the number of judges needed in cases of monetary law, since the distributors determine who receives money and who does not, as well as how much each person receives.

To change to whatever they want – הַחֶשֶׁם הַפְּרָשִׁים. The early commentaries disagree about this point. Some explain that the charity collectors can change as they please the purpose toward which the charity will be used, as long as it remains as charity for the poor. They have the discretion to use the funds for any pressing needs of the poor (Rabbeinu Hananel; Rif; Migash; Ramah). The Ramban and Rabbeinu Yona maintain that money collected for the charity fund can serve as emergency funds for the community for any communal need, as long as that money is replaced. Tosafot seem to say that the money does not even need to be replaced.

To fine (הִשָּׁאָה) people for violating their specifications – הַחֶשֶׁם. While everyone agrees that the residents of a city can force its members to abide by the principles that they created using any means at their disposal, there is a dispute with regard to the meaning of this phrase. Rashi says it means that somebody can be fined for violating what has been fixed and established. The Arukh writes that hishassah means that principles can be altered occasionally. The Rif Migash and Ramah explain that the term is connected to assistance, meaning that they can support their enactments by force.
The Gemara asks: What authority is associated with collecting charity? The Gemara answers: As Rabbi Nahman says that Rabba bar Avuh says: Because they can seize collateral for the charity; i.e., they can collect charity by force, and even on Shabbat eve, when people are busy and might claim that they have no time or money. The Gemara objects: Is that so? But isn’t it written: “I will punish all that oppress them” (Jeremiah 30:20), and Rabbi Yitzĥak bar Shmuel bar Marta says in the name of Rav: And punishment will be meted out even to charity collectors? If charity collectors are permitted to force people to contribute charity, why are they counted among Israel’s oppressors?

The Gemara answers: This is not difficult. This, Rabbi Nahman’s statement, applies when the contributor is rich, in which case the collectors may seize money from him even by force. That, Rabbi Yitzĥak’s statement, applies when he is not rich, in which case the collectors who take money from him by force are termed oppressors of Israel. This right to force contributions from the rich is what occurred in the incident in which Rava compelled Rav Natan bar Ami and took four hundred dinars from him for charity.

Having raised the issue of charity collection, the Gemara cites various rabbinic expositions with regard to the matter. The verse states: “And they who are wise shall shine like the brightness of the firmament; and they who turn many to righteousness like the stars for ever and ever” (Daniel 12:3). “And they who are wise shall shine like the brightness of the firmament”; this is a judge who judges an absolutely true judgment, as his wisdom and understanding lead him to a correct judgment. “And they who turn many to righteousness” like the stars for ever and ever; these are the charity collectors, who facilitate the giving of charity.

It was taught in a *bara‘ita*: “And they who are wise shall shine like the brightness of the firmament”; this is a judge who judges an absolutely true judgment and also charity collectors. “And they who turn many to righteousness like the stars for ever and ever”; these are schoolteachers. The Gemara asks: Like whom? Certainly not every schoolteacher is worthy of such accolades. Rav said: For example, Rav Shmuel bar Sheilat. As it is told that Rav once found Rav Shmuel bar Sheilat standing in a garden. Rav said to him: Have you abandoned your trust and neglected your students? Rav Shmuel bar Sheilat said to him: It has been thirteen years now that I have not seen my garden, and even now my thoughts are on the children.

**Personalities**

Rav Shmuel bar Sheilat – Rava Shmuel bar Sheilat was an *amora* of the second generation in Babylonia. He was a teacher of children who was greatly respected by Rav for his teaching methods. Rav also advised him on how to handle children. Rav Shmuel bar Sheilat was apparently wealthy despite the fact that he involved himself only in education and not in business. It seems that he was also a preacher in the city of Sura, and it is possible that he eulogized Rav after his death. The few statements cited in his name indicate that he was a leading disciple of Rav even though he also quotes statements of Rav’s students. Rav Shmuel bar Sheilat’s son, Rav Yehuda, was an important Sage of the next generation.
They exchange (poretin) – פורטיין: This term is used in mishnaic Hebrew in opposite senses: Both for exchanging large coins for smaller ones, and for exchanging small coins for larger ones.

The Gemara resumes its discussion of the halakhot of charity collection: The Sages taught in a baraita: Charity collectors may not separate from each other, each one collecting in a different place; but in a place where the two can see each other, one collector may separate from the other, e.g., this one going to the gate of a house and that one going to a store. If a charity collector found coins in the market, he may not put them into his own pocket, but rather he must put them into the charity purse, and then later when he comes home, he may take them from there. This is necessary so that people should not suspect him of taking charity money for himself. Similarly, if the charity collector was owed one hundred dinars by another, and the latter repaid his debt in the market, the collector may not put the money he received into his own pocket, but rather he must put it into the charity purse, and then later when he comes home, he may take it.

Abaye said: At first, my Master, Rabba, would not sit on the mats in the synagogue because they had been purchased with charity funds. Once he heard that which is taught in a baraita, that it is permitted for the residents of a city to change the purpose toward which charity will be used to whatever they want, he did sit on them. Abaye said: At first, my Master, Rabba, would make two purses, one for the poor of the rest of the world, and one for the poor of his city. Once he heard what Shmuel said to Rav Taḥalifa bar Avdimi: Make only one purse, he gets home (Rambam Sefer Zera‘im, Hilkhot Mattenot Aniyim 9:9; Shulhan Arukh, Yoreh De‘a 257:1).

They may change the money with other people –சேதிசெல்வு: When a charity collector has no poor people to whom to give the money, he may exchange the coins for dinars, but only with the coins of another person and not with his own coins. Similarly, people who collect food for the charity platter may not buy leftover food for themselves, but must sell it to others (Rambam Sefer Zera‘im, Hilkhot Mattenot Aniyim 9:11; Shulhan Arukh, Yoreh De‘a 257:2).

Are not counted two by two – இரண்டுடன் இரண்டு சேதிசெல்வு: Charity collectors should not count the coins two by two, but rather one by one, to avoid suspicion (Rambam Sefer Zera‘im, Hilkhot Mattenot Aniyim 9:10; Shulhan Arukh, Yoreh De‘a 257:1).

Notes: Charity collectors may not separate from each other – இரண்டு சுழற்பெற்றவர்கள்: Charity collectors may not separate from each other while they are collecting funds unless they can still see each other. Consequently, one person may go to the gate of a courtyard while the other goes to an adjacent store. Pithi Teshuva, citing Beit Yorok, states that they may separate if the amount they are collecting is small (Rambam Sefer Zera‘im, Hilkhot Mattenot Aniyim 9:8; Shulhan Arukh, Yoreh De‘a 257:1).

If he found coins in the market – செல்வுவில் கிட்டப்பட்டவை: If a charity collector finds coins in the market or if somebody repays a debt to the charity collector in the market, the charity collector must not put the money into his own pocket, so that he not place himself under suspicion. Instead, he must put the money into his charity purse and take back the sum in question only after he gets home (Rambam Sefer Zera‘im, Hilkhot Mattenot Aniyim 9:9; Shulhan Arukh, Yoreh De‘a 257:1).

In light of the praises heaped upon judges, tax collectors, and schoolteachers, the Gemara asks: And what was said about the Sages? Ravina said that about them it is stated: “But let them that love Him be as the sun when it comes out in its might” (Judges 5:31).
The Gemara relates: There were these two butchers who made an agreement with each other that whichever one of them worked on the day assigned to the other according to their mutually agreed-upon schedule would tear up the hide of the animal that he slaughtered that day. One of them went and worked on the other’s day, and the other butcher tore up the hide of the animal that he slaughtered. They came before Rava for judgment, and Rava obligated him to pay the butcher who slaughtered that animal.

Rav Yerim bar Shelamya raised an objection to Rava: Isn’t it stated among actions that the residents of a city may take: And to fine people for violating their specifications, i.e., those ordinances that the residents passed? Rava did not respond to him. Rav Pappa said: He did well that he did not respond to him, as this matter applies only where there is no important person in the city, in which case it is permitted for the residents of the city to draw up ordinances on their own. But where there is an important person, it is not in the residents’ power to make stipulations, i.e., regulations; rather, they are required to obtain the approval of the city’s leading authority to give force to their regulations.

The Sages taught: One does not calculate sums with charity collectors concerning the money they collected for charity, to verify how much they received and how much they distributed, nor does one calculate sums with the Temple treasurers concerning the property consecrated to the Temple. And even though there is no explicit proof of the matter from the Bible, there is nevertheless an allusion to the matter, as it is stated: “And they did not reckon with the men into whose hand they delivered the money to pay out to the workmen; for they dealt in good faith” (II Kings 12:16).

Rabbi Elazar says: Even though a person has a trusted treasurer in his house like the aforementioned Temple treasurers, who were fully trusted, he should nevertheless tie up his money and count it, as it is stated: “And the king’s scribe and the High Priest came up, and they tied it in bags and counted the money... And they gave the money that was counted into the hands of them that did the work, that had the oversight of the House of the Lord” (II Kings 12:11–12).

Where there is no important person – אֵין מְחַשְּׁבִין בִּצְדָ אֲשֶׁר יִתְּנוּ אֶת הַכֶּסֶף... One does not calculate sums with charity collectors – רַב אַשִּׁי אֲמַר: One does not calculate sums with the charity collectors or with the Temple treasurers. The Rema, citing the Tur, writes that it is nevertheless appropriate for the charity collectors to provide the community with a financial report. This applies to responsible charity collectors, but if they are irresponsible, even if they were appointed by the community (Shakh), or if they were appointed through violence and are suspected of having made inappropriate use of the funds, the community leaders are obligated to calculate sums with them (Rambam Sefer Zera’im; Hilkhot Mattenot Aniyim 9:11; Shulhan Arukh, Yoreh De’ah 257:2).

Notes:

These two butchers who made an agreement, etc. – מְחַשְּׁבִין בִּצְדָ אֲשֶׁר יִתְּנוּ אֶת הַכֶּסֶף... Some commentaries maintain that this teaches that although one does not calculate sums with charity collectors or the Temple treasurers concerning the money that they distribute, one does keep track of the amounts that they receive.
Charity collectors examine for food – Halakhah

If a poor person declares that he is hungry, he is given food without any examination. But if he asks for clothing, he must first be investigated to make sure he is in fact in need. If he is familiar to the community, he is immediately provided with clothing in accordance with his status. This is in accordance with the opinion of Rav Yehuda (Rambam Shulḥan Arukh, Yoreh De’ah 251:10).

One does not give a poor person… less – Arukh Yoreh De’ah 250:4). A poor person traveling from place to place begging for charity is given at least a loaf of bread worth a pundeyon when a sela buys four sela of grain. If he stays overnight he is given a bed and a pillow. If he spends Shabbat in the town, he is given food for three meals, including lentils, fish, and vegetables. This is the way an unknown poor person is treated, but if the community is familiar with him he is given provisions in accordance with his status (Rambam Sefer Zera‘im, Hilkhot Mattenot Aniyyim 7:8; Shulḥan Arukh, Yoreh De’ah 250:4).

One is not required to attend to him and give him a large gift – Rambam notes that this refers to a loaf that weights a quarter-kav, which suffices for two meals.

A pillow (bei sadya) – Rashi maintains that this refers to a pillow that weighs a quarter-kav, which suffices for two meals.

A pillow (bei sadya) – Rashi explains that bei sadya signifies pillow, whereas Rabbeinu Ĥananel teaches that the term includes all bedding.

NOTES

It is written with a shin – In the standard versions of the Bible the verse is not written in this way. The Ramah apparently omits this sentence from the Gemara. This is cited as one of the instances where the talmudic Sages had a version that differs slightly from the Masoretic text.

Than a loaf worth a pundeyon – Rashi notes that this should be read with a tav meaning “pillow.”

If you wish, say: – Rashi notes that Rav Sama taught: If a person comes before Rav Pappa, the local charity collectors in tattered clothes, he is given clothing without any questions being asked. If you wish, say that this distinction is derived from a verse; if you wish, say instead that it is derived via logical reasoning.

If you wish, say that this distinction is derived via logical reasoning: – This one who is hungry suffers, whereas that one who is in tattered clothing does not suffer in the same way. And if you wish, say instead that this distinction is derived from a verse. Here, it is written: “Is it not to share [paros] your bread with the hungry?” meaning, share it immediately, just as the word is read. Since the word is read with a samekh, Rav Yehuda does not understand it as alluding to examining the recipient. And there, it is written: “When you see the naked, that you cover him,” indicating that “when you see him” you should immediately cover him.

And Rav Yehuda says just the opposite: Charity collectors examine the level of poverty of one who asks for clothing, but they do not examine the level of poverty of one who asks for food. He too addsuces supports for his opinion. If you wish, say that this distinction is derived via logical reasoning; if you wish, say instead that it is derived from a verse.

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We learned in a mishna there (Pe’a 8:7): One does not give a poor person who is traveling from place to place requesting charity less than a loaf worth a pundeyon, one forty-eight of a sela, when the standard price of grain is four sela for a sela. If the poor person sleeps in that place, one gives him provisions for lodging. The Gemara asks: What is meant by provisions for lodging? Rav Pappa said: A bed and a pillow [bei sadya]. And if he spends Shabbat in that place, one gives him food for three meals. A Sage taught in a baraita: If a poor person was going door to door asking for charity, one is not required to attend to him and give him money from the charity fund.

It is related that a certain poor person who was going door to door requesting charity came before Rav Pappa, the local charity collector, but Rav Pappa did not attend to him. Rav Sama, son of Rav Yeiva, said to Rav Pappa: If the Master does not attend to him, nobody else will attend to him either; should he be left to die of hunger? Rav Pappa said to him: But isn’t it taught in a baraita: If a poor person was going door to door asking for charity, one is not required to attend to him? Rav Sama said to him: That baraita means to say that one is not required to attend to him and give him a large gift, since he is already collecting money as he goes door to door, but one does attend to him and give him a small gift.
Rav Asi says: A person should never prevent himself from giving at least one-third of a shekel a year in charity as it is stated: “And we also established mitzvot upon ourselves, to charge ourselves yearly with the third part of a shekel for the service of the House of our God” (Nehemiah 10:33). And Rav Asi says: Charity is equivalent to all the other mitzvot combined, as it is stated in that verse: “We also established mitzvot upon ourselves.” A mitzva is not written here, but rather mitzvot, in the plural, thereby teaching that this mitzva is equivalent to all the other mitzvot.

The Gemara offers a mnemonic device for the following statements extolling the mitzva of charity: Greater, Temple; Moses. Rabbi Elazar says: One who causes others to perform [me’aseh] a meritorious act is greater than one who performs that act himself, as it is stated: “And the causing [me’aseh] of righteousness shall be peace, and the work of righteousness, quietness, and assurance forever” (Isaiah 32:17). If one merits, the following verse is applied to him: “Is it not to share your bread with the hungry?” (Isaiah 58:7), i.e., he will wholeheartedly give charity to the poor. If he does not merit, the latter clause of that verse is applied to him: “You shall bring the poor that are cast out to your house,” i.e., he will be compelled by the government to billet soldiers in his house and sustain them against his will.

Rava said: I beg of you, strive with each other to perform acts of charity and righteousness, so that you will live in peace with the government, since if you do not act charitably toward each other, you will end up paying fines to the government. And Rabbi Elazar says: When the Temple is standing, a person contributes his shekel for the Temple service and achieves atonement for his sins. Now that the Temple no longer stands, if people act charitably, it will be well for them, but if not, the nations of the world will come and take their money by force. The Gemara comments: And even so, the money taken from them by force is credited to them as if they had freely given charity, as it is stated: “And I will make your oppressors charity” (Isaiah 60:17).

Rava said: This following matter was told to me by the infant

From giving one-third of a shekel a year – In the ShelHot of Rav Ahai Gaon, it is written that this is the minimum amount a person can give to fulfill the mitzva of charity. Even one who is sustained by charity must give this amount to fulfill this positive mitzva.

And we also established mitzvot upon ourselves – Even though this text refers to donations to the Temple, giving charity is a greater mitzva; therefore, the matter can be derived through a fornication inference (Tosafot).

One who causes others to perform is greater – The Sages explain that such a person brings benefit to both the donor and the recipient. Furthermore, collecting charity from others often brings insult and embarrassment upon the collector, which can be more painful than the actual giving of money.

And the causing of righteousness – The Rambam explains that when money is given to the government faithfully, it leads the authorities to sympathize with the poor and not to collect taxes from them. Alternatively, because a person suffers at the hands of the government due to the fact that he is a Jew, the act of giving is meritorious for him (Meiri).

The poor that are cast out – The Targum Onkelos comments: This is a reference to the obligation incumbent upon every Jewish male who is at least twenty years old to donate one-half of a biblical shekel to the Temple each year (Exodus 30:11–16). The money was used primarily for the purchase of communal sacrifices and was also used for maintenance of the Temple. This obligation is in force only when the Temple is standing. The details of this mitzva are enumerated in tractate Shelkel.

From giving one-third of a shekel a year – Every person must give charity in accordance with his financial capability and the needs of the poor. This applies even to the poor themselves, who survive on charity. One may give up to 20 percent of his assets. Even when there are none in great need of support, he must give at least one-third of a shekel a year in order to fulfill the mitzva of charity (Rambam Sefer Zeraim, Hilkhot Mattenot Aniyyim 7:6, and see Radbaz there; Shulhan Arukh, Yoreh De’ah 249:1–2).

One who causes others to perform is greater – The Ritva writes that one who causes others to give charity receives a greater reward than the person who actually gives the charity. The Tur states that both receive the same reward (Rambam Sefer Zeraim, Hilkhot Mattenot Aniyyim 10:6; Shulhan Arukh, Yoreh De’ah 249:5, and see Tzuz there).

BACKGROUND

Contributes his shekel – The ShelHot of Rav Ahai Gaon. This is a reference to the obligation incumbent upon every Jewish male who is at least twenty years old to donate one-half of a biblical shekel to the Temple each year (Exodus 30:11–16). The money was used primarily for the purchase of communal sacrifices and was also used for maintenance of the Temple. This obligation is in force only when the Temple is standing. The details of this mitzva are enumerated in tractate Shelkel.

NOTES
The Gemara comments: Why was this Sage called the infant who perverted the ways of his mother? It was because of the following incident: Rav Ahadvoi bar Ami asked Rav Sheshet: From where is it derived that a leper renders a person impure through contact during his days of counting? (Isaiah 64:5). Just as with regard to this garment, each and every thread in it combines to form one large garment, so too with regard to charity, each and every peruta combines to form a great sum.

Rav Ahadvoi said to him: Perhaps connected impurity is different, meaning perhaps he renders his garments impure because they are connected to the source of the impurity, but this does not mean that he renders impure a person whom he touches. A proof for this distinction may be brought from the fact that if one moves an animal carcass, an action that renders him impure even if there was no actual contact with the carcass, he renders the garments that he is wearing impure but does not render another person impure.
The Gemara explains:

Rav Sheshet said to him: But from where do we derive that the carcass of a creeping animal renders a person impure? Is it not because we know that it renders his garments impure? Rav Aĥadvoi said to him: It is written explicitly with regard to the carcass of a creeping animal: “Or a man who touches any creeping animal, whereby he may be made unclean” (Leviticus 22:5). Rav Sheshet said to him: But from where do we derive that semen renders a person impure? Is it not because we say that since it renders his garments impure (see Leviticus 15:17) it also renders a person impure? Rav Aĥadvoi said to him: It is also written explicitly with regard to semen: “Or a man from whom semen is expelled” (Leviticus 22:4), and the Sages expound the superfluous word “or” as serving to include as impure one who touches semen.

The Gemara relates that with each of his answers Rav Aĥadvoi responded to Rav Sheshet in a mocking tone, intimating that he doubted Rav Sheshet’s grasp of Torah verses. Rav Sheshet was deeply offended, and as punishment, Rav Aĥadvoi bar Ami became mute and forgot his learning. Rav Sheshet’s mother came and wept before Rav Sheshet. She cried and cried but he ignored her. As she had once been Rav Sheshet’s nursemaid, she said to him: Look at these breasts of mine from which you suckled. Upon hearing that, Rav Sheshet prayed for mercy for Rav Aĥadvoi, and he was healed. And since it was Rav Aĥadvoi whose behavior led to his mother’s acting in this manner, he was referred to as the infant who perverted his mother’s ways.

The Gemara comments: With regard to that which we arrived at, i.e., this particular subject, let us clarify the matter: From where do we derive that a leper renders impure a person with whom he comes into contact during his days of counting? As it is taught in a baraita: Rabbi Shimon bar Yoĥai says: Washing garments is stated with respect to his days of counting, and washing garments is stated with respect to his days of confirmed leprosy, after he has been declared conclusively impure by a priest. Just as there, when he is a confirmed leper he renders a person impure, as is explicitly stated in the Torah, so too here, during his days of counting he renders a person impure.

The Gemara resumes its discussion of the virtues of giving charity. Rabbi Elazar said: One who performs acts of charity in secret is greater than Moses, our teacher. Whereas with regard to Moses, our teacher, it is written: “For I was afraid of the anger and the wrath” (Deuteronomy 9:19), with regard to one who performs acts of charity it is written: “A gift in secret pacifies anger, and a present in the bosom fierce wrath” (Proverbs 21:14). The Gemara comments: And this statement disagrees with a statement of Rabbi Yitzĥak, as Rabbi Yitzĥak says: A secret gift pacifies anger, but it does not pacify wrath, as it is stated: “And a present in the bosom fierce wrath,” meaning that although a present is in the bosom, i.e., even if one gives charity in secret, nevertheless fierce wrath can still harm him. There are those who say that Rabbi Yitzĥak says as follows: Any judge who accepts a bribe brings fierce wrath upon the world, as it is stated: “And a present in the bosom fierce wrath.”

And Rabbi Yitzĥak says: Anyone who gives a peruta to a poor person receives six blessings, and whoever consoles him1 with words2 of comfort and encouragement receives eleven blessings. The Gemara explains: One who gives a peruta to a poor person receives six blessings, as it is written: “Is it not to share your bread with the hungry, and that you shall bring the poor that are cast out to your house? When you see the naked, that you cover him” (Isaiah 58:7). And the next verses list six blessings: “Then shall your light break forth like the dawn, and your health shall spring forth speedily, and your righteousness shall go before you, the glory of the Lord shall be your rearguard. Then, shall you call, and the Lord shall answer, you shall cry, and He shall say: Here I am” (Isaiah 58:8–9).
And whoever consoles a poor person with words of comfort and encouragement receives eleven blessings, as it is stated: “And if you draw out your soul to the hungry and satisfy the afflicted soul, then shall your light shine in darkness, and your gloom shall be as the noonday. And the Lord shall guide you continually, and satisfy your thirst in drought... And they that shall be of you shall build the old waste places, you shall raise up the foundations of many generations” (Isaiah 58:10–12).

And Rabbi Yitzḥak says: What is the meaning of that which is written: “He who pursues charity and mercy finds life, charity, and honor” (Proverbs 21:21)? Is this to say that because one has pursued charity, he himself shall find charity? That is, shall the reward of one who has always given charity be that he will eventually become poor and other people will act charitably toward him? Rather, the verse serves to tell you that with regard to anyone who pursues charity, giving to the poor and leading others to do so, the Holy One, Blessed be He, furnishes him with money with which to perform his acts of charity.

Rav Nahman bar Yitzḥak says: The Holy One, Blessed be He, sends him people who are deserving of charity, so that he will reap his just reward for helping them. The Gemara comments: What does this statement serve to exclude? It serves to exclude Rabba’s homiletical interpretation of a different verse, as Rabba taught: What is the meaning of that which is written: “Let them be made to stumble before You; deal thus with them in the time of Your anger” (Jeremiah 18:23)? The prophet Jeremiah said before the Holy One, Blessed be He: Master of the Universe, even when those wicked men who pursued me subdue their inclinations and seek to perform acts of charity before You, cause them to stumble upon dishonest people who are not deserving of charity, so that they will not receive reward for coming to their assistance.

Rabbi Yehoshua ben Levi says: Anyone who is accustomed to performing acts of charity merits blessing; he will have sons who are masters of wisdom, masters of wealth, and masters of aggada. The Gemara explains: Masters of wisdom, as it is written:

"He who pursues charity and mercy, finds life” (Proverbs 21:21), and with regard to wisdom it is written: “He who finds Me, finds life” (Proverbs 8:35). Masters of wealth, as it is written: “He who pursues charity and mercy finds charity,” meaning he will be able to give charity. Masters of aggada, as it is written: “He who pursues charity and mercy, finds honor.” And how do we know that this refers to masters of aggada? It is written here “honor,” and it is written there: “The wise shall inherit honor” (Proverbs 3:35).

NOTES

Masters of aggada, as it is written honor – משל אקדת רביע – הבית Masters of aggada lecture in public to the masses who appreciate and enjoy their words; therefore, they are shown more honor than other Torah scholars.
It is taught in a baraita: Rabbi Meir would say: An opponent may bring an argument against you and say to you: If your God loves the poor, for what reason does He not support them Himself? In such a case, say to him: He commands us to act as His agents in sustaining the poor, so that through them we will be credited with the performance of mitzvot and therefore be saved from the judgment of Gehenna. And this is the question that Turnus Rufus asked Rabbi Akiva. If your God loves the poor, for what reason does He not support them Himself? Rabbi Akiva said to him: He commands us to sustain the poor, so that through them and the charity we give them we will be saved from the judgment of Gehenna.

"Turnus Rufus said to Rabbi Akiva: On the contrary, it is this charity which condemns you, the Jewish people, to Gehenna because you give it. I will illustrate this to you with a parable. To what is this matter comparable? It is comparable to a king of flesh and blood who was angry with his slave and put him in prison and ordered that he should not be fed or given to drink. And one person went ahead and fed him and gave him to drink. If the king heard about this, would he not be angry with that person? And you, after all, are called slaves, as it is stated: "For the children of Israel are slaves to Me." (Leviticus 25:55). If God decreed that a certain person should be impoverished, one who gives him charity defies the will of God.

"Rabbi Akiva said to Turnus Rufus: I will illustrate the opposite to you with a different parable. To what is this matter comparable? It is comparable to a king of flesh and blood who was angry with his son and put him in prison and ordered that he should not be fed or given to drink. And one person went ahead and fed him and gave him to drink. If the king heard about this once his anger abated, would he not react by sending that person a gift? And we are called sons, as it is written: "You are sons of the Lord your God." (Deuteronomy 14:1).

Turnus Rufus said to him: You are called sons and you are called slaves. When you fulfill the will of the Omnipresent, you are called sons; when you do not fulfill the will of the Omnipresent, you are called slaves. And since now you do not fulfill the will of the Omnipresent, the parable that I offered is more apt. Rabbi Akiva said to him: The verse states: "Is it not to share your bread with the hungry, and that you shall bring the poor that are cast out to your house?" (Isaiah 58:7). When do we bring the poor that are cast out into our houses? Now, when we have to billet the Roman soldiers in our homes; and about that very time, the verse states: "Is it not to share your bread with the hungry?"

**PERSONALITIES**

**Turnus Rufus** – This is the appellation assigned to the Roman consul Quintus Tineius Rufus, who ruled Judea during the bar Kokheva revolt. He suppressed the revolt with great cruelty. For this reason, he was dubbed Turnus Rufus, a deliberate distortion of his name alluding to the phonetically similar Greek word for tyrant, τυράννος, tyranno. The mishnah recounts his debates with Rabbi Akiva, whom he later commanded to be tortured and killed (Midos 7a). Tractate Talait reports that Turnus Rufus ordered that the Temple Mount be plowed over to show its complete destruction.

**Rabbi Akiva** – Ḥakham: Rabbi Akiva, who lived just after the destruction of the Second Temple, was one of the greatest of the tanna'im. Unlettered until the age of forty, Akiva was encouraged by his wife, Rachel, to devote himself to the study of Torah. After years of study under the tutelage of Rabbi Eleazar ben Hacanan, Yehoshua ben Hananya, and others, he acquired thousands of students and established his own academy in Bnei Brak. Rabbi Akiva arranged many oral traditions, and it was the tradition of Rabbi Akiva as received by his disciple, Rabbi Meir, that ultimately became the basis of the six orders of the Mishna.

Rabbi Akiva was the spiritual leader of the bar Kokheva revolt. Although he even proclaimed bar Kokheva the Messiah early in the struggle, he later retracted this opinion. Despite Roman decrees against disseminating Torah, the aged Rabbi Akiva continued to teach. Rabbi Akiva was arrested by the Romans, imprisoned, tried, and sentenced to death. He suffered a martyr's death at the hands of the Romans, and is listed as one of the ten martyrs whose execution by the Romans is described in liturgy. As the Romans were torturing him to death, he explained to his students that he now had the opportunity to fulfill the true meaning of loving God with all of one’s soul (Berakhot 10b).
It is stated in tractate Britas (16a) that on Rosh HaShana, God appor-
tions food and livelihood to all people for the year. Rabbi Yehuda, son of Rabbi Shalom, expounds that just as God
determines how much income a person will earn during the
year, so does He decree how much money a person will
lose during the year.

Like Shabbat desecrators – כְּשֵׁמָר מְזוֹנוֹתָיו
Violation of a Shabbat prohibition is punishable by stoning. As
It is taught: *“You shall bring the poor that are cast
out to your house,”* i.e., will be compelled by the government
to billet soldiers in his house and feed them against his will.

It is like this incident involving the nephews of Rabban Yoĥanan
ben Zakki, who once saw in a dream that his nephews
were destined to lose seven hundred dinars over the course of
the year. He encouraged them and took money from them
for charity, and they were left with seventeen dinars out of the
seven hundred. When Yom Kippur eve arrived, the government
sent messengers who came and took the remaining seventeen
dinars.

Rabban Yoĥanan ben Zakki said to them: Do not fear that they
will take even more from you; they took from you the seventeen
dinars that were still with you. The nephews said to him: How
did you know? Rabban Yoĥanan ben Zakki said to them: I saw
a dream about you, and he related his dream to them. They
said to him: And why did you not tell us about the dream? Rabban
Yoĥanan ben Zakki said to them: I said, It is better that they
perform a mitzva for its own sake. Had you known from the start
that you were fated to lose that amount of money, the mitzva
would not have been performed purely for its own sake.

The Gemara relates: Rav Pappa was once climbing up a ladder
when his foot slipped and he almost fell. He said: Now, is the
one who hates us, a euphemism for himself, liable like Shabbat
descendants and idol worshippers, who are subject to death by
stoning, which is similar to death by falling, the punishment that
Rav Pappa narrowly escaped?

Rabbi Yehoshua ben Korha says: Anyone who turns his eyes away from one seeking charity is
considered as if he worships idols. From where is this derived? It
is written here: “Beware that there be not a base thought in your
heart… and your eye be evil against your poor brother, and you
give him nothing” (Deuteronomy 15:9). And it is written there:
“Certain base men have gone out… and have drawn away the
inhabitants of their city, saying, Let us go and serve other gods”
(Deuteronomy 13:14). Just as there, the base men sin with idolatry,
so too here, the base thought is treated like idolatry.

It is taught in a baraita that Rabbi Elazar, son of Rabbi Yosei,
said: All acts of charity and kindness that Jews perform in this
world make great peace and are great intercessors between the
Jewish people and their Father in Heaven, as it is stated: “So said
the Lord, enter not into a house of mourning, neither go to
lament nor bemoan them, for I have taken away My peace” from
this people, says the Lord, both kindness and mercy” (Jeremiah
16:5). “Kindness”; this is referring to acts of kindness. “Mercey”;
this is referring to acts of charity. This indicates that when there is
kindness and mercy, God is at peace with His people.
It is taught in a baraita that Rabbi Yehuda says: Great is charity in that it advances the redemption," as it is stated: "So said the Lord, uphold justice and do charity, for My salvation is near to come, and My righteousness to be revealed" (Isaiah 56:1).

He would say: Ten strong entities were created in the world, one stronger than the other. A mountain is strong, but iron, which is stronger, cleaves it. Iron is strong, but fire melts it. Fire is strong, but water extinguishes it. Water is strong, but clouds bear it. Clouds are strong, but wind disperses them. Wind is strong, but the human body withstands it. The human body is strong, but fear breaks it. Fear is strong, but wine dispels it. Wine is strong, but sleep drives it off. And death is stronger than them all, but charity saves a person from death, as it is written: "And charity delivers from death" (Proverbs 10:2, 11:4).

Rabbi Dostai, son of Rabbi Yannai, taught: Come and see that the attribute of the Holy One, Blessed be He, is not like the attribute of flesh and blood. An illustration of the attribute of flesh and blood is that when a person brings a great gift to the king, it is uncertain whether the king will accept it from him or will not accept it from him. And if you say that the king will accept it from him, it is uncertain whether the person who brought the gift will eventually see the face of the king, or will not see the face of the king. But the Holy One, Blessed be He, does not act in this way. Even when a person gives a mere peruta to a poor person, he merits to receive the Divine Presence, as it is stated: "As for me, I will behold Your face through charity; I will be satisfied, when I awake, with Your likeness" (Psalms 17:15).

It is related that Rabbi Elazar would first give a peruta to a poor person and only then would he pray." He said: As it is written in the same verse: "I will behold Your face through charity." The Gemara asks: What is the meaning of that which is written: "I will be satisfied, when I awake, with your likeness"? Rav Nahman bar Yitzĥak says: These are Torah scholars, who in pursuit of their studies banish sleep from their eyes" in this world, and the Holy One, Blessed be He, satiates them with the radiance of the Divine Presence in the World-to-Come.

Rabbi Yoĥanan says: What is the meaning of that which is written: "He that graciously gives to the poor makes a loan to the Lord, and that which he has given, He will pay him back" (Proverbs 19:17)? How can it be that one is considered to have granted a loan to God? Were it not explicitly written in the verse, it would be impossible to say this, that somebody who is gracious to a poor person is seen as lending to God. It would be impermissible, since "the borrower is servant to the lender" (Proverbs 22:7), as it were.

Rabbi Hiyya bar Abba says: Rabbi Yoĥanan raises a contradiction between two texts. In one place it is written: "Riches profit not on the day of wrath, but charity delivers from death" (Proverbs 11:4), and elsewhere it is written: "Treasures of wickedness profit nothing, but charity delivers from death" (Proverbs 10:2). Why is it necessary to have these two verses about charity, that it delivers from death? Rabbi Hiyya bar Abba continues: One verse serves to teach that charity delivers from an unnatural death in this world, and one verse serves to teach that charity delivers from the judgment of Gehenna in the World-to-Come. And in which of the verses is that charity which delivers from the judgment of Gehenna mentioned? It is in that verse in which "wrath" is written, as with regard to the day of judgment it is written: "That day is a day of wrath" (Zephaniah 1:15). And which type of charity is that which delivers from an unnatural death?
Halacha

One gives it without knowing – איזו של צדakah שלא ידע מיהו נטור לה, נטור. A high, though not the highest, level of giving charity is to give to the poor without knowing to whom one gave and without the poor person knowing from whom he received. A level slightly lower than this is to donate to a charity fund. A person should contribute to such a fund only if he is confident that its custodian is trustworthy. A still lower level of charity is achieved when the donor knows the identity of the recipient, but the poor person does not know the identity of the donor (Rambam Sefer Zera'im 249:7–9).

Notes

Into the charity purse – איזו של צדakah בלילה. Although one is ashamed when he feels indebted to a donor, when a poor person receives money from the charity collector he knows that the money does not come from him but from other people, and he therefore does not feel shame in taking it.

To have male offspring – יִהְיוּ לוֹ בָּנִים זְכָרִים. The connection between the mitzva of charity and male children is not explained. The Maharsha suggests that the association is perhaps based on: “His seed shall be mighty upon earth; the generation of the upright shall be blessed” (Psalms 112:2), and later in that same psalm: “He has distributed freely, he has given to the poor” (Psalms 112:9).

It is the type in which one gives the charity without knowing to whom he gave it, and the other one takes it without knowing from whom he took it. The Gemara explains: One gives it without knowing to whom he gave it, this serves to exclude the practice of Mar Uka, who would personally give charity to poor people without their knowing he was the donor. The other one takes it without knowing from whom he took it; this serves to exclude the practice of Rabbi Abbahu, who would render his money ownerless, so that poor people would come and take it without his knowing whom he helped, although they would know from whom the money came. The Gemara asks: Rather, how then should one act to conceal his own identity and also remain ignorant of the identities of the recipients? The Gemara answers: The best method is to put the money into the charity purse.

The Gemara raises an objection from what is taught in a baraita: What should a person do to have male offspring? Rabbi Eliezer says: He should distribute his money liberally among the poor. Rabbi Yehoshua says: He should gladden his wife before engaging in the mitzva of conjugal relations. Rabbi Eliezer ben Yaakov says: A person should not donate a peruta to the charity purse unless a great and trusted individual like Rabbi Hananya ben Teradyon is appointed as supervisor over it. This seems to indicate that putting money into the charity box is not always preferred. The Gemara answers: When we say that putting money into the charity box is the preferred way to give charity, this is referring to when a man like Rabbi Hananya ben Teradyon is appointed as supervisor over it.

The Gemara discusses other matters concerning charity. Rabbi Abbahu says: Moses said before the Holy One, Blessed be He: Master of the Universe, with what shall the horn of Israel be exalted? God said to him: With the passage of “When you raise,” i.e., Israel will be exalted by way of the donations and charity that they will give, as it is stated: “When you raise the heads of the children of Israel… then shall they give” (Exodus 30:12).

And Rabbi Abbahu says: They asked King Solomon, son of David: How far does the power of charity extend? King Solomon said to them: Go out and see what my father David explained: “He has distributed freely, he has given to the poor, his righteousness endures forever, his horn shall be exalted with honor” (Psalms 112:9). Rabbi Abbahu said: It is derived from here how far the power of charity extends: “He shall dwell on high, his place of defense shall be the fortress of rocks; his bread shall be given, his water shall be sure” (Isaiah 33:16). What is the reason that “He shall dwell on high, his place of defense shall be the fortress of rocks”? Because “his bread shall be given” to the poor, and “his water shall be sure,” i.e., it shall be given faithfully and he can be trusted in the matter.

Personalities

Rabbi Hananya ben Teradyon – רבי חנניא בר תרדיון. A fourth- and fifth-generation tanna, Rabbi Hananya lived in Sichin in the Upper Galilee, where he apparently presided over a large yeshiva. Although few of his statements are preserved in the Mishna and other sources, it is clear from several sources that he was a charity collector and that he also gave charity liberally. Following the bar Kokheva revolt, he defied the decrees against teaching Torah in public despite the mortal danger of such activity. Rabbi Hananya was caught by the authorities and sentenced to death. The Romans wrapped him in a torah and burned him along with it. He is listed in the midrash and liturgical poetry as one of the ten martyrs, the rabbis who were executed by the Romans in the period after the destruction of the Second Temple. Rabbi Hananya’s wife was executed as well. Of his children, one son was killed by the Roman authorities, and one daughter was sent to a brothel, though she was eventually rescued by her brother-in-law. Rabbi Hananya’s daughter Berurya was a famous Torah scholar on par with the tannaim, and she married the tanna Rabbi Meir.
And Rabbi Abbahu says: They asked King Solomon: Who is one who is destined for the World-to-Come? King Solomon said to them: All those about whom it is stated: “And before His Elders will be His glory” (Isaiah 44:23), referring to those who are honored in this world due to their wisdom. This is like the incident involving Yosef, son of Rabbi Yehoshua, who became ill and fainted. When he returned to good health, his father said to him: What did you see when you were not conscious? Yosef said to him: I saw an inverted world. Those above, i.e., those who are considered important in this world, were below, insignificant, while those below, i.e., those who are insignificant in this world, were above. Rabbi Yehoshua said to him: You have seen a clear world. The world you have seen is the true world, one in which one’s spiritual and moral standing determines his true importance. Rabbi Yehoshua further asked him: And how did you see us, the Torah scholars, there? Yosef said to him: Just as we are important here, we are important there.

Yosef added: And I heard that they were saying in that world: Happy is the one who arrives with his studies in hand. And I also heard that they were saying: Those executed by the government enjoy such exalted status that no one can stand in their section. The Gemara asks: Who are these martyrs to whom Yosef was referring? If we say that he was referring to Rabbi Akiva and his colleagues, who were killed by the Romans, this cannot be: Is their elevated status due only to the fact that they were martyred by the Roman government and nothing more? These men were exceptional in their piety and sanctity during their lives as well. Therefore it is obvious that even without their martyrdom they would be greater than other people. Rather, it is referring to those like the martyrs of Lod, who died for the sanctification of God’s name but were not Torah scholars.

It is taught in a baraita: Rabban Yohanan ben Zakkai said to his students: My sons, what is the meaning of that which the verse states: “Righteousness exalts a nation, but the kindness of the peoples is sin” (Proverbs 14:34)? Rabbi Eliezer answered and said: “Righteousness exalts a nation,” these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth?” (I Chronicles 17:21). “But the kindness of the peoples is sin,” meaning that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only to elevate themselves in prestige, as it is stated: “That they may sacrifice offerings of pleasing aroma to the God of heaven, and pray for the life of the king and of his sons” (Ezra 6:10). Even though they donated offerings, they did so only for their own benefit.

The Gemara asks: And if one acts this way, is it not full-fledged charity? But isn’t it taught in a baraita that one who says: I am contributing this zela to charity so that my sons will live, or if he says: I am performing the mitzva so that I will merit a share in the World-to-Come, this person is a full-fledged righteous person, as far as that mitzva is concerned, even though he has his own welfare in mind! The Gemara answers: This is not difficult. Here, the statement that he is considered absolutely righteous is with regard to a Jew, while there, the statement that such benefaction is not credited as charity is with regard to a gentile.
Rabbi Eliezer HaModa'i – A Jew should not accept charity from a gentile in public. If he is unable to survive without such charity, he should receive the money in private. Nevertheless, if a gentile king or officer donates money to the Jews for the poor, the money is accepted for the sake of peace with the kingdom. These funds are then given in secret to poor gentiles, as in the case involving Rava. If he is unable to survive without such charity, he accepts charity from a gentile.

NOTES

HALAKHA

And he accepted them for the sake of peace with the kingdom – A Jew should not accept charity from a gentile in public. If he is unable to survive without such charity, he should receive the money in private. Nevertheless, if a gentile king or officer donates money to the Jews for the poor, the money is accepted for the sake of peace with the kingdom. These funds are then given in secret to poor gentiles, as in the case involving Rava. The Rema writes that if the money was earmarked for distribution among the Jewish poor, it should be given to them and the donor should not be deceived. The money should be given to poor gentiles only if the official did not specify how it was to be used (Rambam Sefer Zera'im, Hilkhot Mattenot Aniyyim 8:3; Shulhan Arukh, Yoreh De'ah 294:1–2 and Shakh there).

PERSONALITIES

Rabbi Eliezer HaModa'i – A Jew should not accept charity from a gentile in public. If he is unable to survive without such charity, he should receive the money in private. Nevertheless, if a gentile king or officer donates money to the Jews for the poor, the money is accepted for the sake of peace with the kingdom. These funds are then given in secret to poor gentiles, as in the case involving Rava. If he is unable to survive without such charity, he accepts charity from a gentile.

Rabbi Eliezer HaModa'i was a Sage who lived after the destruction of the Temple and was apparently a young student of Rabban Yohanan ben Zakkai. Most of the quotations cited in his name are explications of verses. Rabban Gamliel often remarked: We still need the Moda'i. As his name indicates, this Sage was bar Kokheva’s maternal uncle, and he died during the siege of Beitar.

Rabbi Yehoshua answered: Rabban Yohanan ben Zakkai’s challenge to interpret the verse and said: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth.” “But the kindness of the peoples is sin” means that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only to perpetuate their dominion, as it is stated by Daniel to Nebuchadnezzar: “Therefore, O king, let my counsel be acceptable to you, and break off your sins by charity, and your iniquities by showing mercy to the poor; that there may be an extension of your serenity” (Daniel 4:24). Since this is the argument that persuaded Nebuchadnezzar, it would appear that his actual motive was his own benefit.

Rabban Gamliel answered and said: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth.” “But the kindness of the peoples is sin” means that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only to perpetuate their dominion, as it is stated by Daniel to Nebuchadnezzar: “Therefore, O king, let my counsel be acceptable to you, and break off your sins by charity, and your iniquities by showing mercy to the poor; that there may be an extension of your serenity” (Daniel 4:24). And wrath means nothing other than Gehenna, as it is stated: “That day is a day of wrath” (Zephaniah 1:15).

Rabban Gamliel said: We still need to hear what the Moda’i has to say, as Rabbi Eliezer HaModa’i says: “Righteousness exalts a nation”; these are the people of Israel, as it is written: “And who is like your people Israel, one nation on the earth.” “But the kindness of the peoples is sin” means that all the acts of charity and kindness that the nations of the world perform is counted as a sin for them, since they perform them only to taunt us with them, as it is stated that the Babylonian officer Nebuzaradan said: “The Lord has brought it, and done according as He has said; because you have sinned against the Lord and have not obeyed His voice, therefore this matter is come upon you” (Jeremiah 40:3).

Rabbi Nehunya ben HaKana answered and said: “Righteousness exalts a nation and kindness” is referring to Israel; and in addition, “of the peoples is sin.” Rabban Yohanan ben Zakkai said to his students: The statement of Rabbi Nehunya ben HaKana appears to be more precise than both my statement and your statements, because he assigns both righteousness and kindness to Israel, and sin to the peoples of the world. The Gemara asks: By inference, it appears that he, Rabban Yohanan ben Zakkai, also offered an interpretation of this verse. What is it? As it is taught in a baraita: Rabban Yohanan ben Zakkai said to them that the verse should be understood as follows: Just as a sin-offering atones for Israel, so charity atones for the nations of the world.

It is related that Ifera Hurmiz, the mother of King Shapur, king of Persia, sent four hundred dinars to Rabbi Ami, but he did not accept them. She then sent them to Rava, and he accepted them for the sake of peace with the kingdom. Rabbi Ami heard what Rava had done and was angry. He said: Does Rava not accept the lesson of the verse: “When the boughs are withered, they shall be broken off; the women shall come and set them on fire” (Isaiah 27:11), meaning that when righteousness has ceased from a particular nation, it is time for its citizens to be punished, and therefore we should not help them perform any meritorious deeds, which would delay their punishment? The Gemara asks: And why did Rava accept the money? The Gemara answers: He did so for the sake of peace with the kingdom.
The Gemara asks: But did Rabbi Ami not also see the importance of accepting the money for the sake of peace with the kingdom? The Gemara answers: Rabbi Ami maintains that Rava should have distributed the money to the gentle poor rather than to the Jewish poor, as it is a disgrace to the Jews to require the kindness of the nations of the world in order to support their poor. The Gemara comments: In fact, Rava also gave the money to the gentle poor and not to the Jewish poor. And Rabbi Ami got angry because those who reported the story to him did not conclude it before him; consequently, Rav Ami was not informed that Rava had indeed given the money to the gentle poor.

It is taught in a baraita: The following was said about Binyamin the righteous, who was appointed supervisor over the charity fund. Once, a woman came before him during years of drought and said to him: My master, sustain me. He said to her: I swear by the Temple service that there is nothing left in the charity fund. She said to him: My master, if you do not sustain me, a woman and her seven sons will die. He arose and sustained her with his own funds. After some time, he fell deathly ill. The ministering angels said to the Holy One, Blessed be He: Master of the Universe, You said that anyone who preserves a single life is regarded as if he has preserved an entire world. Should then Binyamin the righteous, who saved a woman and her seven sons, die after these few years, still in his youth? They immediately tore up his sentence. A Sage taught: They added twenty-two years to his life.

The Sages taught: There was an incident involving King Munbaz, who liberally gave away his treasures and the treasures of his ancestors in the years of drought, distributing the money to the poor. His brothers and his father’s household joined together against him to protest against his actions, and they said to him: Your ancestors stored up money in their treasures and added to the treasures of their ancestors, and you are liberally distributing it all to the poor. King Munbaz said to them: Not so, my ancestors stored up below, whereas I am storing above, as it is stated: “Truth will spring out of the earth and righteousness will look down from heaven” (Psalms 85:12), meaning that the righteous deeds that one has performed are stored up in heaven. My ancestors stored up treasures in a place where the human hand can reach, and so their treasures could have been robbed, whereas I am storing up treasures in a place where the human hand cannot reach, and so they are secure, as it is stated: “Righteousness and justice are the foundation of your throne” (Psalms 89:15).

My ancestors stored up something that does not generate profit, as money sitting in a treasury does not increase, whereas I am storing up something that generates profit, as it is stated: “Say of the righteous, that it shall be well with them, for they shall eat the fruit of their doings” (Isaiah 3:10). My ancestors stored up treasures of money, whereas I am storing up treasures of souls, as it is stated: “The fruit of the righteous is a tree of life, and he that wins souls is wise” (Proverbs 11:30). My ancestors stored up for others, for their sons and heirs, when they themselves would pass from this world, whereas I am storing up for myself, as it is stated: “And it shall be as righteousness to you” (Deuteronomy 24:15). My ancestors stored up for this world, whereas I am storing up for the World-to-Come, as it is stated: “And your righteousness shall go before you, the glory of the Lord shall be your rearguard” (Isaiah 58:8).

**Binyamin the righteous** – רבי יבנימין הראוי. This Binyamin appears to have lived during the amoraic period. Alternatively, he might be the tanna Rabbi Binyamin, student of Rabbi Akiva, or the tanna Abba Binyamin.

**Munbaz** – מונברם. Munbaz was the king of Adiabene at the end of the Second Temple period. This tiny principality was an independent kingdom in the Parthian empire located in northern Aram Naharaim in the area that today includes Kirkuk and Mosul. Members of the royal family of Adiabene and some of the military joined the rebels against Rome during the great rebellion before the destruction of the Temple. Munbaz’s mother, Queen Helene, and his brother, Izates, called Zutus in the talmudic sources, converted to Judaism and scrupulously kept the mitzvot (see Bereishit Rabba, chapter 46, and Nidda 17a). Initially, Munbaz abolished the throne for the sake of his brother but subsequently accepted the throne upon the latter’s death. Josephus describes the history and conversion of this family in detail. Like the rest of his family, Munbaz appears to have been buried in the Tombs of the Kings in Jerusalem.
The court does not divide a mystical name: A jointly owned courtyard, field, or garden is divided only if each party will receive a portion that is large enough to be called by its original designation. Therefore, a courtyard is not divided unless each partner will receive an area of four by four cubits, in addition to the four cubits required for the entrances. A field is divided only if each party will receive a plot large enough to plant nine kav of seed in it. A garden is divided only if each party will receive a plot large enough to plant a half-kav of seed in it (Rambam Sefer Kinyan, Hilkhot Shekhenim 14:21; Shulhan Arukh, Hoshen Mishpat 171:3).

Hall, etc.: One should not divide a hall, a drawing room, a dovecote, a bathhouse, or a garment unless each of the recipients will receive a portion that can be used in the same manner as the item was used when it was whole (Rambam Sefer Kinyan, Hilkhot Shekhenim 15).

When both of them wish: If partners agree to divide a jointly owned item that is otherwise not fit to be divided, they may divide it, even though the discrete portions will lack their original designation. The twenty-four books of the Bible may not be divided if bound together in a single scroll, even if the partners agree to do so (Rambam Sefer Kinyan, Hilkhot Shekhenim 29; Shulhan Arukh, Hoshen Mishpat 173:1).

The Gemara resumes its analysis of the mishna, which taught that one must reside in a place for twelve months in order to be considered a resident for the purposes of issues such as paying taxes. But if he bought himself a residence in the city, he is immediately considered like one of the people of the city. The Gemara comments: The mishna is not in accordance with the opinion of Rabban Shimon ben Gamliel, as it is taught in a baraita that Rabban Shimon ben Gamliel says: If he bought any amount of land in the city, and not necessarily a residence, he is immediately considered like one of the people of the city.

The Gemara asks: But isn’t it taught otherwise in a different baraita: Rabban Shimon ben Gamliel says: If one bought land that is suitable for a residence, he is immediately considered like one of the people of the city. This contradicts the first baraita. The Gemara answers: This is a dispute between two tanna’im and they disagree with regard to the opinion of Rabban Shimon ben Gamliel.

The court does not divide a courtyard at the request of one of the joint owners unless there will be in it four by four cubits for this one and four by four cubits for that one, i.e., this minimum area for each of the joint owners. And the court does not divide a jointly owned field unless there is space in it to plant nine kav of seed for this one and nine kav of seed for that one. Rabbi Yehuda says: The court does not divide a field unless there is space in it to plant half-kav of seed for this one and half-kav of seed for that one. And the court does not divide a jointly owned garden unless there is space in it to plant a half-kav of seed for this one and a half-kav of seed for that one. Rabbi Akiva says that half that amount is sufficient, i.e., the area required for sowing a quarter-kav of seed [beit rova].

Similarly, the court does not divide a hall [hateraklin], a drawing room, a dovecote, a cloak, a bathhouse, an olive press, and an irrigated field unless there is enough for this one to use the property in the usual manner and enough for that one to use the property in the usual manner. This is the principle: Anything for which when it is divided, each of the parts is large enough to retain the name of the original item, the court divides it. But if the parts will not retain the original name, the court does not divide it.

When does this rule apply? It applies when the joint owners do not both wish to divide the item; when only one of the owners wishes to divide the property, he cannot force the other to do so. But when both of them wish to divide the item, they may divide it, even if each of the owners will receive less than the amounts specified above. But in the case of sacred writings, i.e., a scroll of any of the twenty-four books of the Bible, that were inherited by two people, they may not divide them, even if both of them wish to do so, because it would be a show of disrespect to cut the scroll in half.

**Language**

Hall (teraklin) from the Greek τρικλινιον, triclinion, which was a room with three couches. The term later came to refer to any large space for entertaining guests.

**Notes**

Irrigated field (beit se’a): Some versions of the text omit these words since this is included under a field. By contrast, Rashi explains that an irrigated field is different; owing to its irrigation system, it is worthwhile to cultivate the field even if it is an area that requires less than nine kav of seed.

**Background**

Nine kav – מ Kıv: Measurements of area in the Talmud are based on the amount of space required for the sowing of certain quantities of seed. A beit se’a is the space required in order to sow one se’a of seed and is equivalent to 2,500 square cubits. Accordingly, and in keeping with the different opinions as to the length of a cubit, the area of nine kav equals between 950 and 1,400 sq m. The area of a half-kav equals 50 to 80 sq m, and the area of a quarter-kav equals half of this.
Rabbi Asi says that Rabbi Yoĥanan says:
The four cubits of the courtyard which they said each of the joint owners must receive is in addition to the space in front of the entrances\(^1\) to each of the houses that is assigned to the owner of the house for loading and unloading. That opinion is also taught in a baraita: The court does not divide a courtyard unless its area is sufficient so that there will be in it eight cubits for this one and four cubits for that one. The Gemara asks: But didn’t we learn in the mishna that it suffices that there be four cubits for this one and four cubits for that one? Rather, conclude from it that the baraita was taught in accordance with the opinion of Rabbi Asi. The Gemara affirms: Conclude from it that it is so.

And there are those who raise the baraita as a contradiction to what is taught in the mishna and use the previously mentioned point to reconcile the two texts. We learned in the mishna: The court does not divide a courtyard at the request of one of the joint owners unless there will be in it four by four cubits for this one and four by four cubits for that one. But isn’t it taught in a baraita: The court does not divide a courtyard unless there are eight cubits for this one and eight cubits for that one? About this Rabbi Asi said that Rabbi Yoĥanan said: The four cubits of the courtyard which they said each of the joint owners must receive is in addition to the space in front of the entrances to each of the houses.

Further with regard to the division of a courtyard, Rav Huna says: A courtyard is divided according to its entrances.\(^2\) Each of the owners receives a share of the courtyard in proportion to the number of entrances that his house has opening onto the courtyard. And Rav Hisda says: Four cubits are allotted to each of the owners for each and every entrance, and the rest of the courtyard is then divided equally between them.

The Gemara comments: It is taught in a baraita in accordance with the opinion of Rav Hisda: Each of the entrances opening to a courtyard is allotted four cubits. If this one has one entrance and that one has two entrances, the one who has one entrance takes four cubits, and the one who has two entrances takes eight cubits, and they divide the rest of the courtyard equally between them. If this one had an entrance eight cubits wide, he takes eight cubits adjacent to the entrance and four cubits in the courtyard. The Gemara expresses surprise: What are these four cubits in the courtyard doing here? Doesn’t it all depend on the size of the courtyard? Abaye said: This is what the baraita is saying: For the entrance he takes eight cubits along the length of the courtyard and four cubits along the width of the courtyard. In other words, he takes a strip four cubits wide along the entire length of his entrance.

Ameimar says: A pit for holding animal food \[^{peira desuflei}^\] has four cubits on each and every side so that there will be sufficient space for the animals to stand. The Gemara adds: And we said this only when the pit has no special entrance\(^3\) to reach it, but rather it is accessed from all sides.

\(^{1}\) In addition to the entrances – רוחות סך אַמּוֹת כְּנֶגֶד הַאַרְבַּע אַמּוֹת לְכָל רוּחַ וְרוּחַ וְלָא אֲמָרַן אֶלָּא אַמּוֹת לָזֶה וּשְׁמוֹנֶה אַמּוֹת לָזֶה! אֲמַר רַבִּי שְׁמַע מִינָּהּ כִּדְרַבִּי אַסִי, שְׁמַע אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת תַּנְיָא נַמִי.

\(^{2}\) In addition to the entrances – מִינָּהּ שְׁמוֹנֶה אַמּוֹת כְּנֶגֶד הַאַרְבַּע אַמּוֹת לְכָל רוּחַ וְרוּחַ וְלָא אֲמָרַן אֶלָּא אַמּוֹת לָזֶה וּשְׁמוֹנֶה אַמּוֹת לָזֶה! אֲמַר רַבִּי שְׁמַע מִינָּהּ כִּדְרַבִּי אַסִי, שְׁמַע אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת.

\(^{3}\) In addition to the entrances – מִינָּהּ שְׁמוֹנֶה אַמּוֹת כְּנֶגֶד הַאַרְבַּע אַמּוֹת לְכָל רוּחַ וְרוּחַ וְלָא אֲמָרַן אֶלָּא אַמּוֹת לָזֶה וּשְׁמוֹנֶה אַמּוֹת לָזֶה! אֲמַר רַבִּי שְׁמַע מִינָּהּ כִּדְרַבִּי אַסִי, שְׁמַע אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת. אָמַר אַמֵימָר אֶת הֶחָצֵר – עַד שֶׁיְּהֵא בָּהּ אַרְבַּע אַמּוֹת לָזֶה! וְהָתַנְיָא נַמִי בְּשָׁוֶא אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת. תַּנְיָא נַמִי בְּשָׁוֶא אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת. תַּנְיָא נַמִי בְּשָׁוֶא אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת.

\[^{1}\] In addition to the entrances – A jointly owned courtyard may be divided only if each partner will receive an area of four by four cubits, in addition to the four cubits required for the entrances (Rambam Sefer Kinyan, Hilkhot Shekhenin 25; Shulhan Arukh, Hoshen Mishpat 17:13).

\[^{2}\] In addition to the entrances – Four cubits are allotted for each and every entrance –MASTER: Before a courtyard is divided, each entrance is granted four cubits in front of it for the entire length of the entrance. This is in accordance with the opinion of Rav Hisda, which is supported by the baraita. If the entrance is ten cubits wide, its owner receives forty four cubits along the length of the entrance. In any event, he receives an area at least four cubits long, so that if the entrance is less than four cubits wide, he receives additional space on either side of his entrance to complete the four cubits (Rambam Sefer Kinyan, Hilkhot Shekhenin 25; Shulhan Arukh, Hoshen Mishpat 17:12).

\[^{3}\] In addition to the entrances – A pit for animal food – Pit for animal food \[^{peira desuflei}^\] has four cubits on each and every side so that there will be sufficient space for the animals to stand. The Gemara adds: And we said this only when the pit has no special entrance to reach it, but rather it is accessed from all sides.
If a building is half roofed – בֵּית שַׁעַר – it is not given four cubits, as the owner would have room for unloading his animal. Rashi explains that four cubits were granted for unloading burdens. The Gemara comments: If a building is half roofed, it is not given four cubits adjacent to its entrance. If several houses have the adjoining four cubits for unloading, the Gemara asks: When that baraita is taught, it is specifically with regard to the portico of a study hall, which is a proper room. Rather, the baraita is referring to a Roman portico, which is more open than the portico of a study hall, but also not used for unloading.

The Sages taught in a baraita: A portico, and a balcony with a staircase leading down to the courtyard have the adjoining four cubits for unloading. Even if five houses open onto the balcony, they only have four cubits in front of the entrance to the staircase that leads to the balcony. Rabbi Yoĥanan asked Rabbi Yannai: Does a chicken coop that has a staircase have four cubits or does it not have four cubits? Rabbi Yannai said to him: What is the reason that four cubits are granted? It is so that the owner will have room for unloading the burden of his animal. Here this space is not needed, as the chickens climb up to get into the coop and climb down to get out. No additional place is required for the owner to stand alongside them.

Rava asked Rav Naĥman: If a house is half roofed and half unroofed, does it have the adjoining four cubits or does it not have the four cubits? Rav Naĥman said to him: It does not have the four cubits. The Gemara comments: It is not necessary to state this halakha when the house’s roofing is over the inside portion of the house, since it is possible for the owner to go inside and unload his animal. Rather, even when the house’s roofing is over the outside portion of the house, it is not given four cubits, as even in such a case it is possible for the owner to go inside and unload his animal there.
The residents of the alleyway can prevent him – בָּאָלָיו? אֵּמַּר לָהֶם: "כָּלָּן מִשְׁתַּמְּשׁוֹת עִם הַחִיצוֹנָה, וְהַחִיצוֹנָה חָמֵשׁ חֲצֵרוֹת": אָמַר לָהֶם רַבְּהוּנָא מְעַכְּבִין יִבְּנֵי אָדָם:

If one resident of an alleyway wishes to open an entrance to a different alleyway, the residents of the alleyway may prevent him from doing so because this would increase traffic in their alleyway (Maharam of Rothenburg). Even if he plans to seal his entrance to the alleyway and open an entrance to a different alleyway, the residents of the first alleyway can stop him, because his portion of the taxes levied on the alleyway will fall on the other residents of the alleyway. Consequently, if there is no such tax, they cannot prevent him from doing as he pleases. This ruling is in accordance with the version of the Gemara used by the Ritva and the Rambam (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:15; Shulhan Arukh, Hoshen Mishpat 2:12a, 6).

Dung... billeting (akhsanya) – אַכְסַנְיָא: "The dung in a courtyard is divided according to the number of entrances. The burden of the king’s akhsanya is divided according to the number of people in each household (see Smo and Shakh). Some claim that the term akhsanya refers to the dung left behind by the animals of the king’s soldiers who are hosted; others say this term refers to the obligation to house soldiers (Rambam: Sefer Kinyan, Hilkhot Shekhenim 2:8; Shulhan Arukh, Hoshen Mishpat 127:9).

If five courtyards open onto an alleyway – ויִשְׁבַּה בִּקְרֵיהּ בְּצִיָּרַת הַקִּנְיָן: If five courtyards open onto an alleyway, the residents of the inner courtyards may use that part of the alleyway adjacent to the outer courtyards, but residents of the outer courtyards may not use that part of the alleyway adjacent to the inner courtyards, in accordance with the opinion of Rabbi Nehuda HaNasi. Therefore, if one built a bench adjacent to the entrance to his courtyard, the residents of the inner courtyards can object, because this forces them to walk around the bench, but the residents of the outer courtyards cannot protest (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:16; Shulhan Arukh, Hoshen Mishpat 162:7).

NOTES

Can the residents of the alleyway prevent him – בָּאָלָיו? אֵּמַּר לָהֶם: Many commentaries, including Rashi, explain that this is referring to residents of an alleyway onto which someone wishes to open a new entrance, and the question is whether they can prevent him from doing so because they do not want another individual to use the alleyway. The Ritva and others understand that the case in the Gemara is where one of the residents of the alleyway wishes to open an entrance to an additional alleyway, and the question is whether the residents that use the latter alleyway can object because they are concerned that residents of the first alleyway will pass through that person’s courtyard and enter the second alleyway.

The Ra’ava writes that the two questions of Rav Huna, this one and the following one, are connected, and the issue is whether the residents of an alleyway can prevent one of their members from leaving the alleyway because his leaving would increase the burden on those who remain, in the event they have to billet soldiers. The Rambam appears to have a similar understanding, whereas the Rabban disagrees.

According to the people – בָּאָלָיו? אֵּמַּר לָהֶם: Some suggest that this is referring to the relative wealth of the residents; i.e., the wealthier the residents or the larger their house, the greater the number of soldiers they must billet (Responsa Zemah Zedek).

The dung in a courtyard – בָּאָלָיו? אֵּמַּר לָהֶם: The issue is how to divide the dung, which is used to fertilize the fields. The reason for dividing it according to the number of entrances is that the amounts of dung deposited in the courtyard are relative to the number of entrances, which correlates to the size of the courtyard. The Sma understands that according to the opinion of the Rambam the issue is how the residents are to divide the costs of removing the dung.

To close off adjacent to his entrance – בָּאָלָיו? אֵּמַּר לָהֶם: Rashi, Rabbeinu Gershom Meor HaGola, and the gemara understand that this is referring to one who wishes to build a structure around his entrance to the courtyard from his courtyard that will open onto a different alleyway, can the residents of the other alleyway prevent him from opening this entrance, or can they prevent him from doing so? Rabbi Ami said to him: ‘The residents of the other alleyway can prevent him from making the change.’

Rav Huna further asked: When a king issues a billeting order to the residents of a courtyard, obligating them to house his soldiers in their homes, is the burden divided according to the number of people in each household, or is it divided according to the number of entrances that each house has opening into the courtyard? Rabbi Ami said to him: It is divided according to the number of entrances that each house has opening into the courtyard, whereas billeting is divided according to the number of people in each household.

Rav Huna says: If one of the residents of an alleyway wishes to close off an area adjacent to his entrance, i.e., to build a structure in the alleyway adjacent to the entrance to his courtyard, the residents of the alleyway can prevent him from doing so. This is because it will increase the way for them, since they will have to circumvent the structure when going to and from their homes.

The Gemara raises an objection from a baraita: If five courtyards open onto an alleyway, all the residents of the alleyway may use that part of the alleyway that faces the entrance to the outermost courtyard, and the residents of the outermost courtyard may use only that part of the alleyway adjacent to its own entrance. And similarly, the residents of the outer courtyards may use that part of the alleyway that faces the second courtyard, i.e., the next one to the outermost courtyard, and the residents of the second courtyard may use that part of the alleyway adjacent to its own entrance and they may use that part of the alleyway facing the outermost courtyard.

BACKGROUND

Five courtyards open onto an alleyway – בָּאָלָיו? אֵּמַּר לָהֶם:...
Sealed and he wishes to open it – אֵין בְּנֵי מָבוֹי מְעַכְּבִין עָלָיו

The baraita continues: The outcome is that the residents of the innermost courtyard may use that part of the alleyway adjacent to its own entrance, and they may use that part of the alleyway facing each and every other courtyard as well. According to this analysis, it should be permitted for the owner of the innermost courtyard to close off the area in front of his courtyard, since he is the only one who has permission to use it.

The Gemara answers: It is a dispute between tanna’im, as it is taught in a baraita: If one of the residents of an alleyway wishes to alter his entrance to a different alleyway, the residents of the other alleyway can prevent him from doing so. If there had been an entrance there beforehand which is now sealed and he wishes to open it, the residents of the other alleyway cannot prevent him from doing so; this is the statement of Rabbi Yehuda HaNasi. Rabbi Shimon ben Elazar says: If there are five courtyards which open onto an alleyway, the residents of all the courtyards may all use the alleyway with each other.

The Gemara expresses surprise about this last ruling: Courtyards, who mentioned anything about them? Why are they mentioned, considering that the baraita is not discussing the halakhot of courtyards? The Gemara answers: The baraita is incomplete and this is what it is teaching. Additionally, if there are five courtyards which open onto an alleyway, the residents of all the courtyards may all use the area facing the outermost courtyard, and the residents of the outermost one may use only the area facing their own entrance; this is the statement of Rabbi Yehuda HaNasi. Rabbi Shimon ben Elazar says: If there are five courtyards which open onto an alleyway, the residents of all the courtyards may all use the alleyway.

The Gemara directs the discussion to the details mentioned in the baraita. The Master said: If there had been an entrance there beforehand that is now sealed and he wishes to open it, the residents of the other alleyway cannot prevent him from doing so. Rava says: This was taught only when he did not break its doorposts, i.e., when the doorposts remained intact even after the entrance was sealed. But if he sealed the entrance and broke its doorposts, thereby demonstrating that the entrance had been completely negated, the residents of the other alleyway can prevent him from opening a new entrance. Abaye said to Rava: A baraita is taught which supports you:

**Sealed entrance with doorposts intact**

**Sealed entrance with doorposts removed**
A house that has a sealed entrance still has the four cubits adjoining that entrance because the entrance can be reopened. If one broke its doorposts and sealed the entrance, the entrance is completely negated, and it does not have the four cubits adjoining it.

There is a similar distinction with regard to the halakhot of ritual impurity. There is a halakha that a house in which there is a corpse transmits ritual impurity only through its doorways. The baraita continues: A grave whose entrance is sealed does not render all its surroundings ritually impure; the ritual impurity extends only to the area opposite the entrance. But if one broke its doorposts and sealed it, it is no longer considered an entrance, and the grave renders all its surroundings ritually impure, because impurity that has no egress bursts from all sides. Similarly, a house in which there is a corpse that has a sealed entrance does not render all its surroundings ritually impure.

A grave whose entrance is sealed does not render all its surroundings ritually impure. By Torah law, a person is rendered impure if he comes into contact with a grave unless the grave has an opening through which the impurity can exit. Rashi comments that the Sages ordained that the four cubits surrounding a grave impart impurity just as they ordained with regard to the area surrounding a corpse, so that people would distance themselves from a grave and avoid touching it. The passage here is difficult, as it is unclear what the entrance would be in the context of a grave. In fact, in the text before many of the early commentaries, this halakha concerning a grave does not appear.

A house that has a sealed entrance does not render all its surroundings ritually impure – only the area opposite the entrance.

Rabbi Yoḥanan says: With regard to alleyways that are open to another city, and through which one would ordinarily travel to reach that other city, if the residents of the city in which the alleyways are located wished to block them off, the residents of the city into which the alleyways open can prevent them from doing so, because they have a right to reach their city via those routes. The Gemara explains: It is not necessary to state that they can prevent from blocking the alleyways when there is no alternative route to reach their town, but they can prevent from blocking the alleyways even when there is an alternative route.

This is due to the reasoning that Rabbi Yehuda says that Rav says. As Rav says: One is prohibited from ruining a path that the public has established as a public thoroughfare, i.e., steps may not be taken to prevent people from using it. This is in accordance with the statement of Rav Giddel, as Rav Giddel says: If the public has chosen a route for itself and they walk on it, what they have chosen is selected, and it cannot be taken away from them.

Rav Anan says that Shmuel says: With regard to alleyways that open onto a public thoroughfare, if the residents of the alleyways wished to put up doors at the entrance to their alleyways, the people who use the public thoroughfare can prevent them from doing so.
The Gemara asks: The mishna was taught in Eretz Yisrael; what practice should be followed in Babylonia? Rav Yosef said: In Babylonia, a parcel of land the size of which is the area of a day’s plowing is considered a field; if each of the parties will receive less than that, the field should not be divided. The Gemara asks: What is meant by a parcel of land the size of which is the area of a day’s plowing? If it means a day’s plowing in the planting season, i.e., the winter, when it is easy to plow, since the earth has already been turned over at the end of the summer, the field will not require two full days of plowing in the planting season, i.e., at the end of the summer, when it is more difficult to plow, since the earth is hard and dry. In that case, he will have to pay his summer plowman two days’ wages for less than two days of work. And if it means a day’s plowing in the planting season, the field will not require a full day of plowing in the planting season. In that case, he will have to pay his winter plowman a full day’s wages for less than a full day of work.

The Gemara answers: If you wish, say it is referring to a day’s plowing in the planting season, and the field will still require a full day of plowing in the planting season since he plows once before he sows the seeds and then he repeats the plowing after the seeds are sown. And if you wish, say instead that it is referring to a day’s plowing in the planting season, and the field will in fact require two full days of plowing in the planting season if it is rocky ground, on which plowing takes longer.

In connection with this discussion, the Gemara clarifies the conditions under which a cistern applies specifically to the area within four cubits of the public thoroughfare, in accordance with the statement that Rabbi Zeira says that Rav Nahman says, as Rabbi Zeira says that Rav Nahman says: The four cubits in an alleyway that are adjacent to the public thoroughfare are considered like the public thoroughfare itself. Consequently, this area has the halakha of a public thoroughfare. But that is not so. There, the ruling of Rav Nahman was stated with regard to the issue of ritual impurity, with regard to which only the first four cubits of the alleyway are considered like the public thoroughfare. But here, with regard to doors set up at the entrance to the alleyway, sometimes the public thoroughfare becomes crowded with people and they enter far into the alleyway, even farther than four cubits.

The Gemara asks: If it is a cistern in the public thoroughfare, is it considered a field? If it is a cistern that is adjacent to the public thoroughfare, does it apply specifically to the area within four cubits of the public thoroughfare? If it is a cistern in the public thoroughfare that is an area of a day’s irrigation work, does it apply specifically to the area within four cubits of the public thoroughfare? The Gemara answers: The fundamental halakha is that the court does not divide a field unless there is space in it to plant nine kav of seed for this one and nine half-kav of seed for that one. Rabbi Yehuda says: The court does not divide a field even if there is space in it to plant nine half-kav of seed for this one and nine half-kav of seed for that one. The Gemara comments: And they do not disagree with regard to the fundamental halakha, as this Sage ruled in accordance with the custom of his locale, and that Sage ruled in accordance with the custom of his locale. In Rabbi Yehuda’s locale, even a smaller parcel of land was considered a viable field.

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In connection with Rabbi Yosei’s statement that Sumakhos’s words are not nothing but prophecy, the Gemara reports that Rabbi Avdimi from Haifa says: From the day that the Temple was destroyed prophecy was taken from the prophets and given to the Sages. The Gemara expresses astonishment: Is that to say that a Sage is not fit to be a prophet? Rabbi Avdimi seems to say that these are two distinct categories of people. The Gemara explains: This is what Rabbi Avdimi is saying: Even though prophecy was taken from the prophets, it was not taken from the Sages.

Ameimur said: And a Sage is greater than a prophet, as it is stated: “And a prophet has a heart of wisdom” (Psalms 90:12), i.e., he is wise. When comparisons are drawn, who is compared to whom? You must say that the lesser is compared to the greater. Here too, prophecy is compared to wisdom, thus indicating that wisdom is greater than prophecy.

Abaye said: Know that this is so, that the Sages still enjoy the prophetic gift, as a great man makes a statement with regard to a point of halakha and the same statement is then cited in the name of a different great man in accordance with his statement, indicating that the Sages makes their statements by way of prophecy. Rava disagreed and said: And what is the difficulty with explaining this? Perhaps they were born under the same constellation, and since they are similar in their traits, they reach the same conclusions. Rather, Rava said: Know that this is so, as a great man makes a statement and the same statement is then cited...
Mar bar Rav Ashi – Rav Aĥa of Difti

Mar bar Rav Ashi was a seventh-generation Babylonian amora, the son of the well-known amora Rav Ashi. While many understand that Tavyumei was a nickname, some believe that it was his actual name. His primary teacher was his father, while delivering a lecture he would quote his father with the phrase: My father, my master said, which his disseminator would change to: So said Rav Ashi (Kiddushin 31b). After the death of Rav Ashi, who was the head of the yeshiva in Mata Meĥasya, three other Sages served in his place; nevertheless, after twenty-eight years, Mar bar Rav Ashi finally assumed the position, which he held for thirteen years.

Rav Aĥa of Difti – Rav Aĥa of Difti

was an amora of the fifth and sixth generations. A devoted student of Raven, with whom he discussed many halakhot, Rav Aĥa was apparently the Sage in the Exilarch’s house, and was certainly a leader of his generation. The Gemara relates that he and Mar bar Rav Ashi were colleagues who treated each other as equals.

Street (risteka) – Apparently from the Middle Iranian term rastak, meaning a row of houses.

Signs his name Tavyumei – Tavyumei, which is cognate with the given name was Tavyumei, which is cognate with the

As soon as the Sages heard that Mar bar Rav Ashi had arrived, they determined not to proceed with their appointment without the approval of an important figure such as him. They sent a pair of Sages to him to consult with him, and he detained them. They again sent a pair of Sages to him, and he detained them as well. This continued until they completed a quorum of ten Sages. Once they reached ten men, Mar bar Rav Ashi opened his lecture, taught, and expounded. He did not speak earlier because one should not open a lecture during kalla, the gatherings for Torah study during the months of Elul and Adar, when less than ten men are present. He was then appointed as head of the yeshiva.

Understanding that he had been passed over for the position, Rav Aĥa of Difti read about himself the rabbinc aphorism: Anyone who is treated poorly will not soon be treated well; and anyone who is treated well will not soon be treated poorly. Rav Aĥa understood that he had lost the chance to be appointed, whereas Mar bar Rav Ashi had the good fortune to be appointed, and would remain in his position.

And in what way was prophecy given to children? It was like this incident involving the daughter of Rav Hisda, who when she was a child was sitting on her father’s lap while he sat and learned. Rava and Rami bar Hama were sitting before him. Rav Hisda jokingly said to his daughter: Which of them would you want as a husband? She said: I want both of them. Rava said: And I will be last. And this is what happened; first she married Rami bar Hama, and when he died she married Rava.

Having already cited one statement of Rabbi Avdimi from Haifa, the Gemara cites another statement in his name: Rabbi Avdimi from Haifa says: Before a person eats and drinks he has two hearts, meaning his heart is unsettled because he is distracted by hunger. But after he eats and drinks he has only one heart, as it is stated: “A hollow [nevuv] man is two-hearted” (Job 11:12). How is it indicated that “nevuv” means hungry? As it is written concerning the altar: “Hollow [nevuv]” (Exodus 27:8), which we translate into Aramaic as: Hollow with planks, meaning that a hollow person, i.e., one who has not yet eaten, is two-hearted.

The Gemara continues to discuss the meaning of nevuv, Rav Huna, son of Rav Yehoshua, says: With regard to one who is accustomed to wine, although his heart, i.e., his mind, is closed like a virgin, wine opens it, as it is stated: “And new wine opens [nevuv] the virgins” (Zechariah 9:17). The word nevuv is used here in the sense of clearing out a space: Even if one’s heart and mind are closed, wine will open them to understanding.

He has two hearts – Rashi, Rabbeinu Gershom, and the Ramah explain that before a person eats, his heart is distracted due to his feeling of hunger; therefore, he is like a person with two hearts who thinks about food while thinking about something else at the same time. The Maharal offers the opposite explanation: Before a person eats, his heart is wide open as if he had two hearts, whereas after he eats his body is occupied with digestion and his attention suffers.
A portion of a firstborn and a portion of an ordinary son – לֶבֶן וּמִצְרָא. A firstborn son who inherits a double portion is provided his two portions along one boundary, even when all the portions are not of equal quality and giving him two portions along one boundary results in his receiving higher-quality portions. In this case, he would have to compensate his brother for the difference in value between the respective portions (Sma). The Rema, citing the Rosh, disagrees and says that the halakha that a firstborn is provided his two portions along one boundary applies only when all the portions are of equal quality, but if not, the inheritance is divided by lottery (Rambam Sefer Kinyan, Hilkhot Shekhenim 12:2; Shulhan Arukh, Hoshen Mishpat 174:1).

Yevam – תַּשְׁוָשׁוּט: With regard to a yevam who married his deceased brother’s widow and therefore receives that brother’s portion of their father’s estate, the court forces the others to give this brother his portion along one boundary, and it is not permitted for him to marry her through hiltzat, and it is not permitted for him to marry her through levirate marriage.

Abaye said: This case is equal to that case. What is the reason for this? The Merciful One calls the yevam “firstborn” (see Yevamot 24a) and therefore he is treated like a firstborn in all regards. He receives the two portions of his father’s estate as a single parcel of land. But Rava said: The verse states: “And it shall be, the firstborn” (Deuteronomy 21:17) of his father’s estate. Therefore, it is understood that he receives one contiguous parcel of land that is twice the size of those received by his brothers. By contrast, a yevam receives two independent portions. He inherits one portion as the son of his father, and also receives the portion that was to be inherited by the deceased brother. These are two distinct portions; therefore, the brothers are not obligated to give him two adjacent portions.

The Gemara resumes its discussion of the division of property. Rav Huna, son of Rav Yehoshua, says: It is obvious that if a person inherits a portion of his father’s estate because he is the firstborn, and he also inherits a portion of that estate as an ordinary son, as the like of his brothers, he is given his two portions along one boundary, so that they are adjacent to one another and form a single property. The Gemara asks: What is the halakha with regard to a yevam, a man whose brother died without children, who is obligated by Torah law to marry his deceased brother’s widow or grant her hiltzat? If he marries his brother’s widow, the halakha dictates that he receive his brother’s portion of their father’s estate in addition to his own. Does he too receive the two portions along one boundary?

It is reported that a certain person bought land along the boundary of his father’s property. After some time the father died. When they came to divide the estate, this person said to his brothers: Give me my portion along my boundary. Rabba said: In a case such as this, the court compels people to refrain from conduct characteristic of Sodom. The court forces a person to waive his legal rights in order to prevent him from acting in a manner characteristic of the wicked city of Sodom. Since it makes no difference to the brothers which portion they receive since the parcels of land must be of equal value, whereas it matters to this brother that the area he receives should be adjacent to the land he already bought, the court forces the others to give this brother his portion along his boundary.

The Rema, citing the Rosh, says: It is understood that he receives one contiguous parcel of land the same as for a firstborn son (Deuteronomy 21:17) of his father’s estate. Therefore, it is understood that he receives one contiguous parcel of land that is twice the size of those received by his brothers. By contrast, a yevam receives two independent portions. He inherits one portion as the son of his father, and also receives the portion that was to be inherited by the deceased brother. These are two distinct portions; therefore, the brothers are not obligated to give him two adjacent portions.

Notes

Background

Yevam – תַּשְׁוָשׁוּט: A man whose brother died without children is obligated by Torah law to marry his deceased brother’s widow or to free her by means of a hiltzat ceremony (see Deuteronomy 25:5–10). As long as neither levirate marriage nor hiltzat has taken place, it is prohibited for her to marry another man. By Torah law, levirate marriage is achieved by the act of sexual intercourse. The Sages, nevertheless, instituted the practice of malomar, in which the deceased husband’s brother betroths the widow, even though this betrothal is not effective by Torah law without intercourse. Intercourse consummates the marriage between the deceased brother and the widow, and she is thereafter considered his wife in all respects. A bill of divorce would be necessary to formalize a divorce between them. Nowadays, the brother-in-law is required to free his brother’s widow through hiltzat, and it is not permitted for him to marry her through levirate marriage.

Notes

Yevam – תַּשְׁוָשׁוּט: The early meanings of this phrase is: His father-in-law’s property. But Flasch explains here that it refers to his father’s property. This is based on the continuation of the passage, where the brothers come and protest, indicating that they inherited along with him; such a protest can emerge only with regard to their father’s estate.

But most commentaries, including Tosafot, Arukh, and Ri Migash, explain that this refers to the case of a father-in-law who had only daughters, who in turn divided his estate among themselves.
According to Rashi, this land was of especially high value. Tosafot

Like the property of the house of bar Maryon – כִּבְכוֹר He has two hearts – son eats, his heart is wide open as if he had two hearts, whereas after

they should divide the land in such a manner that both fields are adjacent portions.

The Rema, citing Rav Yosef, said that in this case as well, one of the brothers owns land along the boundary, and therefore his request is honored. Refusing his request in such a situation would be conduct characteristic of Sodom because he may have a valid reason for objecting:

Sometimes this water channel continues running well, while this second one does not continue running well; therefore, the second brother wants to receive land that adjoining a water channel on both sides. The Gemara concludes: And the halakha is in accordance with the opinion of Rav Yosef.

If a father leaves his two sons two parcels of land next to two water channels [nigrei], and one brother requests the field that is next to a field that he already owns, Rabba says: In a case such as this, the court compels people to refrain from conduct characteristic of Sodom and allows that brother to receive the field adjoining his own. Rav Yosef objects to this, saying that if the other brother protests and wants that parcel of land, it is not a case involving conduct characteristic of Sodom because he may have a valid reason for objecting:

If a father leaves his two sons two parcels of land next to one channel and one of the brothers already owns a field next to one of those parcels of land, Rav Yosef said: In a case such as this, the court compels people to refrain from conduct characteristic of Sodom and allows that brother to receive the field adjoining his own. Abaye objects to this, saying that this is not a case involving conduct characteristic of Sodom because the other brother can say to him: I want the number of sharecroppers to increase. If my field is in the middle and you have fields on either side, you will need more sharecroppers to work them and my field will enjoy greater security. And the halakha is in accordance with the opinion of Rav Yosef because the increase of sharecroppers is considered as nothing, and this is therefore not a valid reason for objecting.

Notes:
The early commentaries express two main explanations. According to the first explanation, there is a qualitative difference between the area along the boundary and the parcels the others are receiving. For example, that area might be superior in quality to the rest of the field. The Meiri writes that were the areas equal in value, even Rav Yosef would agree that the brothers could not deny the desired parcel along the boundary from their brother who already owned property there. According to the second explanation, all the areas are equal in value, but the other brothers insist on assigning the portions by lottery. If one of the brothers wants a particular portion for himself, that parcel is assigned a higher value so that if a different brother receives it in the lottery, he can sell it to him at a higher price (see Ramban and Rashba).

Like the property of the house of bar Maryon – רִבְּנוֹת בְּכוֹר

According to Rashi this land was of especially high value. Tosafot and others explain that these people were tremendously wealthy and would not sell their land for less than an exceedingly steep price.

Two parcels of land next to two channels – יָבָם דְּהַאי מִדְוִיל. Rashi holds that in this case as well, one of the brothers owns land along the boundary, and therefore wishes to receive his portion of his father’s estate next to it. His brother disagrees, maintaining that they should divide the land in such a manner that both fields are irrigated from both water channels. Tosafot understand that neither brother owns land along the boundary. Rather, one brother thinks they should divide the property so that each area has its own channel, whereas the other calls for a different arrangement. They explain the subsequent case of two parcels of land with one water channel in a similar fashion.

Language:
Channel (nigra) – יָבָם. Based on the root nun, gimmel, reish, which denotes the drawing or flowing of water. Here and in other places, the word refers to a fixed water channel or a river (Arukh).

Rav Yosef objects to this, saying this is not a case involving conduct characteristic of Sodom, since the brothers can explain their refusal to grant the request. The brothers can say to him: We assess this field that you want for yourself as particularly valuable, like the property of the house of bar Maryon. The brothers can claim that the portion he wants is more desirable than the others, and for that reason they do not want to give it to him. The Gemara concludes: And the halakha is in accordance with the opinion of Rav Yosef, and the brothers can refuse the request.

Background:
Two parcels of land next to two channels – יָבָם דְּהַאי מִדְוִיל. The diagrams illustrate the opinions of the amora'im in accordance with Rashi’s interpretation. Here, the father has left two plots, Plot B and Plot C, to his two sons, one of whom already owns a third plot, Plot A, next to one of them. According to Rav Yosef, the second son may demand that the two plots be redivided lengthwise, such that while the first son still receives the plot adjacent to the one he already owns, both sons have equal access to each channel.

Two parcels of land next to one channel – יָבָם דְּהַאי מִדְוִיל. Here, Rav Yosef concedes that the first son receives the plot adjacent to the one he already owns.

Three plots bordering the same channel

Above: Division of the plots according to Rabba
Right: Division of the plots according to Rav Yosef
A water channel on one side – רַחַם יָבָא עַד. A square field that has a river on two adjacent sides, e.g., on the north and on the east, and a path or a brook (simḥa) on its other sides, in this case, on the south and on the west, is divided diagonally so that each portion borders on the river and on the path (Rambam Sefer Kinyan, Hilkhot Shekhenim 123; Shulhan Arukh, Hoshen Mishpat 1743).

If there is a water channel on one side of the field, the field is divided diagonally (karna zol): between the two brothers, so that they each receive land adjoining both the river and the water channel.

The mishna teaches that a hall, a drawing room, and the like should not be divided unless both parties will be able to use their respective portions in the same manner that they had previously used them. The Gemara asks: What is the halakha if there is not enough for this one and that one? What is to be done if one of the parties wishes to dissolve the partnership? Rav Yehuda said: There is a halakha of: Either you set a price or I will set a price. That is to say, one party can say to the other: Set a price you are willing to pay for my share, and I will sell my share to you or purchase your share from you at that price. Rav Nahman said: There is no halakha of: Either you set a price or I will set a price; rather, the partnership continues.

Rava said to Rav Nahman: According to you who say that there is no halakha of: Either you set a price or I will set a price, what should they do if there was a firstborn son and an ordinary brother whose father left them a slave and a non-kosher animal as an inheritance? How are they to be divided? Rav Nahman said to him: I say that they work for this one, the ordinary brother, one day, and for the other one, the firstborn, two days.

The Gemara raises an objection to Rav Yehuda’s approach from what is taught in a mishna (Gittin 41b): One who is half-slave5 half-freeman, e.g., a slave who had been jointly owned by two people, one of whom emancipated him, serves his master one day and himself one day; this is the statement of Beit Hillel. Beit Shammai say: You have remedied the situation of his master, who benefits fully from all his rights to the slave, but you have not remedied his own situation. He cannot marry a maidservant, since half of him is free, and a free Jew may not marry a Canaanite maidservant. He is also not able to marry a free woman, since half of him is a slave, and a Jewish woman may not marry a Canaanite slave. And if you say he should be idle and not marry, but is it not true that the world was created only for procreation? Is this the statement of Rabbi Yehuda? He is not able to marry a woman, or buy his share, or sell his share. And if you say he should marry a woman, or buy his share, or sell his share, then do not say that he does not marry, or buy his share, or sell his share, or that he is not able to marry a woman, or buy his share, or sell his share.

Rather, the court forces his master to make him a freeman by emancipating the half that he owns, and the court writes a bill in which the slave accepts responsibility to pay half his value to his master. This was the original version of the mishna. The ultimate version of the mishna records the retraction of Beit Hillel: And Beit Hillel retracted its opinion and ruled in accordance with the statement of Beit Shammai. This indicates that it is only in this case, where there is the particular consideration of procreation, that the court compels one of the parties to forfeit his portion and dissolve the partnership. But in other cases there is no halakha of: Either you set a price or I will set a price.
Go take servants for yourself; and they will bathe in the bathhouse. Or he can say: Go take olives for yourself and come and transform them into oil in the olive press. Evidently, the poor brother cannot say to him: Buy my share. The Gemara rejects this proof: There too the poor brother can say: You set a price and buy my share, as the rich brother has the means to buy his poor brother’s portion; but he is not able to say: Or else I will set a price and buy your share, as the poor brother does not have the money to buy his brother out.

The Gemara further proposes: Come and hear a proof from what is taught in a baraita: Anything which, even after it is divided, each of the parts retains the name of the original item, may be divided. And if the parts will not retain the original name, the item should not be divided, but rather its monetary value is assessed, because one of the joint owners can say to the other: Either you set a price and buy it from me, or I will set a price and buy it from you. The Gemara explains: Actually, this matter is a dispute between tanna’im, as it is taught in a baraita: If a courtyard or the like was not large enough to warrant division into two, and one of the co-owners said to the other: You take a minimum measure of the courtyard, e.g., four cubits, and I will take less, the court listens to him. Rabban Shimon ben Gamliel says: They do not listen to him.

The Gemara clarifies the baraita: What are the circumstances of the case under discussion? If we say it is exactly as it is taught, what is Rabban Shimon ben Gamliel’s reasoning? Why does he rule that the court ignores the party who is prepared to settle for less? Rather, is it not that the baraita is incomplete and this is what it is saying: If one of the co-owners said to the other: You take a minimum measure of the courtyard, and I will take less, all agree that the court listens to him. And the tanna of the baraita adds: And if one says: Either you set a price and buy it from me, or I will set a price and buy it from you, they also listen to him. And Rabban Shimon ben Gamliel comes to say: In the first case the court does listen to him, but they do not listen to him when he says: Either you set a price or I will set a price. Accordingly, this issue is the subject of a tannaitic dispute.
The Gemara rejects this interpretation of the baraita: No, the baraita should actually be understood exactly as it is taught. And with regard to what you said: What is Rabban Shimon ben Gamliel’s reasoning? Why can’t one of the parties say that they should divide the property and he will settle for less? It is because the second one can say to him: If you want me to compensate you with money for the difference between my share and your share, I have no money to give you. And if you wish to give it to me as a gift, I am not at ease with that, as it is written: “But he who hates gifts shall live” (Proverbs 15:27). The baraita indicates that there is a halakha of: Either you set a price or I will set a price, in accordance with the opinion of Rav Yehuda.

As a continuation of this discussion, Abaye said to Rav Yosef: That statement of Rav Yehuda is actually the opinion of Shmuel, his teacher, as we learned in the mishna (1a): But in the case of sacred writings, i.e., a scroll of any of the twenty-four books of the Bible, that were inherited by two people, they may not divide them, even if both of them wish to do so, because it would be a show of disrespect to cut the scroll in half. And Shmuel said: They taught that sacred writings should not be divided only if they are contained in one scroll, but when they are contained in two scrolls, they may be divided. And if it should enter your mind to say that there is no halakha of: Either you set a price or I will set a price, why does the halakha apply specifically to one scroll? Even if the sacred writings were contained in two scrolls, they should also not divide them, since the respective parts will not be even and one of the recipients will have to compensate the other.

Rav Shalman interpreted the mishna: It is referring to a case where they both want to divide the sacred writings; therefore, Shmuel said that they may do so when they are contained in two scrolls. But if just one of them wishes to divide them, there is no proof that he can compel the other one to accept the division.

Ameimar said: The halakha is in accordance with the opinion of Rav Yehuda that there is a halakha of: Either you set a price or I will set a price. Rav Ashi said to Ameimar: What about that statement of Rav Nahman, who disagrees with Rav Yehuda and says that there is no such halakha? Ameimar said to him: I do not know of it, that is to say, I do not maintain this opinion. The Gemara asks: And is the halakha not in accordance with the opinion of Rav Nahman? But it happened that the father of Ravin bar Ḥinnana and Rav Dimi bar Ḥinnana died and left them two maidservants, one of whom knew how to bake and to cook, and the other of whom knew how to spin and to weave. One of the brothers suggested that each of them take one of the maidservants entirely for himself and forfeit his rights to the other maidservant. They came before Rava and he said to them: There is no halakha of: Either you set a price or I will set a price.

The Gemara answers: It is different there, since this master wanted both of them and the other master wanted both of them. Therefore, when one of the brothers said to the other: You take one and I will take the other, it is not a case of: Either you set a price or I will set a price. The Gemara asks: And can we not say so? But there is the case of sacred writings, which both of them presumably want, and Shmuel said: They taught that sacred writings should not be divided only if they are contained in one scroll; but when they are contained in two scrolls, they may be divided. The Gemara answers: Rav Shalman interpreted the mishna: It is referring to a case where they both want to divide the sacred writings, and in such a case they may divide them, provided that they are in two scrolls.

Sacred writings…in one scroll – Ḥoshen Mishpat 173:1). Jointly owned sacred writings contained in a single scroll should not be divided, even if the two owners wish to do so. But if the writings are contained in two scrolls, they may be divided (Rambam Sefer Kinyan, Hilkhot Shekhenim 2:9; Shulhan Arukh, Hoshen Mishpat 173:1).

This master wanted both of them – Ḥoshen Mishpat 173:1). If two people co-owned two items that have different uses but are equally needed by both of them, neither one can force the other to divide the items between them, even if they are of equal value. This is also not a case of: Either you set a price or I will set a price (Shulhan Arukh, Hoshen Mishpat 173:13, and see 173:1).
A person may attach the Torah, the Prophets, and the Writings together – בֶּכֶרֶךְ אֶחָד יְהוּדָה דִּשְׁמוּאֵל הִיא הָא דְּרַב כָּל שֶׁאִילּוּ יֵחָלֵ. It is permitted to fasten the Torah, the Prophets, and the Writings together into one scroll. Such a scroll does not have the same level of sanctity as a Torah scroll; it has the sanctity of one of the five books of the Torah. This is in accordance with the opinion of Rabbi Meir (Rambam Sefer Avodah 7:15, Shuĥtan Arukh, Yoreh De’a 283:1).

Between each book of the Torah – בֵּין חוּמָּשׁ לְחוּמָּשׁ שֶׁל תּוֹרָה a scribe must leave a space of four empty lines between one book of the Torah and another. Three lines must be left between one book of the Prophets and another, and between one book of the Twelve Prophets and another (Rambam Sefer Avodah, Hilkhōt Tehillim UMezuza VeSefer Torah 7:15, Shuĥtan Arukh, Yoreh De’a 273:1).

And Rabbi Yehuda said: There was an incident involving Baitos ben Zunin, who had eight books of the Prophets attached together as one scroll, and he did this with the approval of Rabbi Elazar ben Azarya. And others say that each and every one of the books was a scroll by itself, in accordance with the opinion of the Sages. Rabbi Yehuda HaNasi said: There was an incident where they brought before us the Torah, the Prophets, and the Writings attached together as one scroll and we ruled in accordance with the opinion of Rabbi Meir and deemed them fit.

The Gemara states: When different books are included in the same scroll, four empty lines of space should be left between each book of the Torah, and similarly between one book of the Prophets and another. But between each of the books of the Twelve Prophets only three empty lines should be left, because they are considered one book. And the scribe may finish a book at the bottom of a column and the next book at the top of the next column without leaving any empty space in between.

The Sages taught: A person who wishes to attach the Torah, the Prophets, and the Writings together as one scroll may attach them. He should leave enough empty parchment at the beginning of the scroll for winding around the pole to which the beginning of the scroll is fastened. And at the end of the scroll he should leave enough empty parchment for winding around the entire circumference of the rolled-up scroll. And he may finish a book at the bottom of one column and begin the next book at the top of the next column without leaving any empty space between them.

Background

The circumference of the entire scroll is significantly greater than the circumference of the pole around which it is wound.

Notes

The Gemara now begins a general discussion about sacred writings. The Sages taught: A person may attach the Torah, the Prophets, and the Writings together as one scroll; this is the statement of Rabbi Meir. Rabbi Yehuda says: the Torah should be a scroll by itself, the books of the Prophets a scroll by themselves, and the books of the Writings a scroll by themselves. And the Sages say: Each one of the books of the Prophets and the Writings should be a scroll by itself.

Perspectives

Rabbi Elazar ben Azarya – בְּרֹאשׁוֹ כְּדֵי לָגוֹל עַמּוּד וּבְס הָי. Rabbi Elazar ben Azarya was a Torah scholar and an extremely wealthy man. His father, Azarya, was a Torah scholar and an extremely wealthy family. His father, Azarya, was a Torah scholar and an extremely wealthy family. His father, Azarya, was a Torah scholar and an extremely wealthy family. His father, Azarya, was a Torah scholar and an extremely wealthy family.

Background

The circumference of the entire scroll is significantly greater than the circumference of the pole around which it is wound.
And if he wishes to cut the scroll, he may cut it. The Gemara is surprised at this: What is the tanna saying? Why is mention made here of cutting the scroll? The Gemara answers: This is what the tanna is saying: He arranges the text so that if he finishes a book at the bottom of one column, he begins the next book at the top of the next column without leaving any empty space, so that if he wishes to cut the scroll, he may cut it. If he does not begin the next book at the top of the next column, he will not be able to cut the scroll, because it is not fitting for a scroll to begin with an empty space.

The Gemara raises a contradiction between this baraita and another baraita that teaches: Enough parchment should be left at the beginning of the scroll and at its end for winding. The Gemara clarifies: For winding around what? If it means for winding around the pole to which the beginning of the scroll is fastened, this is difficult in light of what is taught in the first baraita, that at the end of the scroll enough parchment should be left for winding around the entire circumference of the scroll. And if it means for winding around the entire circumference, this is difficult in light of what is taught in the first baraita that at the beginning of the scroll enough parchment should be left for winding around the pole.

Rav Nahman bar Yitzhak said: The tanna teaches the halakha disjunctively, referring to two separate cases. He issues a general statement requiring that enough parchment be left for winding as needed: At the beginning of the pole, enough to wind around the pole, and at the end of the scroll, enough to wind around the circumference.

Rav Ashi said: When that second baraita is taught, indicating that the same measure of parchment is left at both the beginning and the end of the scroll, it was referring to a Torah scroll, as it is taught in a baraita: All other scrolls are wound from the beginning to the end around a single pole, but a Torah scroll is wound from both ends to the middle around two poles, one of which he attaches at this end of the scroll and the other at the other end. Rabbi Eliezer, son of Rabbi Tradok said: This is how the scribes in Jerusalem made their scrolls, i.e., with poles at either end so that it could be rolled to the middle.

The Sages taught: A Torah scroll should not be made in such a manner that its length, i.e., its height, is greater than its circumference when it is rolled up; nor should its circumference be greater than its length. They asked Rabbi Yehuda HaNasi: What should the size of a Torah scroll be? Rabbi Yehuda HaNasi said to them: If it was written on a hide that was treated with gallnuts [gevil] it should be six handbreadths long. They asked him further: How much should it be if it was written on ordinary parchment [kelaf]? Rabbi Yehuda HaNasi said to them: I do not know.

**NOTES**

- **If he wishes to cut – הקטן בר ארא: This is surprising, as it was taught in the mishna that it is disrespectful to divide sacred writings. It may be suggested that while it is disrespectful to divide sacred writings as part of a division of assets, there is nothing wrong with dividing them when no monetary consideration is involved (Tosafot).**

- **All scrolls are wound from the beginning to the end – רות ב. א: This is Rashi’s version of the text. Most of the early Commentaries, by contrast, appear to understand this as: All scrolls are wound to their beginning. Tractate Sofrim explicitly states that all scrolls, except for Torah scrolls, are rolled from their end to their beginning. The Commentaries disagree about how to resolve the contradiction between this version of the text and the earlier baraita that states that enough empty parchment must be left at the beginning of the scroll to wind the scroll around a pole, and enough empty parchment must be left at the end of the scroll to wind it around the entire circumference of the rolled-up scroll, since this baraita indicates that the scrolls are rolled from their beginning to their end.**

- **But a Torah scroll is wound to the middle – רות ב. א: This does not mean literally to the middle, but rather to the spot where the previous reading had ended and the next reading will begin. The difference between a Torah scroll and other scrolls lies in the honor that must be shown to the community, that the people should not be kept waiting while the Torah is being rolled to the proper place from the beginning or from the end. It would be similarly disrespectful to the community if the Torah had to be rolled from the middle each time it was read (Ri Migash).**

- **On gevil it should be six handbreadths – רות ב. א: This means, citing Rav Yehudai Gaon, that this measurement was chosen to correspond to the dimensions of the tablets of the covenant. Others write that this is the measurement of the Torah that was in the Ark of the Covenant. (Yazavot).**

**HALAKHA**

- **If he wishes to cut – הקטן בר א: The empty lines that must be left between the books of the Torah and the books of the Prophets are intended to facilitate cutting of the scroll, should one desire to do so (Rambam Sefer Ahava, Hilkhot Tefillin UMezuza VeSefer Torah 9:15).**

- **At the beginning of the scroll and at its end – רות ב. א: An empty portion of parchment must be left at the beginning and at the end of a Torah scroll to facilitate winding the scroll around the poles. An additional two fingerbreadths must be left between the pole and the column of writing (Rambam Sefer Ahava, Hilkhot Tefillin UMezuza VeSefer Torah 9:2; Shulhan Arukh, Yoreh De’a 273:1).**

- **All scrolls are wound from the beginning to the end – רות ב. א: All sacred scrolls are wound around a pole fastened to the end of the scroll. A Torah scroll is rolled from both ends to the middle around two poles fastened to either end. The parchment is seven with sinews (Rambam Sefer Ahava, Hilkhot Tefillin UMezuza VeSefer Torah 9:2; Shulhan Arukh, Orach Hayyim 691:2 and Yoreh De’ah 278:1).**

- **Its length should not be greater than its circumference – יfat תוקף הנקרא: A Torah scroll should be written in such a way that after it is seven and rolled, its length equals its circumference. When the scroll is written on gevil, its length should be six handbreadths; when it is written on ordinary parchment, it can be more or less than that, provided that its length equals its circumference. Some authorities say that the thickness of the pole at the end of the scroll is included in the measurement of the circumference (Rambam Sefer Ahava, Hilkhot Tefillin UMezuza VeSefer Torah 9:3; Shulhan Arukh, Yoreh De’ah 271:1).**

**BACKGROUND**

- **Gevil and kelaf – כפלי הקטן: Gevil is a whole animal hide that has been treated in the way crude leather is made fit for clothes, shoes, and the like. During the processing, the hair and flesh is removed, and the skin is smoothed out, shrunk, and treated to become more durable. The skin is smoothed until suitable for writing. This was the prevalent process for preparing Torah scrolls in ancient times.**

- **In the talmudic period, the process of preparing the animal hides changed somewhat. After its initial treatment, the hide was cut into two layers. The outer layer of skin, which had been covered with hair, was called kelaf, while the inner layer, facing the flesh was called dukhotsum. During the Middle Ages, particularly in France and Germany, a new practice developed, in which the hides, rather than being split, were stripped down on both sides by removing the hair and the layer immediately beneath it, as well as the inner layer. The exposed core of the hide was then used for writing. This core layer is subject to all the halakhot of a kelaf taught in the Gemara despite not being true kelaf. This type of parchment is still used today for writing Torah scrolls, phylacteries, and mezuzot.**
The Ark that Moses fashioned, according to Rabbi Meir:

Four hundred vineyards – Rabbi Yannai planted four hundred vineyards due to his love for the land of Eretz Yisrael, which he wished to build up and plant with his own two hands (Rav Aĥa bar Ya’akov; Ritva; Meiri).

It is related that Rav Huna wrote seventy Torah scrolls himself, and it happened for him only once that the length and the circumference were equal. Rav Aĥa bar Ya’akov wrote one Torah scroll on calfhide and it happened to have the same length and circumference. The Sages looked at him and his achievement with jealousy, and he died from their envious gaze.

The Sages said to Rav Hannuna: Rabbi Ami wrote four hundred Torah scrolls. Rav Hannuna said to them: Perhaps he wrote the verse: “Moses commanded us the Torah” (Deuteronomy 33:4) four hundred times, rather than four hundred complete Torah scrolls, as it is difficult to say that he could have written so many, even over a lifetime. Similarly, Rav said to Rabbi Zeira: Rabbi Yannai planted four hundred vineyards. Rav said to him: Perhaps he did not plant large vineyards, but only the smallest possible vineyards recognized by halakha, which are composed of two vines facing another two vines, with a fifth one protruding like a tail, extending out beyond the square.

The Gemara raises an objection to what is taught with regard to the length of a Torah scroll from a baraita: With regard to the Ark of the Covenant that Moses fashioned, its length was two and one-half cubits, its width was one and one-half cubits, and its height was one and one-half cubits (see Exodus 25:10), the cubit used for these measurements being six handbreadths. Therefore, the Ark was fifteen handbreadths long, nine handbreadths wide, and nine handbreadths high.

The baraita continues: And as for the tablets, their length was six handbreadths, their width was six handbreadths, and their thickness was three handbreadths. The tablets were placed along the length of the Ark, one next to the other. If so, how much space did the tablets occupy along the length of the Ark? Twelve handbreadths, as each tablet was six handbreadths long. Three handbreadths were left there along the length of the Ark, for a total of fifteen handbreadths. Deduct a handbreadth from them: One-half a handbreadth for this wall, namely, the thickness of the wooden Ark itself, and one-half a handbreadth for the other wall. Accordingly, two handbreadths were left there, in which the Torah scroll written by Moses lay.
The baraita continues: With this explanation you have accounted for the entire length of the Ark; go now and account for the width of the Ark, which was nine handbreadths wide. How much space did the tablets occupy of the width of the Ark, which was nine handbreadths wide? Six handbreadths; therefore, three handbreadths were left there along the width of the Ark. Deduct a handbreadth from them: One-half a handbreadth for the thickness of this wall and one-half a handbreadth for the thickness of the other wall. Accordingly, two handbreadths were left there. What was their purpose? These were necessary so that the Torah scroll would be able to go in and out without being pressed; this is the statement of Rabbi Meir.

Rabbi Yehuda disagrees and says: The cubit used for all the measurements of the Ark was five handbreadths long. Therefore, the Ark was twelve and one-half handbreadths long, seven and one-half handbreadths wide, and seven and one-half handbreadths high. And as for the tablets, their length was six handbreadths, their width was six handbreadths, and their thickness was three handbreadths, and they were placed along the length of the Ark, one next to the other. If so, how much space did the tablets occupy along the length of the Ark? Twelve handbreadths, so that one-half a handbreadth was left there, which is two handbreadths. One fingerbreadth of those two was for the thickness of this wall and one fingerbreadth of those two was for the thickness of the other wall.

With this explanation, you have accounted for the entire length of the Ark; go now and account for the width of the Ark, which was seven and one-half handbreadths. How much space did the tablets occupy in the Ark? Six handbreadths, meaning that one and one-half handbreadths were left there along the width of the Ark. Deduct one handbreadth, one and one-half fingerbreadths for the thickness of this wall, and one and one-half fingerbreadths for the thickness of the other wall. Accordingly, one handbreadth was left there in which the silver columns were placed on either side of the tablets, as it is stated: “King Solomon made himself a palanquin of the timbers of Lebanon; he made its columns of silver, its back of gold, its seat of purple” (Song of Songs 3:9–10). This is understood as an allusion to the Ark of the Covenant.

And the chest in which the Philistines sent the gift to the God of Israel was placed alongside the Ark, as it is stated: “And put the golden devices which you are restoring to Him for a guilt-offering in a chest by the side of it, and send it away that it may go” (1 Samuel 6:8). And upon this chest lay the Torah scroll, as it is stated: “Take this Torah scroll and put it at the side of the Ark of the Covenant of the Lord” (Deuteronomy 31:16). This means that it was placed at the side of the Ark, and not inside it.

And accordingly, how do I realize the meaning of that which is stated: “There was nothing in the Ark except the two tablets of stone which Moses put there,” which, according to the opinion of Rabbi Meir, teaches that something else was in the Ark besides the tablets themselves? It serves to include...
The Gemara asks: What is the diameter of a T orah scroll with a circumference of six handbreadths? It would be impossible to fit it in. Rav Ashi said: A small section of the scroll was wound separately and then placed on top of the scroll.

Having concluded its current discussion, the Gemara now addresses the details of the aforementioned baraita and asks: And according to Rabbi Yehuda, who says that the Torah scroll rested on the chest that came from the Philistines, where was the Torah scroll placed before the chest arrived? The Gemara answers: A shelf protruded from the Ark and the Torah scroll rested on it. The Gemara asks: And according to Rabbi Meir, who says that the Torah scroll rested inside the Ark, what does he do with this verse: “Take this Torah scroll and put it at the side of the Ark” (Deuteronomy 31:16)? The Gemara answers: He requires that verse to teach that the Torah scroll was placed at the side of the tablets, and that it was not placed between the two tablets, but it was actually placed inside the Ark at the side of the tablets.

The Gemara asks: And according to Rabbi Meir, where were the silver columns placed? The Gemara answers: Outside the Ark. The Gemara further asks: And from where does Rabbi Meir derive that the broken pieces of the first set of tablets were placed in the Ark, as the verse from which Rabbi Yehuda learns this: “There was nothing in the Ark except” (1 Kings 8:9), is needed by Rabbi Meir to teach that the Torah scroll was placed there? The Gemara answers: He derives this point from what Rav Huna expounded, as Rav Huna says: What is the meaning of that which is written: “The Ark of God, whereupon is called the Name, the name of the Lord of hosts that sits upon the cherubs” (1 Samuel 6:2)? The phrase “the name, the name of the Lord” teaches that both the second tablets and the broken pieces of the first set of tablets were placed in the Ark.
The Gemara asks: And what does the other Sage, i.e., Rabbi Yehuda, derive from this verse? The Gemara responds: He requires that text for that which Rabbi Yoĥanan says, as Rabbi Yoĥanan says that Rabbi Shimon ben Yoĥai says: This teaches that the ineffable name of God and all of His appellations were placed in the Ark.

The Gemara inquires: And doesn’t the other Sage, Rabbi Meir, also require it for that? The Gemara answers: Yes, it is indeed so. Rather, from where does he derive that the broken pieces of the first set of tablets were placed in the Ark? The Gemara expounds: He derives this from that which Rav Yosef taught, as Rav Yosef taught a baraita: The verses state: “At that time the Lord said to me: Hew for yourself two tablets of stone like the first…and I will write on the tablets the words that were on the first tablets, which you broke, and you shall put them in the Ark” (Deuteronomy 10:1–1). This teaches that both the second set of tablets and the broken pieces of the first set of tablets were placed in the Ark.

The Gemara asks: And what does the other one, Rabbi Yehuda, learn from this verse? The Gemara answers: He requires it for that which Reish Lakish teaches, as Reish Lakish says: What is the meaning of that which is stated: “[Hosea]” and not with any other prophet before him? Weren’t there many prophets between Moses and Hosea? If so, Rabbi Yehuda, derive from this verse? The Gemara answers: Were it written [asher shibbarta]?”? These words allude to the fact that God approved of Moses’ action, as if the Holy One, Blessed be He, said to Moses: May your strength be straight [yishar koĥah] because you broke them.

The Gemara inquires: But let the book of Hosea be written separately and let it precede the others. The Gemara answers: Were it written separately, since it is small it would be lost.

\[\text{NOTES}\]

\[\text{HALAKHA}\]
The order of the books of the Writings is: Ruth, Psalms, Job, Proverbs, Ecclesiastes, Song of Songs, and Lamentations; Daniel, Esther, Ezra, and Nehemiah, and Chronicles. Bibles printed today follow a different order (Rambam Sefer Aboth, Hilkhot Teffilin UMezuza VeSefer Torah 7:15; Shulhan Arukh, Yoreh De’a 283:3).

The Gemara further asks: Consider: Isaiah preceded Jeremiah and Ezekiel, let the book of Isaiah precede the books of those other prophets. The Gemara answers: Since the book of Kings ends with the destruction of the Temple, and the book of Jeremiah deals entirely with prophecies of the destruction, and the book of Ezekiel begins with the destruction of the Temple but ends with consolation and the rebuilding of the Temple, and Isaiah deals entirely with consolation, as most of his prophecies refer to the redemption, we juxtapose destruction to destruction and consolation to consolation. This accounts for the order: Jeremiah, Ezekiel, and Isaiah.

The baraita continues: The order of the Writings is: Ruth and the book of Psalms, Job and Proverbs; Ecclesiastes, Song of Songs, and Lamentations; Daniel and the Scroll of Esther; and Ezra and Chronicles. The Gemara asks: And according to the one who says that Job lived in the time of Moses, let the book of Job precede the others. The Gemara answers: We do not begin with suffering, i.e., it is inappropriate to start the Writings with a book that deals so extensively with suffering. The Gemara asks: But the book of Ruth, with which the Writings opens, is also about suffering, since it describes the tragedies that befell the family of Elimelech. The Gemara answers: This is suffering which has a future of hope and redemption. As Rabbi Yohanan says: Why was she named Ruth, spelled reish, vav, vav? Because there descended from her David who sated, a word with the root reish, vav, vav, the Holy One, Blessed be He, with songs and praises.

The baraita now considers the authors of the biblical books: And who wrote the books of the Bible? Moses wrote his own book, i.e., the Torah, and the portion of Balaam in the Torah, and the book of Job. Joshua wrote his own book and eight verses in the Torah, which describe the death of Moses. Samuel wrote his own book, the book of Judges, and the book of Ruth. David wrote the book of Psalms by means of ten elders of previous generations, assembling a collection that included compositions of others along with his own. He included psalms authored by Adam the first man, by Melchizedek king of Salem, and by Abraham, and by Moses, and by Heman, and by Jeduthun, and by Asaph.

By means of ten elders: It has been suggested that Psalms, chapter 139 is attributed to Adam: “Your eyes did see my imperfect substance.” Melchizedek is credited with the authorship of chapter 110, which states: “After the manner of Melchizedek.” Chapter 89 is attributed to Abraham, as it says: “Maskil of Ethan the Ezrathite,” who is identified with Abrahm. Chapter 90 is explicitly introduced as: “A prayer of Moses,” and many commentaries assume that the next ten chapters were composed by him as well. Heman wrote chapter 88; Jeduthun, chapter 39; and Asaph, chapters 50 and 73–83. The sons of Korah are credited with chapters 42, 44–49, 84, 85, 87, and 88.

And Jeremiah deals entirely with the destruction – יִשָּׁע בּוֹ רוֹחַט טֶ׳ַח יֵאָרָנוּת הִיא! And according to the Riaf, Moses’ own book is a collection that included compositions of others along with his own. The Gemara further asks: Consider: Isaiah preceded Jeremiah and Ezekiel, let the book of Isaiah precede the books of those other prophets. The Gemara answers: Since the book of Kings ends with the destruction of the Temple, and the book of Jeremiah deals entirely with prophecies of the destruction, and the book of Ezekiel begins with the destruction of the Temple but ends with consolation and the rebuilding of the Temple, and Isaiah deals entirely with consolation, as most of his prophecies refer to the redemption, we juxtapose destruction to destruction and consolation to consolation. This accounts for the order: Jeremiah, Ezekiel, and Isaiah.

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Which has a future – יִשָּׁע בּוֹ רוֹחַט טֶ׳ַח יֵאָרָנוּת הִיא! It has been suggested that Psalms, chapter 139 is attributed to Adam: “Your eyes did see my imperfect substance.” Melchizedek is credited with the authorship of chapter 110, which states: “After the manner of Melchizedek.” Chapter 89 is attributed to Abraham, as it says: “Maskil of Ethan the Ezrathite,” who is identified with Abrahm. Chapter 90 is explicitly introduced as: “A prayer of Moses,” and many commentaries assume that the next ten chapters were composed by him as well. Heman wrote chapter 88; Jeduthun, chapter 39; and Asaph, chapters 50 and 73–83. The sons of Korah are credited with chapters 42, 44–49, 84, 85, 87, and 88.

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The Gemara elaborates on the particulars of this *baraitha*: The Master said above that Joshua wrote his own book and eight verses of the Torah. The Gemara comments: This *baraitha* is taught in accordance with the one who says that it was Joshua who wrote the last eight verses in the Torah. This point is subject to a tannaitic dispute, as it is taught in another *baraitha*: "And Moses the servant of the Lord died there" (Deuteronomy 34:5); is it possible that after Moses died, he himself wrote "And Moses died there?" Rather, Moses wrote the entire Torah until this point, and Joshua wrote from this point forward; this is the statement of Rabbi Yehuda. And some say that Rabbi Nehemiah, son of Hacaliah.

Rabbi Shimon said to him: Is it possible that the Torah scroll was missing a single letter? But it is written: "Take this Torah scroll" (Deuteronomy 31:26), indicating that the Torah was complete as is and that nothing further would be added to it. Rather, until this point the Holy One, Blessed be He, dictated and Moses repeated after Him and wrote the text. From this point forward, with respect to Moses’ death, the Holy One, Blessed be He, dictated and Moses wrote with tears. The fact that the Torah was written by way of dictation can be seen later, as it is stated concerning the writing of the Prophets: "And Baruch said to them: He dictated all these words to me, and I wrote them with ink in the scroll" (Jeremiah 36:18).

The Gemara asks: In accordance with whose opinion is that which Rabbi Yehoshua bar Abba says that Rav Giddel says that Rav says: When the Torah is read publicly in the synagogue, one person reads the last eight verses in the Torah, and that section may not be divided between two readers? Shall we say that this is in accordance with the opinion of Rabbi Yehuda and not in accordance with the opinion of Rabbi Shimon, as according to Rabbi Shimon these verses are an integral part of the Torah, written by Moses just like the rest? The Gemara answers: Even if you say that this was said in accordance with the opinion of Rabbi Shimon, since they differ from the rest of the Torah in one way, as Moses wrote them with tears, they differ from the rest of the Torah in this way as well, i.e., they may not be divided between two readers.

Halakha

Eight verses – פסוק שמונים ושמונים: The last eight verses of the Torah may be read even in the absence of a quorum of ten men, i.e., where at first there are ten men and one steps out. According to the Shulhan Arukh, these verses must be read by one person and may not be divided between two readers. The Rama, citing the Mordekhai, writes that these verses should be read by a Torah scholar (Rambam Sefer Avot, Hilkhot Tefillah 13:6 and Kesef Mishneh there; Shulhan Arukh, Orah Hayyim 428:7 and 669:1 in the comment of Rama).

Notes

The three sons of Korah – על ביה תקיע: Tosafot cite a version of this *baraitha* that credits Solomon and the three sons of Korah, since there are also chapters in the book of Psalms that are attributed to Solomon (72, 127). Tosafot explain that there are variations to this *baraitha*, one of which states that David and Solomon composed the book, and another which lists Abraham as a contributor distinct from Ethan the Ezri, who is identified as Jacob (see Rabbeinu Gershon and Maharsha; Rashi at the beginning of the book of Psalms).

Hezekiah and his colleagues – רבעי תוכית: The source for this assertion is: "These are the prophecies of Solomon which were copied by the colleagues of Hezekiah, king of Judea" (Proverbs 25:1).

Ezekiel and the Twelve Prophets – ינוק ו adoles ירר: Rashi wonders why Ezekiel did not write his own book. He suggests that perhaps prophecies outside of Eretz Yisrael were not recorded outside Eretz Yisrael, but were written by prophets and the other members of the Great Assembly. Consequently, they wrote the books of Ezekiel, Daniel, and Esther, all of which refer to events that took place outside Eretz Yisrael. They themselves completed the record of their prophecies and combined the books of the twelve minor prophets into one book. Tosafot comment that Jeremiah went to Egypt but is said not to have returned, and yet it states that he wrote his own book. The Maharal takes a different approach, which resolves this difficulty: The members of the Great Assembly wrote the books of those who died during their era, such as Ezekiel and Daniel. This was not the case with Jeremiah and Ezra.

And eight verses of the Torah – עשר פסוקים פסוקים: While most commentators understand this to be a reference to the final eight verses in the Torah (Deuteronomy 34:5–12), it has also been explained to be referring to the eight verses beginning “And Moses ascended from the plains of Moab” (Deuteronomy 34:1) through the verse ending “so the days of weeping in the mourning for Moses were ended” (see Ibn Ezra and Hazan Sofer).

Moses repeated and wrote – משה נהנה עקב מיכה: Moses repeated after God so as not to en in his writing (Rashi on Mekhilta 30a), as this is the customary practice of scribes.

One person reads – אדם אחד: This ruling has been understood in several ways. Rashi explains that a single individual reads these verses without interruption. Another suggestion is that these verses must be read as a distinct passage without the previous text, so as not to combine this unique passage with the rest of the Torah (Ri Migash). The Ramah combines these two approaches. Tosafot cite Rabbeinu Meshullam as saying that one individual reads the verses rather than two, as is the practice in most places today where one person is called to the Torah while another actually reads from it. The Rambam maintains that one can read these verses even in the absence of a quorum of ten men. The Meiri and the Mordekhai explain that an important man must read these verses.
It is stated in the baraita that Joshua wrote his own book. The Gemara asks: But isn't it written toward the end of the book: "And Joshua, son of Nun, the servant of the Lord, died" (Joshua 24:29)? Is it possible that Joshua wrote this? The Gemara answers: Aaron's son Eleazar completed it. The Gemara asks: But isn't it also written: "And Eleazar, son of Aaron, died" (Joshua 24:33)? The Gemara answers: Pinchas completed it.

It is also stated in the baraita that Samuel wrote his own book. The Gemara asks: But isn't it written: "And Samuel died" (1 Samuel 28:3)? The Gemara answers: Gad the seer and Nathan the prophet finished it.

It is further stated that David wrote the book of Psalms by means of ten elders, whom the baraita proceeds to list. The Gemara asks: But then let it also count Ethan the Ezrahite among the contributors to the book of Psalms, as it is he who is credited with Psalms, chapter 89. Rav says: Ethan the Ezrahite is the same person as Abraham. Proof for this is the fact that it is written here: "A Maskil of Ethan the Ezrahite" (Psalms 89:1), and it is written there: "Who raised up one from the east [mizraḥ], whom righteousness met wherever he set his foot" (Isaiah 41:2). The latter verse is understood as referring to Abraham, who came from the east, and for that reason he is called Ethan the Ezrahite in the former verse.

The Gemara asks: The baraita counts Moses among the ten elders whose works are included in the book of Psalms, and it also counts Heman. But doesn't Rav say: The Heman mentioned in the Bible (1 Kings 5:11) is the same person as Moses? This is proven by the fact that it is written here: "Heman" (Psalms 88:1), which is Aramaic for trusted, and it is written there about Moses: "For he is the trusted one in all my house" (Numbers 12:7). The Gemara answers: There were two Hemans, one of whom was Moses, and the other a Temple singer from among the descendants of Samuel.

The baraita further states that Moses wrote his own book, i.e., the Torah, the portion of Balaam, and the book of Job. This supports Rabbi Levi bar Laĥma, as Rabbi Levi bar Laĥma says: Job lived in the time of Moses. It is written here with regard to Job: "Oh, that my words were written now [eifo]" (Job 19:23), and it is written there in Moses' words to God: "For in what shall it be known here [eifo]?" (Exodus 33:16). The unusual use of the word eifo in these two places indicates that Job and Moses lived in the same generation.

The Gemara comments: But if that is the proof, say that Job lived in the time of Isaac, as it is written in connection with Isaac: "Who then [eifo] is he that has taken venison?" (Genesis 27:33). Or say that he lived in the time of Jacob, as it is written with respect to Jacob: "If it must be so now [eifo], do this" (Genesis 43:11). Or say that he lived in the time of Joseph, as it is written with respect to Joseph: "Tell me, I pray you, where [eifo] are they feeding their flocks?" (Genesis 37:16).

The Gemara answers: It could not enter your mind to say this, as it is written in the continuation of the previously mentioned verse: "Oh, that my words were inscribed [veyuĥaku] in a book?" (Job 19:33), and it is Moses who is called the inscriber, as it is written with regard to him: "And he provided the first part for himself, for there was the inscriber's [mehokek] portion reserved?" (Deuteronomy 33:21).

Rava says: Job lived at the time of the spies whom Moses sent to scout the land of Canaan. This is proven by the fact that it is written here: "There was a man in the land of Utz, whose name was Job" (Job 1:1), and it is written there in the account of the spies: "Whether there are trees [eitz] in it" (Numbers 13:20). The Gemara asks: Is it comparable? Here the word that is used is Utz, whereas there the word is eitz. The Gemara answers: This is what Moses said to Israel, i.e., to the spies: Is that man named Job still alive, he whose years are as long as the years of a tree and who protects his generation like a tree? This is why the allusion to him here is through the word eitz, rather than Utz.
The Gemara relates that one of the Sages sat before Rabbi Shmuel bar Nahmani and he sat and said: Job never existed and was never created; there was never such a person as Job. Rather, his story was a parable. Rabbi Shmuel bar Nahmani said to him: In rebuttal to you, the verse states: “There was a man in the Land of Utz whose name was Job” (Job 1:1), which indicates that such a man did indeed exist.

The Gemara asks: But if that is so, that the words “there was” prove that Job existed, what shall we say about the parable that Natan the prophet presented to David: “There were two men in one city; the one rich and the other poor. The rich man had very many flocks and herds, but the poor man had nothing except one little lamb, which he had bought and reared” (I Samuel 25:2)? Was there really such a person? Rather, it was merely a parable; here too it is merely a parable. The Gemara answers: If so, that it is a parable, why state his name and the name of his city? Rather, Job was clearly a real person.

The Gemara cites another opinion with regard to the time when Job lived. Rabbi Yohanan and Rabbi Elazar both say: Job was among those who ascended from the exile to Eretz Yisrael at the start of the Second Temple period, and his house of study was in Tiberias. The Gemara raises an objection from what is taught in a baraita: The days of Job’s life extended from when Israel entered Egypt until they left, indicating that this is the period during which he lived and not, as suggested, in the early days of the Second Temple.

The Gemara answers: Say that the baraita means that the duration of Job’s life lasted as long as from when Israel entered Egypt until when they left, but not that he lived during that specific time frame.

The Gemara raises an objection from another baraita against the notion that Job was a Jew: Seven prophets prophesied to the nations of the world, and they are: Balaam and his father Beor, and Job, Eliphaz the Temanite, and Bildad the ShuRITE, and Zophar the Naamathite, and Elihu ben Barachel the Buzite, which indicates that Job was not Jewish. He said to him: And according to your reasoning that Job could not have been Jewish because he prophesied to the nations of the world, was Elihu ben Barachel not a Jew? Is it not written: “Of the family of Ram” (Job 32:2), meaning Abraham?

Rather, one must explain that Elihu is included in this list because he prophesied to the nations of the world; and so too it may be maintained that Job is included in this list, even though he is Jewish, because he prophesied to the nations of the world. The Gemara asks: But did not all the other prophets also prophesy to the nations of the world? Why then are only these seven mentioned? The Gemara answers: There, with regard to the other prophets, their main prophecies were directed to Israel, whereas here, with regard to these seven prophets, their main prophecies were directed to the nations of the world.

The Gemara raises an objection from what is taught in a different baraita: There was a certain pious man among the nations of the world and his name was Job, and he came into the world only to receive his reward. The Holy One, Blessed be He, brought afflictions upon him, and he began to blaspheme and curse. The Holy One, Blessed be He, doubled his reward in this world in order to expel him from the World-to-Come. This baraita states that Job was not a Jew, but rather a gentle.
The Gemara responds: The matter of whether or not Job was Jewish is a dispute between tanna'im, as it is taught in a baraita with regard to the period during which Job lived: Rabbi Elazar says: Job lived in the days of the judging of the Judges, as it is stated in connection with Job: “Behold, all you yourselves have seen it; why then have you become altogether vain?” (Job 27:12). Which generation was completely vain? You must say it was the generation of the judges of the Judges, when the people judged the Judges, as will be explained shortly.

Rabbi Yehoshua ben Korha says: Job lived in the days of Ahasuerus, as it is stated: “And in all the world were no women found so beautiful as the daughters of Job” (Job 42:15). In which generation were beautiful women sought? You must say it was the generation of Ahasuerus (Esther, chapter 2). The Gemara asks: But why not say it was in the days of David, as it is written: “And they sought a beautiful maiden” (1 Kings 1:1)? The Gemara answers: There, in the time of David, they searched “throughout the territory of Israel” (1 Kings 1:1), whereas here, in the time of Ahasuerus, they searched throughout the world, as is similarly stated with regard to Job’s daughters.

Rabbi Natan says: Job lived in the days of the kingdom of Sheba, as it is stated: “And Sheba fell upon them, and took them away” (Job 1:15). And the Rabbis say: Job lived in the days of the kingdom of the Chaldeans in the time of Nebuchadnezzar, as it is stated: “The Chaldeans formed three bands” (Job 1:17). And some say that Job lived in the days of Jacob and that he married Dina, the daughter of Jacob. As it is written here: “You speak as one of the loathsome women speaks” (Job 2:10), and it is written there in the account of the incident involving Dina: “He has done a loathsome act in Israel” (Genesis 34:7). This concludes the text of the baraita. The Gemara comments: And all these tanna'im hold that Job was a Jew except for the opinion introduced with the phrase: And some say, according to which Job lived in the time of Jacob, and he was certainly not one of Jacob’s sons.

And what is the proof that all these tanna'im maintain that Job was Jewish? As if it should enter your mind that he came from the nations of the world, there is a difficulty: After Moses died, did the Divine Presence rest any longer on the nations of the world? But doesn’t the Master say: Moses requested that the Divine Presence not rest again on the nations of the world, and his request was granted to him, as it is stated: “That we shall be differentiated, I and Your people, from all the people that are upon the face of the earth” (Exodus 33:16), and it is stated there that God acceded to his request.

Rabbi Yoḥanan says: The generation of Job was awash in licentiousness, as it is stated: “Behold, all of you yourselves have seen [bazeṭem] it; why then have you become altogether vain?” (Job 27:12), and it is written: “Return, return, O Shulamite; return, return, that we may look [venezeze] upon you” (Song of Songs 7:1), which teaches that the phrase “you have seen it” connotes a licentious gaze. The Gemara asks: But say that the phrase “you yourselves have seen it” signifies prophecy, as it is written: “The vision [ḥazon] of Isaiah ben Amoz” (Isaiah 1:1). The Gemara answers: If so, why do I need the words: “Why then have you become altogether vain”? Rather, the reference must be to inappropriate licentious gazing.

NOTES

Generation was completely vain – This can be understood in light of what is stated subsequently: “In the days of the judging of the Judges” (Ruth 1:1), the generation judged its own judges, as they too were sinful. The Maharal writes that the generation’s primary ruin lay in the absence of order and leadership: “Every man did what was right in his eyes” (see, e.g., Judges 17:6). Such a generation deserves to be called completely vain.
And further, with regard to Rabbi Elazar’s statement in the baraita that the generation of the judging of the Judges was one of vanity, Rabbi Yohanan says: What is the meaning of that which is written: “And it happened in the days of the judging of the Judges” (Ruth 1:1)? This indicates a generation that judged its judges. If a judge would say to the defendant standing before him: Remove the splinter from between your eyes, meaning rid yourself of some minor infraction, the defendant would say to him: Remove the beam from between your eyes, meaning you have committed far more serious sins. If the judge would say to him: “Your silver is to become dross” (Isaiah 1:22), meaning your coins are counterfeit, the defendant would say to him: “Your wine is mixed with water” (Isaiah 1:22), meaning you yourself dilute your wine with water and sell it. Since nobody behaved in proper manner, the judges were unable to judge.

Rabbi Shmuel bar Nahmani says that Rabbi Yonatan says: Anyone who took a half of his wealth from him, or complained about the fact that you had failed to fulfill your wine with water and sell it. Since nobody behaved in proper manner, the judges were unable to judge.

§ Having mentioned the book of Job, the Gemara addresses several matters relating to it. It is stated: “Now there was a day when the sons of God came to present themselves before the Lord, and the Satan came also among them. And the Lord said to the Satan: From where do you come? And the Satan answered the Lord, and said: From going to and fro in the earth, and from walking through it” (Job 1:6–7). The Satan said to God: Master of the Universe, I have gone to and fro throughout the entire world and have not found anyone as faithful as Your servant Abraham, to whom You said: “Arise, walk through the land in the length of it and in the breadth of it; for I will give it to you” (Genesis 13:17). And even so, when he did not find a place to bury Sarah before he purchased a burial site for four hundred silver shekels, he did not find fault with Your ways or complain about the fact that you had failed to fulfill Your promise.

"And the Lord said to the Satan: Have you considered My servant Job, that there is none like him on earth, a perfect and upright man, one who fears God and turns away from evil?” (Job 1:8). About this Rabbi Yohanan says: That which is stated about Job is greater than that which is stated about Abraham. As with regard to Abraham it is written: “For now I know that you fear God” (Genesis 22:12), with regard to Job it is written: “A perfect and an upright man, one who fears God and turns away from evil” (Job 1:8).

The Gemara clarifies the meaning of the aforementioned verse: What is meant by “and turns away from evil”? Rabbi Abba bar Shmuel says: Job was forgiving with his money. It is the way of the world that one pays the storekeeper for even half-peruta of merchandise purchased from him. But if somebody bought an item of such little value from Job, he would forgive him his half-peruta.

The Gemara continues to clarify the verses concerning Job. “Then the Satan answered the Lord, and said: Does Job fear God for naught? Have You not made a hedge about him, and about his house, and about all that he has on every side? You have blessed the work of his hands, and his cattle is increased in the land” (Job 1:9–10). What is meant by: “You have blessed the work of his hands”? Rabbi Shmuel bar Rav Yitzḥak says: Anyone who took a peruta from Job was blessed. Not only was Job’s own hardwork blessed, but anybody who received anything from him was also blessed.
The Gemara continues with its explication of these verses. What is meant by: "And his livestock is increased [paratz] in the land" (Job 1:10)? Rabbi Yosei bar Hanina says: Job’s livestock breached [paratz] the order of the world. It is the way of the world that wolves kills goats, but in the case of Job’s livestock, the goats killed the wolves.

The Gemara continues to relate the Satan’s challenge to God: "But now put forth Your hand, and touch all that he has, and he will curse You to Your face. And the Lord said to the Satan: Behold, all that he has is in your power; only upon himself do not put forth your hand. And the Satan went out from the presence of the Lord" (Job 1:11–12). The verses relate what then occurred: “Now there was a day when his sons and his daughters were eating and drinking wine in their eldest brother’s house, and there came a messenger to Job, and said: ‘The oxen were plowing, and the asses were feeding beside them’” (Job 1:13–14). The Gemara asks: What is meant by: “The oxen were plowing and the asses were feeding beside them”? Rabbi Yohanan says: This teaches that the Holy One, Blessed be He, gave Job a taste of the World-to-Come, when plowing and harvesting will take place at the same time. Here too, the oxen plowed and the donkeys grazed on the crops that grew from that effort.

The Gemara continues to interpret verses from the book of Job. “While he was yet speaking, there came also another and said: The fire of God has fallen from heaven, and has burned up the sheep, and the servants, and consumed them... While he was yet speaking, there came also another and said: The Chaldeans formed three bands, and fell among the camels, and have carried them away, and have slain the servants with the edge of the sword... While he was yet speaking, there came also another and said: Your sons and your daughters were eating and drinking wine in their eldest brother’s house; and, behold, there came a great wind from across the wilderness, and smote the four corners of the house, and it fell upon the young men, and they are dead... Then Job arose, and rent his coat, and shaved his head, and fell down on the ground and prostrated himself. And he said: I came naked out of my mother’s womb, and naked I shall return there; the Lord gave, and the Lord has taken away, blessed be the name of the Lord. In all this Job sinned not, nor did he lay reproach on God” (Job 1:16–22).

"Again there was a day when the sons of God came to present themselves before the Lord, and the Satan came also among them to present himself before God. And the Lord said to the Satan: From where do you come? And the Satan answered the Lord, and said: From going to and fro in the earth and from walking up and down in it” (Job 2:1–2). The Satan said before God: Master of the Universe, I have gone to and fro across the entire world and have not found anyone as faithful as your servant Abraham, to whom you said: “Arise, walk through the land in the length of it and smite the wicked and the wolves. But in the case of My servant Job, there is none like him on earth, a perfect and an upright man, one that fears God and turns away from evil?” (Genesis 13:17). And when he wanted to bury Sarah, he could not find a place to bury her, and yet he did not criticize Your ways, or accuse You of having failed to keep Your promise.

About this it says: “And the Lord said to the Satan: Have you considered My servant Job, that there is none like him on earth, a perfect and an upright man, one that fears God and turns away from evil? And still he holds fast to his integrity, although you moved Me against him, to destroy him without cause” (Job 2:3).
Rabbi Yohanan says: Were it not explicitly written in the verse, it would be impossible to say this, as it would be insulting to God’s honor. The verse states: “You moved Me against him,” like a person whom others persuade and allows himself to be persuaded, as if God had not wanted to do anything, but allowed Himself to be persuaded to bring harm to Job.

It was taught in a baraita with regard to the methods of the Satan: He descends to this world and misleads a person into sinning. He then ascends to Heaven, levels accusations against that very sinner, and inflames God’s anger against him. He then receives permission to act and takes away the sinner’s soul as punishment.

The Gemara returns to discuss the text of the book of Job: “And the Satan answered the Lord, and said: Skin for skin, for all that a man has he will give for his life. But put forth Your hand now, and touch his bone and his flesh, and he will curse You to Your face. And the Lord said to the Satan: Behold, he is in your hand; only spare his life. So the Satan went forth from the presence of the Lord, and smote Job with vile sores from the sole of his foot to his crown” (Job 2:4–7).

Rabbi Yitzḥak says: Satan’s suffering was more difficult than that of Job. This can be explained by means of a parable involving a servant whose master said to him: Break the barrel but save its wine. Here too, God told the Satan that he could do whatever he liked short of taking Job’s life, and that limitation caused Satan to suffer.

Reish Lakish says: Satan, the evil inclination, and the Angel of Death are one, that is, they are three aspects of the same essence. He is the Satan who seduces people and then accuses them, as it is written: “So the Satan went forth from the presence of the Lord, and smote Job with vile sores” (Job 2:7). He is also the evil inclination, as it is written there: “The impulse of the thoughts of his heart was only evil continuously” (Genesis 6:5); and it is written here: “Only upon himself do not put forth your hand” (Job 1:12). The verbal analogy between the various uses of the word “only” teaches that the evil inclination is to be identified with the Satan. He is also the Angel of Death, as it is written: “Only spare his life” (Job 2:6); apparently Job’s life depends upon him, the Satan, and accordingly the Satan must also be the Angel of Death.

Rabbi Levi says: Both Satan, who brought accusations against Job, and Peninnah, who tormented Hannah, mother of Samuel the prophet, acted with intent that was for the sake of Heaven. As for Satan, when he saw that the Holy One, Blessed be He, inclined to favor Job and praised him, he said: Heaven forbid that He should forget the love of Abraham. With regard to Peninnah, as it is written: “And her rival wife also provoked her sore, to make her fret” (1 Samuel 1:6), i.e., Peninnah upset Hannah in order to motivate her to pray. Rav Aha bar Ya’akov taught this in Paphunya, and Satan came and kissed his feet in gratitude for speaking positively about him.

The Gemara considers the character of Job. The verse states: “In all this Job did not sin with his lips” (Job 2:10). Rava says: A close reading of the verse indicates that he did not sin with his lips, but he sinned in his heart. What did he say that suggests that he had wicked thoughts? “The earth is given into the hand of the wicked, he covers the faces of its judges; if not he, then who is it?” (Job 9:24). Rava says: Job sought to turn the bowl upside down, that is to say, he alluded here to a heretical thought, as he said that the earth is given into the hand of the wicked, indicating that he had God in mind. Abaye said to him: Job was referring here only to the Satan, he being the wicked one into whose hands the land was given.

The Gemara comments: This is parallel to a dispute between tanna’im, as it was taught in a baraita: “The earth is given into the hand of the wicked.” Rabbi Eliezer says: Job sought to turn the bowl upside down; Rabbi Yehoshua said to him: Job was referring here only to the Satan.
The Gemara continues to discuss Job's statements: “Although You know that I am not wicked, and there is none that can deliver out of Your hand” (Job 10:7). Rava says: Job sought to exempt the whole world from judgment, claiming that all of a person’s actions are directed by God, and therefore one cannot be held culpable for his misdeeds. Job said before God: Master of the Universe, You created the ox with split hooves, making it kosher, and You created the donkey with closed hooves, making it forbidden; You created the Garden of Eden, and You created Gehenna; and similarly, You created righteous people and You created wicked people; who can restrain You? Seeing that You created people as either righteous or wicked, You cannot later complain about their actions.

And how did Job’s friends answer him? “You do away with fear, and impair devotion before God” (Job 15:4) with such statements. True, the Holy One, Blessed be He, created the evil inclination, but He also created the Torah as an antidote to counter its effects and prevent it from gaining control of a person.

Rava interpreted a verse homiletically: What is the meaning of that which is written, Job saying about himself: “The blessing of him that was lost came upon me, and I caused the widow’s heart to sing for joy” (Job 29:13). “The blessing of him that was lost came upon me” teaches that Job used to steal a field from orphans, cultivate it, improve it, and then return it to them; consequently, they would bless him for the field they had lost. “I caused the widow’s heart to sing for joy” teaches that anywhere that there was a widow whom no one would marry, he would go and cast his name upon her, i.e., he would start a rumor that she was related to him, and then somebody would come forward and marry her.

Job further said: “O that my vexation were thoroughly weighed, and my calamity laid in the balances” (Job 6:2). Rava says: Dust should be put in the mouth of Job, meaning, he should not have spoken in such a manner, as if he were weighing his deeds against those of God; may one act as if he is in a friendship with Heaven? And similarly, Job said: “There is no arbiter between us, who may lay his hand upon us both” (Job 11:1). Rava says: Dust should be put in the mouth of Job for saying this; is there a servant who rebukes his master? Job also said: “I have made a covenant with my eyes; why then should I look upon a virgin?” (Job 12:11). One may learn by inference that initially he did not know how beautiful she was because he had not gazed at her.

Job further said: “As the cloud is consumed and vanishes away, and my calamity laid in the balances” (Job 6:2). Rava says: From here it may be inferred that Job denied the resurrection of the dead, as he said that one who goes down to the grave will not come up and live again, just as a cloud that dissipates will not return. He also stated: “He crushes me with a tempest, and multiplies my wounds without cause” (Job 9:17). Rabba says: Job blasphemed with mention of a tempest and he was answered with mention of a tempest.

Rabba explains: He blasphemed with mention of a tempest [biscera], as it is written: “He crushes me with a tempest” Job said before God: Master of the Universe, perhaps a tempest passed before You and You confused Ioyn, Job, with oyev, enemy. He was answered with mention of a tempest, as it is written: “Then the Lord answered Job out of the tempest, and said: Who is this that darkens counsel by words without knowledge? Gird up now your loins like a man, for I will demand of you and let me know your answer” (Job 38:1-3).
God further said to Job: “Who has divided a channel [te’ala] for the torrent of rain, or a path for the lightning of thunder” (Job 38:25). I have created many drops of water in the clouds, and for each drop I created its own path, so that two drops should not emerge from the same channel. As were two drops to emerge from the same channel they would destroy the earth and it would not yield produce. Now, if I do not confuse one drop with another, would I confuse Iyov with oyev? Incidentally, the Gemara asks: From where may it be inferred that this term te’ala means a channel? Rabba bar Sheila said: As it is written with regard to Elijah the prophet: “And he fashioned a channel [te’ala] about the altar, as great as would contain two se’a of seed” (1 Kings 18:32).

The second half of the aforementioned verse in Job states: “Or a path for the lightning of thunder,” which is interpreted as follows: God said: I have created many thunderclaps in the clouds, and for each and every thunderclap I created its own path, so that two thunderclaps should not issue forth from the same path. As were two thunderclaps to issue from the same path, they would destroy the world. Now, if I do not confuse one thunderclap with another, would I confuse Iyov with oyev?

It is further stated there: “Do you know when the wild goats of the rock give birth? Can you mark when the hinds do calve?” (Job 39:1). This goat is cruel to her young and shows them no pity; when she squats to give birth she ascends to the top of a mountain so that the kid should fall down from her and die. And I summon her

What is the meaning of “out of the tempest”? God said to him: I have created many hairs [nimin] on a person, and for each hair I created its own follicle through which the hair is sustained, so that two hairs should not draw from one follicle. As were two hairs to draw from one follicle, they would impair a man’s vision. Now, if I do not confuse one follicle with another, would I confuse Iyov with oyev? The Hebrew word for tempest, se’ara, is phonetically identical to the Hebrew word for hair.

God said to Job: “I do not confuse one drop with another, would I confuse Iyov with oyev? Can you mark when the hinds do calve?” (Job 42:8). Now, if I do not confuse one moment with another moment, would I confuse Iyov with oyev? Incidentally, the Gemara comments: On the one hand, the text states: “Job has spoken without knowledge, and his words were without wisdom” (Job 34:35). But on the other hand, it is written with regard to Job’s friends: “You have not spoken of Me the thing that is right, like my servant Job” (Job 42:8). Rava said: From here it may be inferred that a person is not held responsible for what he says when he is in distress. Although Job uttered certain words that were wrong and inappropriate, he was not punished for them because he said them at a time of pain and hardship.
Propagation came to the world – רבייה בא לעולם; רישי ל끊אה לברך. Rashi explains that daughters speed the process of population growth, because they marry and have children at a younger age than do sons. Rabbeinu Gershon explains the term reviyya as related to development and upbringing, i.e., that daughters help raise children. The Maharsha explains that population growth depends exclusively upon the number of women who give birth; an increase in the number of men in the world does not lead to more children being born.

The verse states: “And Job’s three friends heard of all this evil that was come upon him, they came every one from his own place, Eliphaz the Temanite, and Bildad the Shuhite, and Zophar the Naamathite; for they had made an appointment together to come to mourn with him and to comfort him” (Job 2:11). What does “they had made an appointment together” mean? Rav Yehuda says that Rav says: This phrase teaches that they all entered through one gate at the same time. And a Sage taught in a baraita: There were three hundred parasangs between each and every one of them, i.e., each one lived three hundred parasangs away from the other.

The Gemara asks: How did they all know at the same time what had happened to Job so that the three of them came together? There are those who say that they each had a crown which displayed certain signs when something happened to one of the others. And there are those who say they each had trees and when the trees withered they knew that sorrow had visited one of them. Rava said that this closeness between Job and his friends explains the adage that people say: Either a friend like the friends of Job or death. If a person lacks close friends, he is better off dead.

The Gemara cites another place where Job is mentioned. “And it came to pass, when men began to multiply [larov] on the face of the earth, and daughters were born to them” (Genesis 6:1). Rabbi Yoḥanan says: Larov means that propagation [reviya] came to the world through these daughters. Reish Lakish says: Strike [meriva] came to the world. Once daughters were born, the men began to fight among themselves over them. Reish Lakish said to Rabbi Yoḥanan: According to you who say that due to the daughters propagation came to the world, for what reason were the number of Job’s daughters not doubled, when at the end of the story God doubled everything that Job had lost (see Job 1:3, 42:12)?

Rabbi Yoḥanan said to him: Granted, the numbers of Job’s daughters were not doubled in name, meaning they did not become twice as many, but they were doubled in beauty, as it is written: “He had also seven sons and three daughters. And he called the name of the first Jemimah, and the name of the second was Keziah, and the name of the third one was Keren-happuch” (Job 42:13–14). All three names relate to the daughters’ beauty.

Jemimah [Yemima]; in her beauty she was similar to the day [yorn]. Keziah; her scent wafted like the cassia [ketzia] tree. Keren-happuch; in the school of Rav Sheila they say: She was similar to the horn [keren] of a keros, an animal whose horns are particularly beautiful. They laughed at this in the West, Eretz Yisrael, since it is considered a blemish when a person resembles the horn of a keros. Rather, Rav Hisda said: She was like garden saffron [kekurkema derishka], which is the best of its kind. Keren refers to a garden, and pukh means ornament, as it is stated: “Though you enlarge your eyes with paint [pukh], you beautify yourself in vain” (Jeremiah 4:30).

Cassia – כוס者は Some identify the specific species of cassia mentioned in the Gemara here as the Chinese cinnamon. It is cultivated in various regions of Asia and is widely used as a spice around the world.

LANGUAGE

Keres – קרס: Apparently from the Greek κερας, keros, meaning a horn. The Greek word κυκροκος, kurokho, means a creature with a single horn. The term can also refer to a wild ox, especially in the Septuagint. It is unclear which creature is referred to here. Some commentators suggest keres refers to the rhinoceros, some species of which have only a single horn. Alternately, it might be comparing her to a mythical beast, the unicorn.

Indian rhinoceros, a single-horned species

Garden saffron [kurkema derishka] – קורקמה דרישקה: The word kurkema, meaning saffron, seems to have originated in Sanskrit as kunkuma, from where it entered into many languages, e.g., as karkom in Hebrew, куркума in Russian, and krokos in Greek; and krus in Latin. In modern Hebrew and Arabic, this word refers to turmeric. The word nishka is apparently derived from the Middle Iranian term rishak, a fiber. As such, the phrase kurkema derishka may refer to saffron fibers.

Saffron flower

The Maharsha explains that the expression “they had made an appointment [vayyiva‘adu]” indicates that they were in the usual gathering spot, which is the city gate, the place where the city elders sit and meet, and Job was sitting there as well. The word “together (yehudai)” indicates that they arrived at the same spot simultaneously.

They all entered through one gate – רבייה בא לעולם. The Maharsha explains that the expression “they had made an appointment [vayyiva‘adu]” indicates that they were in the usual gathering spot, which is the city gate, the place where the city elders sit and meet, and Job was sitting there as well. The word “together (yehudai)” indicates that they arrived at the same spot simultaneously.

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Cassia – כוסה: Some identify the specific species of cassia mentioned in the Gemara here as the Chinese cinnamon. It is cultivated in various regions of Asia and is widely used as a spice around the world.
It is reported that a daughter was born to Rabbi Shimon, son of Rabbi Yehuda HaNasi, and he was upset that he did not have a son. His father said to him: Propagation has come to the world through the birth of a daughter. Bar Kappara said to Rabbi Shimon: Your father has consoled you with meaningless consolation, as it is taught in a baraita: ‘The world cannot endure without males and females, as both are needed for the perpetuation of humanity. But fortunate is he whose children are males and woe to him whose children are females. Similarly, the world cannot endure without either a spice dealer whose wares are sweet-smelling, or a tanner [bursa], who is engaged in a foul-smelling occupation. Fortunate is he whose occupation is a spice seller, and woe to him whose occupation is a tanner.

The Gemara comments that this disagreement is parallel to a dispute between *tanna‘im*: The Torah states: ‘And the Lord blessed Abraham with everything [bakkol]’ (Genesis 24:11), and the Sages disagree about what *bakkol* means. Rabbi Meir says: The blessing is that he did not have a daughter. Rabbi Yehuda says: On the contrary, the blessing was that he had a daughter. Others say: Abraham had a daughter and her name was Bakkol. Rabbi Elazar HaModa‘i says: Abraham our forefather was so knowledgeable in astrology [itztagninut] that all the kings of the East and the West would come early to his door due to his wisdom. This is the blessing of *bakkol*, that he possessed knowledge that everybody needed. Rabbi Shimon ben Yohai says: A precious stone hung around the neck of Abraham our forefather; any sick person who looked at it would immediately be healed. When Abraham our forefather died, the Holy One, Blessed be He, hung this stone from the sphere of the sun, which from that point on brought healing to the sick. Abaye said: This explains the adage that people say: As the day progresses, sickness is lifted.

Alternatively, what is the blessing of *bakkol*? That Esau did not rebel in Abraham’s lifetime, that is to say, as long as Abraham lived Esau did not sin. Alternatively, the blessing of *bakkol* is that Ishmael repented in Abraham’s lifetime. The Gemara explains: From where do we derive that Esau did not rebel in Abraham’s lifetime? As it is written: ‘And Jacob was cooking a stew and Esau came in from the field and he was faint’ (Genesis 25:30), and a *baraita* taught: On that day Abraham our forefather passed away, and Jacob our forefather prepared a lentil stew to comfort Isaac, his father, as it was customary to serve mourners lentil stew.

The Gemara explains: And what is different about lentils that they in particular are the fare customarily offered to mourners? They say in the West, Eretz Yisrael, in the name of Rabba bar Mari: Just as this lentil has no mouth, i.e., it does not have a crack like other legumes, so too a mourner has no mouth, that is, his anguish prevents him from speaking. Alternatively, just as this lentil is completely round, so too mourning comes around to the inhabitants of the world. The Gemara asks: What is the practical difference between the two explanations? The Gemara answers: ‘There is a practical difference between them with regard to whether it is appropriate to console a mourner with eggs,’ which have no opening but are not completely round.

Rabbi Yoḥanan says: That wicked Esau committed five transgressions on that day that Abraham died: He engaged in sexual intercourse with a betrothed maiden, he killed a person, he denied the principle of God’s existence, he denied resurrection of the dead, and he despised the birthright.

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**HALAKHA**

To console with eggs – *לזרע בבש* The first food served to a mourner following a funeral consists of eggs or lentil stew, which are indications of mourning. Other foods may subsequently be offered (Shulchan Arukh, *Yoreh De‘a* 378:9).
The Greek word Yoreh De'a Keresh Snake [derakon Gevia] suggest that daughters speed the process of population growth, because they together, the two terms aptly reflect the death of a righteous person; reviyya beast, the unicorn. Mourner following the funeral consists of eggs or lentil stew which meet, and Job was sitting there as well. The word “together [ment [are] completely useless. The term [asifa]...refers to the rhinoceros, some species of which have...and crocus in Latin. The word [deira] – kurkema derishka word in modern Hebrew. The word may refer to saffron fibers. Kurkum in Arabic can also refer to turmeric, and this is the sense of the...krokos and crocus...The word [dardakin] – bursi Tanner...a tanner. The origin of this word is uncer-...regard to rape of a betrothed maiden: “And Esau despised the birthright, as it is written: “And Esau despoiled the birthright” (Genesis 25:34). And from where do we derive that Ishmael repented in Abraham's lifetime? From the incident involving Ravina and Rav Ḥama bar Buzi, who were sitting before Rava, and Rava was dozing while they were talking. Ravina said to Rav Ḥama bar Buzi: Is it true that you say that any death with regard to which the word gevía, expire, is mentioned is the death of the righteous? Rav Ḥama bar Buzi said to him: Yes. For example: “And Isaac expired [vayyigva], and died” (Genesis 35:19). Ravina objected: But with regard to the generation of the flood it states: “And all flesh expired [vayyigva]” (Genesis 7:21), and there they died for their wickedness. Rav Ḥama bar Buzi said to him: We say this only when both gevía and asifa, gathering, are used; when these two terms are mentioned together they indicate the death of a righteous person.

Ravina asked: But isn't there Ishmael, about whom gevía and asifa are written, as it is stated: “And these are the years of the life of Yishmael...and he expired and died [vayyigva vayyamot]; and was gathered to his people” (Genesis 25:17)? Meanwhile Rava, who had heard the discussion in his dozed state, fully awoke and said to them: Children [dardeker], this is what Rabbi Yoḥanan says: Ishmael repented in the lifetime of his father, as it is stated: “And Isaac and Ishmael, his sons, buried him” (Genesis 25:9). The fact that Ishmael allowed Isaac to precede him demonstrates that he had repented and accepted his authority.

The Gemara asks: But perhaps the verse listed them in the order of their wisdom: that is to say, perhaps in fact Ishmael preceded Isaac but the Torah did not list them in that order. The Gemara answers: But if that is so, consider that the verse states: “And Esau and Jacob, his sons, buried him” (Genesis 35:29). What is the reason that the verse there did not list them in the order of their wisdom? Rather, since Ishmael allowed Isaac to precede him, it is clear that he made Isaac his leader, and since he made him his leader, learn from it that he repented in Abraham's lifetime.

Incidental to the discussion of the verse “And God blessed Abraham with everything” (Genesis 24:1), the Gemara states that the Sages taught: There were three people to whom the Holy One, Blessed be He, gave already in this world...
There were three people over whom the evil inclination had no sway:** they are: Abraham, Isaac, and Jacob, as it is written with regard to them: respectively: “With everything,” “from everything,” “everything.” The completeness of their blessings means that they did not have to contend with their evil inclinations. And some say that even David was not subject to his evil inclination, as it is written: “And my heart has died within me” (Psalms 109:22), meaning that the evil inclination in his heart was nullified as if his heart had died. And how does the other authority, who does not include David in his list, explain this verse? He is mentioning his travails. David means to say that his heart died within him owing to all the suffering that he endured, but he says nothing about his evil inclination.

The Sages taught: There were six people over whom the Angel of Death had no sway in their demise, and they are: Abraham, Isaac, and Jacob, Moses, Aaron, and Miriam. Abraham, Isaac, and Jacob, as it is written with regard to them, respectively: “With everything,” “from everything,” “everything”; since they were blessed with everything they were certainly spared the anguish of the Angel of Death. Moses, Aaron, and Miriam, as it is written with regard to them that they died “by the mouth of the Lord” (Numbers 33:38; Deuteronomy 34:5), which indicates that they died with a kiss, and not at the hand of the Angel of Death.

The Gemara asks: But with regard to Miriam it is not written: “By the mouth of the Lord.” Rabbi Elazar says: Miriam also died with a kiss, as this is learned through a verbal analogy between the word “there” mentioned in regard to Miriam: “And Miriam died there” (Numbers 20:1), and the word “there” mentioned in regard to Moses: “And Moses died there” (Deuteronomy 34:5). And for what reason is “by the mouth of the Lord” not stated with regard to her? It is unseemly to mention death by a kiss with regard to a woman.

The Sages taught: There were seven people over whom the worm and the maggot had no sway, and they are: Abraham, Isaac, and Jacob, Moses, Aaron and Miriam, and Benjamin, son of Jacob. Abraham, Isaac, and Jacob, as it is written with regard to them, respectively: “With everything,” “from everything,” “everything.” Moses, Aaron, and Miriam, as it is written with regard to them: “By the mouth of the Lord”; Benjamin, son of Jacob, as it is written: “And to Benjamin he said: The beloved of the Lord, he rests securely, unbothered by worms. And the maggot had no sway, and they are: Abraham, Isaac, and Jacob, as it is written: “My flesh also dwells secure by Him” (Deuteronomy 33:12). Even in death, he rests securely, unbothered by worms. And some say that even David is included, as it is written: “My flesh also dwells secure” (Psalms 16:9). The Gemara asks: And how does the other authority, who does not include David, explain this? The Gemara answers: He is asking for mercy, that his flesh should dwell secure and not be subject to worms and maggots, but his request was denied.

The Sages taught in a baraita: There were four people who died only because of the counsel of the primordial snake, in the wake of which all of humanity became mortal, and not on account of any personal sin. And they are: Benjamin, son of Jacob; Amram, father of Moses; Yishai, father of David; and Chileab, son of David. And all of these are known through tradition except for Yishai, father of David, with regard to whom it is written explicitly: “And Absalom placed Amasa over the army instead of Joab, and Amasa was the son of a man whose name was Ithra the Israelite, who engaged in intercourse with Abigail, daughter of Nahash, the sister of Zeruiah, mother of Joab” (II Samuel 17:25). But was Abigail the daughter of Nahash? Was she not the daughter of Yishai, as it is written: “And their sisters were Zeruiah and Abigail” (I Chronicles 2:16)? Rather, she was called ‘daughter of Nahash’ to indicate that she was the daughter of one who died only because of the counsel of the snake.
This chapter established that with regard to walls that form partitions in a courtyard, regional custom dictates the materials out of which such walls must be constructed, as well as the thickness of those walls. When two neighbors agree to build a wall between their respective properties, each party contributes half of the space upon which the wall is to be constructed and pays half of the construction costs. If the wall later collapses, the space and the materials are divided equally between them. If one of the neighbors builds the wall on his own, he builds it wholly on his property and at his expense, and he fashions a border mark to indicate that he alone built the wall.

The Gemara also concluded that invasion of privacy resulting from exposure to the gaze of one’s neighbor is considered damage, and therefore in a place where there is such an invasion of privacy one party can compel the other to build a barrier, which must be at least four cubits high.

One party can compel the other to build a partition in three other instances: Where there is an invasion of privacy in one’s courtyard or in a garden where it is customary to erect a barrier; when a neighbor who initially opposed building a wall demonstrates that he is pleased that it was built, e.g., by completing a fence erected by his neighbor; or when the initially reluctant neighbor derives benefit from the barrier, such as by building another wall close to it in order to cover both walls with a roof.

Just as neighbors can compel each other to build a wall, so too, the residents of a courtyard or a city can compel each other to build whatever is necessary for their protection. Mention is therefore made in this chapter of various ordinances with regard to communal obligations that are cast upon all the residents of a city, such as charity and municipal improvements. The Gemara determined that responsibility for funding whatever brings benefit to all of the city’s residents is imposed upon all of them, including minor orphans, whereas funds for that which is merely for protection are not collected from Torah scholars.

The Sages established that every property is subject to the halakha of division, provided that it is large enough that each of its co-owners will receive a portion that can still be used and the division will not interfere with the original use of the property. In such a case each party can compel the other to either buy his portion or sell him his.

The above applies to a division of property demanded by one of the co-owners. If both parties agree to divide their jointly owned property, every property can be divided, with the exception of books of the Bible contained in a single volume, which owing to the honor that must be shown them may not be divided.

Incidental to the discussion of these issues, the chapter addressed some of the halakhot governing charity, taxes, and the authorship of the books included in the Bible.
In addition to the halakhic discussions in this chapter, there were also two large sections of *aggada*, which were not directly connected to the subject matter of the chapter but were discussed incidentally to matters arising in the course of the halakhic discussion. The first dealt primarily with the mitzvot of charity, while the second discussed a Torah scroll in particular and the Bible in general. The latter section also explored the biblical character of Job, along with his era and character.
This chapter discusses those occasions in which one performs an activity on his own property and thereby causes damage to his neighbor.

Damage to one’s neighbor comes in various forms and results from different types of actions. The problems discussed in the Gemara concern the limit of private activities: To what extent is an individual entitled to act within his own property, and when is the damage he inflicts considered so severe that he is barred from certain activities, notwithstanding the fact that they are performed in his private domain?

Some actions cause immediate damage to the property of another, in which case they can be compared to an act of direct harm, or, in the language of the Gemara, the shooting of one’s arrows. In other situations the damage is not immediate, and its effects on the neighbor’s property are apparent only at a later stage.

Likewise, there are certain types of damage that are tangible, while others are intangible, e.g., the ability to peer into another’s house. Some types of damage cause only a slight loss or a sense of discomfort; others are unbearable, might lead to extensive financial loss, or might even entail physical danger.

An analysis of these issues raises several fundamental questions. Is it correct to say that in general, there is a principle that it is the responsibility of the one who has the potential to cause damage to distance himself from another’s property or person in order to ensure that he avoids causing damage, or does an individual generally have the right to do as he pleases on his own property, and it is the neighbor’s responsibility to distance himself if he is likely to sustain damage? This leads to a further issue: If one distances his activities from his neighbor so as not to cause damage, is he entitled to compensation, or is he simply fulfilling an obligation for which he does not receive payment? Yet another dilemma concerns a case where one took precautions to avoid causing damage to another, and nevertheless his activity damaged his neighbor’s property. Do his efforts serve to exempt him from responsibility? Or must he still pay for the damage he caused, in which case the instructions of the Sages can be considered mere good advice that does not have legal ramifications in the event of damage?

Just as one’s actions can damage the property of another individual, they can also damage public property. This chapter discusses the right of the public to prevent an individual from harming their collective interest, and the differences between one who causes damage to another individual and one who causes damage to the public.

The discussion and resolution of these matters and are the main topics of this chapter.
MISHNA A person may not dig a pit close to the pit of another, in order to avoid damaging the latter’s pit. And similarly, one may not dig a ditch, nor a cave, i.e., a covered pit, nor a water channel, nor a launderer’s pond, which is a pit used for washing clothes, unless he distanced all of these three handbreadths from the wall of another and he plasters lime on the place where there is water.

And one must distance the solid residue of produce that has been pressed free of its oil, e.g., the refuse of olives from which oil has been squeezed, and animal manure, and salt, and lime, and rocks three handbreadths from the wall of another, as all these items produce heat and can damage the wall. Or, alternatively, he may plaster the wall with lime to prevent damage. One must likewise distance seeds, i.e., one may not plant seeds, and one may not operate the plow, and one must eliminate urine, three handbreadths from the wall of another.

The mishna continues: And one must distance a mill from a neighbor’s wall by three handbreadths from the lower stone of the mill, which is four handbreadths from the smaller upper stone of the mill. And there must be a distance of three handbreadths from the protruding base of an oven until the wall, which is four handbreadths from the narrow upper rim of an oven.

May not dig – רבינו קצין: The commentaries disagree with regard to the reason for this restriction. While the Gemara (19a) states that the concern is about the moisture that seeps from the various pits, on 17b the Gemara indicates that the construction of the pit itself weakens the ground. Some commentaries write that the digging weakens the walls of nearby structures (Rashba). Tosafot claim that the main damage to the neighbors’ property is from the moisture, while the digging merely causes the first stage of the damage. Yet others contend that both reasons are correct, as each is a sufficient reason to mandate keeping a distance (Ri; Ramah). Alternatively, some say that there is a difference in this regard between a ditch and a cave on the one hand, in which the construction is the problem, and a water channel or a launderer’s pond on the other, where the issue is the inevitable moisture (Ramban).

Rocks – רבינו קצין: Rashi maintains that this refers to flint; consequently, these too produce heat similar to that produced by olive refuse. Alternatively, rocks tend to crumble, which damages the ground (Rabbeinu Hananel). Yet others claim that people will walk on rocks, which causes them to shift and thereby damage a nearby wall (Ramah).

Base (kalya) – רבינו קצין: The commentaries disagree with regard to the meaning of the term kalya, translated here as base, and that of the term sof, translated here as upper rim. According to Rashi, the kalya is the base of the oven, which is designed to prevent the ground from cooling off the oven. The sof is its upper narrow part, which has the same circumference as the oven. Others say that the kalya is the belly of the oven, which is shaped like a pitcher and protrudes in the middle, while the sof is the upper, narrower part of the oven (Rabbeinu Hananel, Ri Migash, Ramah). Alternatively, the kalya is the cement covering, which is one handbreadth thick and serves to maintain the oven’s heat. The sof is the body of the oven itself (see Ri Migash).

May not dig a pit – רבינו קצין: One may not dig a pit, or pass a water channel, or prepare a launderer’s pit near the wall of his neighbor’s pit unless he distances it three handbreadths from that pit and plasters it with lime on the side facing the neighbor’s property. Some claim that this is the halakha even where the presence of water is not constant, e.g., in the case of a pipe that is opened occasionally. One may not dig a pit very close to the wall of another even if it is not intended that the pit will hold water, and if one does so, he must prevent workers from using it (Rambam Sefer Kinyan, Hilkhot Shekheninim 9:2; Shulhan Arukh, Hoshen Mishpat 155:10, and in the comment of Rema and Be’er Tohia there).

And one must distance the solid residue of produce pressed of its oil – רבינו קצין: Olive refuse, manure, salt, lime, rocks, and wet sand must all be kept at a distance of three handbreadths from the wall of a neighbor (Rambam Sefer Kinyan, Hilkhot Shekheninim 9:2; Shulhan Arukh, Hoshen Mishpat 155:4).

One must distance seeds – רבינו קצין: The planting of seeds, the use of a plow, and the placement of a pit for urine all must be done at a distance of three handbreadths from the wall of a neighbor, even if the wall is built of stone (Smot). Some add that a pit for urine must be plastered with lime (Rema). In the absence of such a pit, one may not urinate within three handbreadths of a neighbor’s wall (Rambam Sefer Kinyan, Hilkhot Shekheninim 9:2; Shulhan Arukh, Hoshen Mishpat 155:5).

And one must distance a mill – רבינו קצין: The bottom stone of a mill must be kept at a distance of three handbreadths from a neighbor’s wall, or is four handbreadths from the upper stone. Some write that this halakha applies specifically to small hand mills, whereas more distance must be maintained in the case of large, animal-driven mills (Rambam Sefer Kinyan, Hilkhot Shekheninim 9:3, Shulhan Arukh, Hoshen Mishpat 155:7, and in the comment of Rema).

Of an oven – רבינו קצין: The bottom of an oven must be kept at a distance of three handbreadths from a neighbor’s wall, i.e., the upper rim should be four handbreadths from the wall. The measurement of three handbreadths is from the inner rim of the oven (Rambam Sefer Kinyan, Hilkhot Shekheninim 9:4, Shulhan Arukh, Hoshen Mishpat 155:8).
Wall of a pit – דְּאַתְּ אִימְלַכְתְּ וְחָאָסוֹמֵךְ; אֲּרָא אֵפיִי (Rabbeinu Yona).

Some early commentaries claim that according to this (Rabbeinu Yona).

One who comes to place the items close to the boundary – אֵינוֹ סוֹמֵךְ, דְּהָא אֵינָהּ עֲשׂוּיָה... The Gemara elaborates: Abaye says he may place them close – אֵינוֹ סוֹמֵךְ... The Gemara challenges: But even so, let it teach: Unless he distanced his excavations three handbreadths from the pit of another, and one would understand that the term pit is referring to the wall of the other’s pit. The Gemara responds: By using the phrase: From the wall of another, this teaches us incidentally that the wall of a pit must be at least three handbreadths thick, as the wall of the other’s pit occupied the full three handbreadths between the cavity of his pit and the property of his neighbor. The practical difference of this observation is with regard to buying and selling, as it is taught in a baraita: With regard to one who says to another: I am selling you a pit and its walls, the wall of the pit must be at least three handbreadths thick.

Some early commentaries claim that according to this (Rabbeinu Yona). If one sells a pit and its walls, the walls must be at least three handbreadths thick (Rambam Sefer Kinuyan; Hikhot Melkia 2112; Shulhan Arukh, Hoshen Mishpat 217:5).

One who comes to place the items close to the boundary – אֵינוֹ סוֹמֵךְ, דְּהָא אֵינָהּ עֲשׂוּיָה... The Gemara elaborates: Abaye says: He may dig these excavations or place these items close to the boundary of his field, which is permitted, then when his neighbor subsequently digs his own pit he must distance it six handbreadths from the first pit. If one’s neighbor’s field was designated for digging pits, he must distance his pit three handbreadths from the boundary of his field. If the neighbor decides to dig a pit, he must also distance his pit three handbreadths from the boundary. The halakha is in accordance with the opinion of Rava, based on the second version of his dispute with Abaye. The Rama, citing the Ramah, adds that in addition to the distancing, the wall of the pit must be plastered with lime, while the Rish disagrees with this ruling (Rambam Sefer Kinuyan, Hikhot Shekhinim 9:10; Shulhan Arukh, Hoshen Mishpat 155:18).

Designated for pits – בּוֹר וְכוֹתְלֶיהָ אֲנִי מוֹכֵר לְךָ... The early commentaries write that this refers to an irrigated field, in which a pit is required for watering it.

It was stated: With regard to one who comes to dig any of these excavations or place any of the items listed in the mishna close to the boundary of his field, where his neighbor currently has no pit, Abaye says: He may dig or place them close to the boundary; and Rava says: He may not dig or place them close to the boundary. The Gemara elaborates: Abaye says: He may dig these excavations or place these items close to the boundary, as the neighbor’s field is not designated for pits, so he is not causing any damage by doing so. Rava says: He may not dig these excavations or place these items close to the boundary, as the neighbor can say to him: Just as you changed your mind and dug a pit, I too might change my mind and dig a pit, and I will no longer be able to dig near my border if you dig your pit close to the boundary.

There are those who say a different version of this discussion: All agree that one may dig these excavations or place these items close to the boundary of a field that is not designated for digging pits. When they disagree is with regard to a field that is designated for digging pits.

The Gemara elaborates: Abaye says: He may dig these excavations or place these items close to the boundary of his field, which is designated for pits, as it is taught in the mishna (25b): One must distance a tree twenty-five cubits from a cistern, lest the roots of the tree grow and damage a neighbor’s cistern in his field. The difference is that there it is prohibited, as when he plants the tree there is already a cistern. But here, at the time when he digs his cistern, there is as yet no cistern in his neighbor’s field.
And Rava says: One may not dig these excavations or place these items close to the boundary; and this is the halakha even according to the opinion of Rabbi Yosei, who says in that same mishna: This one may dig in his field and that one may plant in his field, i.e., one need not distance his tree for fear of damaging his neighbor’s field through expanding roots. The reason that Rava maintains that his ruling is correct even according to the opinion of Rabbi Yosei is that this matter applies only there, as when he plants the tree, its roots, which might damage the cistern, are not yet present. Consequently, when he plants he does not cause any damage. But here, the neighbor can say to him: Each and every strike of yours with the hoe loosens my earth, and therefore you are already causing damage as you dig your cistern.

The Gemara suggests a proof: We learned in the mishna that a person may not dig a pit close to the pit of another, unless he does so at a distance of three handbreadths from his neighbor’s wall. The Gemara analyzes this statement: Apparently, the reason he may not dig close to the boundary of his neighbor’s field is that there is a pit there, from which it may be inferred that if there is no pit he may dig his pit close to his neighbor’s wall. Granted, according to that second version of the dispute, in which you said: All agree that one may dig these excavations or place these items close to the boundary of a field that is not designated for digging pits, one can explain that the mishna is referring to a field that is not designated for digging pits.

But according to that first version of the dispute, in which you said that they disagree with regard to a field that is not designated for digging pits, there is a difficulty. Granted, this works out well according to the opinion of Abaye, who says that one may dig one’s pit near the boundary when the neighbor has no pit. But according to the opinion of Rava, who maintains that it is prohibited to dig a pit near the boundary under any circumstances, the ruling of this mishna is difficult.

The Gemara explains: Rava could have said to you: Wasn’t it stated with regard to that mishna that Abaye says, and some say it was Rav Yehuda who says: We learned that the mishna means: From the wall of his pit? This indicates that the neighbor must distance the edge of his pit from the boundary by the thickness of his wall, which is three handbreadths. Therefore, even according to the ruling of the mishna, one may not dig his pit directly adjacent to the boundary.

There are those who say this discussion in the form of a challenge to the opinion of Abaye. The mishna teaches that one must distance his pit from that of his neighbor, and it was stated with regard to that ruling that Abaye says, and some say it was Rav Yehuda who says: We learned that it means: From the wall of his pit. In other words, the edge of the neighbor’s pit must be three handbreadths away from the boundary. Granted, according to that first version of the dispute, in which you said: All agree that he may not dig or place them close to a field of his neighbor if that field is designated for digging pits, one can explain that the mishna is referring to a field that is designated for digging pits.

But according to that second version of the dispute, in which you said that they disagree with regard to a field that is designated for digging pits, there is a difficulty. Granted, this works out well according to the opinion of Rava, who says that it is prohibited to dig a pit near the boundary in this case. But according to the opinion of Abaye, the ruling of this mishna is difficult, as if the mishna is referring to the wall of the neighbor’s pit, this indicates that the first pit was dug close to the boundary.

The Gemara explains: Abaye could have said to you: The mishna is referring to the specific case where both neighbors came to dig their pits at the same time. Consequently, they must both distance their pits from one another. If there is no pit as yet next to the boundary, and the neighbor is not digging at that point, one may dig his pit alongside the boundary.
Rock that crumbles in one's hands – סלע ה הבא ב ידיים. This is referring to soil that is so soft that it can be hewn by hand. It might mean sand-like rock that can be crumbled manually, or clumps of stones held together with a layer of earth that do not require any type of tool to break.

He who asked it, etc. – קא אמר איזו גлибо. This expression is used in the Gemara when the answer to a question is self-evident. In this case, the Gemara will ask. And he who asked this question, why did he ask it, when its resolution is so obvious? Some commentators claim that this and similar questions are not part of the original talmudic text, but were added by the savora'im when they redacted the Talmud (Halikhot Olam).

NOTES

-Damnace (metunto) – רבעא. Some commentators claim that this term is from the Greek ἐκτός, exotes, meaning moisture, and it took on an Aramaic form.

-Dampness (metunto) – רבעא. Some commentators claim that this term is from the Greek ἐκτός, exotes, meaning moisture, and it took on an Aramaic form.

BACKGROUND

Rock that crumbles in one's hands – סלע ה הבא ב ידיים. This is Rashi's version of the text. Other early commentaries cite the ge'onim subsequently digs his own pit he must distance it six handbreadths to distance it only three handbreadths (Rabbeinu Yona).

The Gemara suggests: Come and hear a proof from a baraita: In the case of rock that is so soft that it crumbles in one's hands, and no tool is needed, this one may dig his pit from here, and that one may dig his pit from there. This one distances his pit three handbreadths and plasters with lime, and that one distances his pit three handbreadths and plasters with lime. This indicates that the first one who digs a pit must distance his pit even when the second one does not yet have a pit. 'The Gemara rejects this proof: Rock that crumbles in one's hands is different. In this case, one must maintain a distance from the boundary due to the softness of the ground.

The Gemara is puzzled by this exchange: And he who asked it, why did he ask it? The baraita is explicitly referring to rock that crumbles in one's hands, so this is clearly a unique case. The Gemara answers that the Sage who asked the question assumed that the halakha of the baraita includes all types of soil, and he thought that it was necessary for the tanna to mention the specific example of rock that crumbles in one's hands, as it could enter your mind to say that since this substance crumbles in one's hands he is required to keep his pit at an even greater distance. To counter this, the baraita teaches us that a distance of three handbreadths is sufficient.

The Gemara suggests: Come and hear a proof from the mishna: One must distance the solid residue of produce that has been pressed free of its oil, and animal manure, and salt, and lime, and rocks three handbreadths from the wall of another, or he can plaster the wall with lime. The Gemara analyzes this statement: The reason for this ruling is that there is a wall there belonging to his neighbor, from which it may be inferred that if there is no wall there, one may place these substances close to the boundary of his neighbor's courtyard. This presents a difficulty for the opinion of Rava according to the first version of the dispute, which states that one may not place these substances close to a boundary even in the case of a field that is not designated for pits.

The Gemara rejects this proof: No, even if there is no wall one may also not place these substances close to the boundary. The Gemara asks: Rather, what does mentioning a wall here teach us? The Gemara answers: This teaches us that all these substances are damaging to a wall.

The Gemara suggests: Come and hear another proof from the mishna: One must distance seeds, and the plow, and itron three handbreadths from the wall of another. The Gemara analyzes this ruling: The reason for this ruling is that there is a wall, from which it may be inferred that if there is no wall, one may place these substances close to the boundary of the field. The Gemara rejects this proof as well: No, even if there is no wall, one may also not place these substances close to the boundary. The Gemara asks: But rather, what does this teach us? The Gemara answers: This teaches us that dampness [dimunta] is damaging to a wall.

NOTES

If there is no wall one may also not place them close to the boundary – סלע ה הבא ב ידיים. Even according to the opinion of Rava, why should it be prohibited to place these substances close to the boundary? After all, he causes no damage, and he can always remove the materials at a later stage. One answer is that since, if the neighbor did have a wall, these substances would cause damage and he would be required to remove the materials, the neighbor can prevent him from placing those substances close to his property even now by saying he wants to avoid potential future damage (Rashi). Alternatively, even now his actions cause damage to the neighbor's land. Furthermore, it will be difficult to remove at a later date materials he has already placed there (Riva).

Dampness (metunto) – רבעא. Rashi explains that this means dampness or moisture. The later commentators raise several problems with this interpretation, and suggest that metunto refers to rust that loosens the soil (Torat Hayyim).
The Gemara suggests: Come and hear another proof from the mishna: And one must distance a mill from a wall by three handbreadths from the lower stone of the mill, which is four handbreadths from the upper rim of the oven. The Gemara analyzes this statement: The reason for this ruling is that there is a wall, from which it may be inferred that if there is no wall, one may place a mill close by the boundary. The Gemara rejects this proof: No, even if there is no wall, one may also not place his mill close by the boundary. The Gemara asks: But rather, what does this teach us? The Gemara answers: This teaches us that vibrations are damaging to a wall.

The Gemara suggests: Come and hear another proof from the mishna: And the oven must be distanced by three handbreadths from the base, which is four handbreadths from the upper rim of the oven. The Gemara analyzes this statement: The reason for this ruling is that there is a wall, from which it may be inferred that if there is no wall, one may place an oven close by the boundary. The Gemara rejects this proof as well: No, even if there is no wall, one may also not place his oven close by the boundary. The Gemara asks: Rather, what does this teach us? The Gemara answers: This teaches us that heat is damaging to a wall.

The Gemara suggests: Come and hear another proof from the mishna: A person may not open a bakery or a dye shop beneath the trees is necessary to enable animals to plow between them. The Gemara analyzes this ruling: The reason for this ruling is due to the work of the vineyard, from which it may be inferred that if not for the problem due to the work of the vineyard, it would be permitted for one to plant his tree close to the boundary, and apparently, this is the halakha even though there are roots of the tree that damage his neighbor’s field. The Gemara answers: With what are we dealing here? We are dealing with a case where a hard rock interrupts between the two fields, preventing the roots from passing through to the other field.

The Gemara continues: The language of the mishna is also precise with regard to this point, as it teaches further on: If there was a fence between them, this one places, i.e., plants a tree, close to the fence from here, and that one places, i.e., plants a tree, close to the fence from here. If the baraita were referring to a case where the roots could travel across, how could it be permitted for both neighbors to plant their trees alongside each other? Consequently, it must be referring to a situation where a rock separates between the two fields below, and therefore the neighbors may plant their trees near the fence.
Alternatively, a bakery and a dye shop produce a great deal of heat. Tosafot

**Bakery – metunta**

Metunta: Dampness

A residence is different – the materials at a later stage. One answer is that since, if the neighbor uses a"metunta" this interpretation, and suggest that some commentaries explain that if one has a prohibition is that a large amount of smoke is found in these places. There are two main interpretations of this statement. Some commentaries explain that if one has a storeroom. This differs from the digging of a pit in a field (Ri Migash; Ramah). Some commentaries reject this explanation, claiming that even according to the opinion of Rava, there are no vegetables, one may place, his tree close to the neighbor's field. The Gemara cites yet another source: Come and hear a proof from a mishna (25b): One must distance a tree twenty-five cubits from a cistern. The Gemara analyzes this halakha: The reason for this ruling is that there is a cistern, from which it may be inferred that if there is no cistern, one may place, i.e., plant, his tree close to the neighbor's field. The Gemara answers: No, even when there is no cistern one may also not place it close to the neighbor's field. And by mentioning a cistern, the tanna of the mishna teaches us this: That the roots of a tree extend and damage the cistern up to a distance of twenty-five cubits away.

The Gemara cites yet another source: Come and hear a proof from a mishna (25a): One must distance the water in which flax is steeped from vegetables growing in a neighbor's field, and one must distance leeks from onions growing in a neighbor's field, and one must likewise distance mustard from bees that are in a neighbor's field. The Gemara analyzes this statement: The reason is that there are vegetables present, from which it may be inferred that if there are no vegetables, one may place the water close to the neighbor's field. The Gemara rejects this opinion: No, even if there are no vegetables one may also not place the water close to the neighbor's field. And the tanna teaches us that these items mentioned in that mishna are harmful to each other.

The Gemara responds: If so, say the last clause of that mishna: Rabbi Yosei renders it permitted to plant near the neighbor's bees in the case of mustard. As explained in a baraita, this is because he can say to the owner of the bees: Just as you say to me: Keep your mustard away from my bees, I can say to you: Keep your bees away from my mustard, as they come and eat my mustard plants. In other words, you are damaging my property as well.

**BACKGROUND**

Leeks from onions – The leek, Allium porrum, known as kereisha or kart in the Talmud, is related to the onion, Allium cepa. Not only are these two plants similar to each other in appearance, but they belong to the same botanical genus. For this reason there is a concern that if they are planted next to each other, insects might cross-pollinate them, which will cause them to produce sterile seeds. If this occurs, any onions and leeks grown for their seeds will be rendered useless.

Mustard plants – }
And if one may not place an item that might cause damage close to his neighbor’s boundary, how can you find a case where each neighbor is damaging the property of the other? Rav Pappa says: This is referring to a buyer who purchased part of his neighbor’s field, and it contains a substance or items that might cause damage, e.g., the water in which flax is steeped or mustard. In the other section of the field the neighbor retained an item or substance that could be damaged. In this manner, it is possible for the item that causes damage to be found near the boundary of the neighbor without one having violated the ruling of the mishna.

The Gemara asks: If this is referring to a buyer, what is the reason of the Rabbis, who say that the neighbor can demand that the buyer distance that which causes damage? After all, he has not acted improperly. And furthermore, what is the reason of Rabbi Yosei for disagreeing only in the case of the mustard and the bees? Even the case of water in which flax is steeped and vegetables is also subject to the same reasoning: Why should he have to distance his water, considering that he did not act improperly?

Ravina said that the explanation is as follows: The Rabbis hold that the responsibility falls on the one who causes damage to distance himself. The one who has the potential to cause damage must act to prevent the damage from occurring. This is the halakha even if his initial placement was done in accordance with halakha, as in the case where one bought part of a field.

The Gemara asks: Does this prove by inference that Rabbi Yosei, who disagrees with the ruling of the Rabbis, holds that the responsibility falls on the one whose property was damaged to distance himself; i.e., to avoid being damaged? But if the responsibility to distance oneself falls on the one whose property was damaged, even in the case of water in which flax is steeped and vegetables the owner should also not have to distance himself. Why does Rabbi Yosei distinguish between that situation and the case of bees and mustard?

Rather, actually Rabbi Yosei also holds that the responsibility to distance oneself falls on the one who causes damage, even if he did not act improperly. And this is what Rabbi Yosei is saying to the Rabbis: Your explanation works out well with regard to water in which flax is steeped and vegetables, where the one who causes damage must distance himself, as these damage those, but those do not damage these, i.e., the water in which flax is steeped damages the vegetables, but the vegetables do not damage the water. But in the case of mustard and bees, they both damage one another. In light of this factor, and since the initial planting of the mustard was permitted, the owner of the bees should distance them from the mustard.

And as for the Rabbis, how do they respond to this claim? They maintain that bees do not damage mustard. Their reasoning is that if it is referring to a seed, the bees will not find it. If it is referring to a leaf, it will grow back, and therefore no damage has been caused.
Ravina said –

And if one may not place it close to his neighbor's boundary – this discussion between the neighbors arise? (Rashi).

the boundary of his neighbor's field in all circumstances the item that any substance or item that will cause damage alongside a neighbor's who say that one who causes damage must distance himself in all ge'onim Rashi and the

According to this reading, Ravina's statement is a continuation and explanation of Rav Pappa's comment. If this is ment. His reason is in accordance with the opinion of the Rabbis, who say that the mustard seeds are very far from the walls of the pond. If it is referring to a seed, the bees will not find it; if it is referring to a leaf, it will grow back.

The Gemara elaborates: Rabbi Yosei was saying to the Rabbis: In my opinion, the responsibility falls on the one whose property was damaged to distance himself, and therefore even in the case of water in which flax is steeped and vegetables, the owner of the water need not distance himself. But according to your opinion, that the responsibility falls on the one who causes damage to distance himself, this works out well with regard to water in which flax is steeped and vegetables, as these damage those and those do not damage these. But mustard and bees both damage one another, and if the mustard owner acted properly, the owner of the bees should be required to move his bees.

The Gemara continues: And how do the Rabbis respond to this claim? They hold that bees do not damage mustard: If this is referring to a seed, the bees will not find it; if it is referring to a leaf, it will grow back.

The Gemara asks: And does Rabbi Yosei hold that the responsibility falls on the one who causes damage to distance himself? But didn’t we learn in a mishna (25b) that Rabbi Yosei says: Even though the cistern preceded the tree, the owner need not cut down the tree, as this one digs a cistern in his property, and that one plants the tree in his property? Rather, actually Rabbi Yosei holds that the responsibility falls on the one whose property was damaged to distance himself. And Rabbi Yosei spoke to the Rabbis in accordance with their statement.

The Gemara elaborates: Rabbi Yosei was saying to the Rabbis: In my opinion, the responsibility falls on the one whose property was damaged to distance himself, and therefore even in the case of water in which flax is steeped and vegetables, the owner of the water need not distance himself. But according to your opinion, that the responsibility falls on the one who causes damage to distance himself, this works out well with regard to water in which flax is steeped and vegetables, as these damage those and those do not damage these. But mustard and bees both damage one another, and if the mustard owner acted properly, the owner of the bees should be required to move his bees.

The Gemara continues: And how do the Rabbis respond to this claim? They hold that bees do not damage mustard: If this is referring to a seed, the bees will not find it; if it is referring to a leaf, it will grow back.
The mishna teaches that one who digs a pit must distance it three handbreadths from another’s property and plaster it with lime. A dilemma was raised before the Sages: What is the precise wording of the mishna? Did we learn: And plasters with lime, meaning that the walls must be plastered with lime in addition to distancing the pit three handbreadths, or perhaps we learned: Or plasters with lime, i.e., one may plaster the walls with lime instead of digging the pit at a distance of three handbreadths.

The Gemara answers: It is obvious that we learned: And plasters with lime, as, if it enters your mind that we learned: Or plasters with lime, which is the same as what is stated in the clause of the mishna discussing olive refuse, if so, let the tanna combine them and teach them together. If the same halakha applied in all circumstances, all of the mishna’s cases could be taught together.

The Gemara answers: This is not proof, as perhaps these cases are taught separately because this type of damage is not similar to that type of damage. The first clause of the mishna addresses the issue of damage due to moisture, whereas the last clause addresses the issue of damage due to heat.

The Gemara suggests: Come and hear a proof from a baraita. Rabbi Yehuda says: With regard to rock that does not crumble in one’s hands, this one digs his pit from here, on his property, and that one digs his pit from there. This one distances his pit three handbreadths and plasters with lime, and this one distances his pit three handbreadths and plasters with lime. The Gemara analyzes this ruling: The specific reason one must also plaster with lime is that he is using rock that crumbles in one’s hands, from which it may be inferred that if it is rock that does not crumble in one’s hands, one would not be required to plaster with lime as well.

The Gemara answers: One could say that the same is true, i.e., that even though he is using rock that does not crumble in one’s hands, he must also plaster with lime. And it was necessary for the tanna to mention the case of rock that crumbles in one’s hands, as it might enter your mind to say that since it crumbles in one’s hands, let us require a greater distance. Therefore, the tanna teaches us that this is not the case.

The Gemara teaches: One must distance the solid residue of produce that has been pressed free of its oil, and animal manure, and salt, and lime, and rocks three handbreadths from the wall of another, or to plaster its receptacle with lime. The Gemara comments: We learned in a mishna there (Shabbat 47b): With what substances may one insulate a pot of cooked food on Shabbat eve, and with what substances may one not insulate it?

One may insulate the pot neither with the solid residue of produce that has been pressed free of its oil, nor with manure, nor with salt, nor with lime, nor with sand, whether those materials are moist or whether they are dry. All of these materials spontaneously generate heat when piled up for an extended period of time. Therefore, they add heat to the pot they insulate. The Gemara asks: What is different here that the mishna teaches the halakha in the case of rocks and it does not teach the halakha in the case of sand, and what is different there that it teaches the halakha in the case of sand and it does not teach the halakha in the case of rocks?
Background

Tabs of purple wool — סְלָעִים לְקַרָּךְ: This refers to bunches of wool that were washed and combed into strips before being woven. These strips were then fashioned into fixed sizes and forms. Their high value was due to their purple coloring, which was derived by extracting muck from the glands of certain snails using complex methods of extraction. For this reason purple dye was an expensive commodity available only to the rich and influential.

It heats hot items — בְּמַדְרָה: Sand is made principally from quartz, which is a poor conductor of heat. The space between the grains enables sand to serve as an insulator, which preserves the heat of items wrapped in it. By the same token, this space also helps keep cold items cool.

Rav Yosef says: There is a practical reason for this difference. Rocks are not mentioned there because it is not customary for people to insulate food with rocks. Abaye said to him: And is it customary for people to insulate food with wool fleece and tabs of purple wool? As it is taught in a baraita: One may insulate food with wool fleece; with combed wool clumps, which are unwoven; with tabs of purple wool, and with swathes of soft material; but one may not move them on Shabbat because they are set-aside [muktze].

Rather, Abaye said that the tanna follows the biblical aphorism in the verse that states: “Its neighbor tells about him” (Job 36:33), i.e., one example is mentioned and the same applies to the other case. He taught the halakha in the case of rocks here and the same is true of sand; he taught the halakha in the case of sand there and the same is true of rocks. Rava said to Abaye: If this is correct, that “its neighbor tells about him,” let him teach the halakha of all of these examples in one case, and let him teach the halakha of just one in the other case, and it can be said that the same is true with regard to the others.

Rather, Rava said: There, this is the reason that the tanna does not teach the halakha in the case of rocks: Because they break, i.e., scratch, the pot, and consequently people do not use them for insulating food at all. Here, this is the reason that the tanna does not teach the halakha in the case of sand: Because it heats hot items and cools cold items, and therefore it does not cause any damage to the wall.

The Gemara asks: But Rabbi Oshaya taught in a baraita that one must distance sand from his neighbor’s wall. The Gemara answers: There, it is referring to damp sand, which must be kept at a distance due to its moisture. The Gemara challenges: Let the tanna of our mishna teach the halakha in the case of sand and we will interpret it as referring to damp sand. The Gemara answers: This tanna already taught the case of a water channel, which is a source of dampness, and therefore there was no need to mention damp sand as well.

The Gemara rejects this answer: That is incorrect, as is that to say that the mishna includes only one example of a source of dampness? Doesn’t the mishna teach the case of a water channel? And yet it also teaches the example of a launderer’s pond. This demonstrates that the mishna teaches many cases, despite the similarity between them, and therefore it should have mentioned the halakha in the case of sand as well.

The Gemara answers: Both of those particular examples are necessary, as, had the tanna taught only the case of a water channel, one would have claimed that a distance must be kept because it is fixed, i.e., water constantly passes through it. But with regard to a launderer’s pond, which is not fixed, as it sometimes holds water and sometimes does not, one might say that one need not distance it from his neighbor’s property. And conversely, had the tanna taught only the case of a launderer’s pond, one might have said that this must be distanced because its water is fixed and standing in one location and therefore leaks out. But with regard to a water channel, one might say distancing it is not required. Consequently, it is necessary to state both examples. By contrast, including the halakha in the case of sand would not add any novel understanding.

The mishna teaches: One must distance seeds, i.e., one may not plant seeds, and one may not operate the plow, and one must eliminate urine, three handbreadths from the wall of another. The Gemara asks: Why is it necessary to mention seeds? Let him derive this requirement to distance the seeds due to the requirement to distance a plow, as in any event the ground must be plowed before it can be sown? The Gemara answers: This is referring to planting with a single hand motion, which is performed without plowing.

Notes

But one may not move them — אִם מְטַלְטְלִין אַחַי: The prohibition against moving articles on Shabbat is called set-aside [muktze]. Some of these materials are set aside because they are used for work, others because they are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale, and yet others, e.g., the tabs of wool, are intended for sale.

Because they break — מִדְמְשַׁתְּכִי מִמַּי הַכּוֹבְסִין: Rashi explains that the rocks might break an earthenware pot, which is why people are hesitant to insulate food with them, whereas softer materials will not break or otherwise damage the pot (see Ramah and Arukh). Nevertheless, Rashi himself points out that this verb generally refers to the formation of rust, and many commentators explain that rocks ruin food (Ramban).

Because they break the pot — מִשָּׁמְשָׁמִין מִטְמַטְּכִּים: Some commentators rule that it is permitted to insulate food using rocks on Shabbat eve, despite the fact that they add heat. The reason is that this practice is uncommon and the Sages did not apply their decree to uncommon practices (Rema; Mordkhai). They did issue their decree with regard to substances that are used for this purpose occasionally (Shulhan Arukh, Orach Hayyim 257:3, and in the comment of Rema, and Magen Avraham there).

There it is referring to damp sand — בתנָא מִבָּרָא: If one desires to place damp sand in his courtyard, he must distance it from his neighbor’s wall or plaster it with lime (Shulhan Arukh, Hoshen Mishpat 154:2 and see Shakh there).

The Gemara asks: But Rabbi Oshaya taught in a baraita that one must distance sand from his neighbor’s wall. The Gemara answers: There, it is referring to damp sand, which must be kept at a distance due to its moisture. The Gemara challenges: Let the tanna of our mishna also teach the halakha in the case of sand and we will interpret it as referring to damp sand. The Gemara answers: This tanna already taught the case of a water channel, which is a source of dampness, and therefore there was no need to mention damp sand as well.

The Gemara rejects this answer: That is incorrect, as is that to say that the mishna includes only one example of a source of dampness? Doesn’t the mishna teach the case of a water channel? And yet it also teaches the example of a launderer’s pond. This demonstrates that the mishna teaches many cases, despite the similarity between them, and therefore it should have mentioned the halakha in the case of sand as well.

The Gemara answers: Both of those particular examples are necessary, as, had the tanna taught only the case of a water channel, one would have claimed that a distance must be kept because it is fixed, i.e., water constantly passes through it. But with regard to a launderer’s pond, which is not fixed, as it sometimes holds water and sometimes does not, one might say that one need not distance it from his neighbor’s property. And conversely, had the tanna taught only the case of a launderer’s pond, one might have said that this must be distanced because its water is fixed and standing in one location and therefore leaks out. But with regard to a water channel, one might say distancing it is not required. Consequently, it is necessary to state both examples. By contrast, including the halakha in the case of sand would not add any novel understanding.
The Gemara further challenges: The mishna teaches that one must distance a plow; but let him derive this requirement to distance a plow due to the requirement to distance the seeds, as plowing is preparation for planting. The Gemara answers: This is referring to one who plows to prepare the ground for trees. The Gemara challenges: But if so, let him derive this requirement to distance a plow due to the requirement to distance the water. If there are trees, there must be a water channel to irrigate them, and arranging one's field in such a manner should be prohibited for that reason. The Gemara answers: The tanna is referring to Eretz Yisrael, concerning which it is written: “And drinks water as the rain of heaven comes down” (Deuteronomy 11:11). In Eretz Yisrael, water channels were not needed.

The Gemara asks: Is this to say that seeds take root to the sides, i.e., the growing roots spread sideways and cause damage to walls? But didn’t we learn in a mishna (Kilayim 71:1): With regard to one who bends a branch of a grapevine into the ground so that it strikes roots and produces a new vine, if it does not have three handbreadths of earth over it he may not plant a seed above it, as he would thereby transgress the prohibition of diverse kinds?

And it is taught with regard to this mishna: But one may plant on either side of that bent branch. This indicates that there is no concern that the roots of the seeds will spread out sideways. Rabbi Ḥagga says in the name of Rabbi Yosei: The issue here is not that the roots will spread out sideways and reach the wall. Rather, it is prohibited to plant seeds near one’s neighbor’s property because they break up the ground and cause loose soil to rise up, which damages the foundation of the wall.

The mishna teaches: And urine must be kept at a distance of three handbreadths from the wall of one’s neighbor. Rabba bar Ḥana says: It is permitted for a person to urinate alongside the wall of another, as it is written: “And I will cut off from Ahab those who urinate against the wall, and him that is shut up and him that is left at large in Israel” (1 Kings 21:21). As the verse employs the term “those who urinate against the wall” to mean males, it seems that urinating against a wall was a common practice. The Gemara asks: But didn’t we learn in the mishna that urine must be kept a distance of three handbreadths from the wall? The Gemara answers: There, the mishna is referring to urine that is poured from a chamber pot, as opposed to urine that is passed from the body.

The Gemara suggests: Come and hear a baraita: A person may not pour water at the side of the wall of another unless he distances the water three handbreadths from the ground. If pouring water is prohibited, then all the more so should urination be prohibited. The Gemara explains: There too, it is referring to urine that is poured from a chamber pot.

One who bends a branch of a grapevine - בַּרְבוּא: If one bends the branch of a grapevine into the ground, it is permitted to plant above it if it is covered by three handbreadths of soil. This is the case even if the vine is placed in a dried gourd or an earthenware pipe. If there are not three handbreadths of soil over it, it is prohibited to plant above it. One may plant to its side (Rambam Sefer Zera’im, Hilkhot Kilayim 6:7; Shulḥan Arukh, Yoreh De’ah 295:4).

That is poured - שׁמָּעַם: It is prohibited to pour urine next to one’s neighbor’s wall, even into a pit, unless he distances it three handbreadths from the wall (Shulḥan Arukh, Hoshen Mishpat 155:5, and in the comment of Rema).

This exchange in the Gemara is puzzling, as it is not clear why one should assume that if pouring water at the side of a wall is prohibited, urinating, which involves a lesser quantity of liquid, would be prohibited there as well. The Maharshal writes that this question and answer represent a corrupted version of the text and should be deleted. The Bah suspects emending the text of the baraita to read: A person may not place (yishpokh) water, etc. – This early commentators question this ruling, as even if the seed’s roots extend sideways, the roots of a grapevine also extend sideways, which means that the two will intermingle and produce diverse kinds. They explain that the roots of the grapevine typically descend lower than three handbreadths, thereby precluding the possibility of any problem of diverse kinds (Rabbeinu Tora).

They break up the ground – מָשִׁית: The Gemara explains that the seeds create holes in the ground, like those dug by a mole (Rabbeinu Gershon Meor HaGola; Rashi).

A person may not pour (yishpokh) water, etc. – This is derived from the Rabbinic midrash (Tur Shabbat 153:1).
In the case of a brick wall – מִמֶּנּוּ שְׁלֹֹשָׁה טְ
ֲדְּמִמְאִיס
A wafer which becomes disgusting – wafer which becomes disgusting

In the case of a brick wall – מִמֶּנּוּ שְׁלֹֹשָׁה טְ
ֲדְּמִמְאִיס
A wafer which becomes disgusting – wafer which becomes disgusting

And if there is hard rock – בְּכוֹתֶל לְבֵינִים
A person may not urinate next to his neighbor’s wall unless he moves himself a distance of three handbreadths from the wall. This is in the case of a wall constructed from bricks. It is sufficient to move one handbreadth away from a stone wall. If the stones and ground were rock hard, or built on rock, one need not distance himself (Rambam, Sefer Kinyan, Hilkhot Shekhenim 15:1 and Ra’avad there, and 7:1).

A wafer does not reduce the dimensions of a window – קִרְיוֹן
to urinate there. The Gemara comments: The refutation of the opinion of Shmuel teaches us that even a wafer is not nullified, as it can be used to feed animals, as one is not particular about their food. Therefore, the wafer does not become part of the window in which it is placed.

The Gemara asks: But Rabbi bar bar Hanan stated a verse in support of his opinion; how can the baraita rule counter to what is written in a verse? The Gemara answers: This is what it is saying there, i.e., this is the meaning of that verse: I will not even leave Ahab something whose manner is to urinate against a wall. And what is that? A dog. According to this interpretation, the verse is not referring to another wafer – A person may not urinate next to his neighbor’s wall unless he moves himself a distance of three handbreadths from the wall. This is in the case of a wall constructed from bricks. It is sufficient to move one handbreadth away from a stone wall. If the stones and ground were rock hard, or built on rock, one need not distance himself (Rambam, Sefer Kinyan, Hilkhot Shekhenim 15:1 and Ra’avad there, and 7:1).
The Gemara challenges: And let him derive this halakha from the fact that a wafer is an item that is susceptible to ritual impurity, and any item that is susceptible to impurity does not serve as a barrier against the spread of impurity. The Gemara explains: This is referring to a wafer that was kneaded in fruit juice,5 which is not one of the liquids that renders food susceptible to ritual impurity, and therefore the wafer is not susceptible to ritual impurity. Consequently, one might have thought that it serves as a barrier before ritual impurity and reduces the dimensions of the window.

The Gemara raises an objection to Shmuel’s opinion from a mishna (Oholot 6:2): With regard to a basket that is full of straw,6 or an earthenware barrel full of dried figs, which are placed in a window, one considers: If the straw or dried figs would stand on their own were the basket or barrel removed, then they would serve as a barrier against the spread of impurity. But if they would not stand on their own they would not serve as a barrier. The Gemara explains the objection: But why should the straw or dried figs serve as a barrier? Even straw that can stand on its own is fit for feeding to one’s animal and will likely be removed from the opening, which means it should not be considered part of the window.

The Gemara answers: The ruling of the mishna is stated with regard to straw, which is unfit for animal consumption. The Gemara asks: But it is fit for use in the making of clay for bricks. The Gemara answers: This is referring to straw that has thorns in it7 and therefore is not fit for making bricks. The Gemara challenges: Even so, it is fit for kindling a fire. The Gemara answers that this is referring to wet straw. The Gemara responds: Nevertheless, it is fit for kindling a large fire. If one builds a large fire, wet straw will dry and become ignitable. The Gemara answers: A large fire is not common, and therefore, in all likelihood, the straw will remain in the window.

The Gemara further asks: But dried figs are fit for him to consume, and he will certainly remove them. Consequently, they should not be considered fixed in their place. Shmuel says: This is referring to a case where the figs became worm infested [beshehitrifu].8 And so Rabba bar Avuh teaches: This is referring to a case where the figs became worm infested.

The Gemara clarifies: What are the exact circumstances of this barrel that held the dried figs? If this is referring to a case where its opening faced outward, i.e., not toward the source of the ritual impurity,

Let the barrel itself serve as a barrier.9 It should not be susceptible to impurity in this case, as an earthenware vessel does not contract impurity if its exterior is exposed to impurity. Rather, one must say that its opening faces inward, and it is rendered impure because the impurity enters through its opening. And if you wish, say instead that actually its opening faces outward, and with what are we dealing here? We are dealing with a metal barrel, which does contract impurity through its exterior.

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5 That was kneaded in fruit juice – תודיעת: Food items become susceptible to contracting ritual impurity only after water or any of six other liquids has fallen onto them (see Makkot 6a). Should fruit juice touch flour, the latter does not become susceptible to contracting ritual impurity.

6 That was kneaded in fruit juice – הלוקה מלים כאן: In talmudic times, clay was prepared by stomping on straw with bare feet. This action cannot be performed if the straw contains thorns (Rabbeinu Gershon Meor HaGola; Rash). The figs became worm infested – 부טטרוק: This translation follows Rash’s interpretation. Others maintain that it means the figs became moldy (Rabbeinu Hananel). In either case they are no longer fit for human or animal consumption, as animals do not eat dried figs (Ramah).

7 Became worm infested [beshehitrifu]: This is referring not to urination but to pouring out the urine from the affected area can be sliced off, leaving the remaining part fit for further use as food. By contrast, in the case of a thick piece of bread, any damage to the affected surface does not nullify it (Tosafot). Others suggest that as it has been designated for this use, it will not be taken for any other purpose (Ramah). Many early commentators explain that the principle that an item is not nullified if it is subject to removal applies only where the item merely reduces the space in question. In a case where the item completely blocks the window, such as a barrel, it is viewed as reducing the space even if it will eventually be moved (Rabbeinu Tam; Rabbeinu Ḥilkah of Dampierre, cited in Tosafot; Rashba; and see Ramban).
A child born after eight months of pregnancy—אפרצת

In talmudic times, there was an assumption that a child born after only eight months of pregnancy would not live, whereas one born after seven months had a greater chance of survival. This claim is not supported by medical research. In practice, the Sages established that the number of months of gestation cannot be used as a determining factor in assessing the viability of the newborn. Rather, the physical growth of nails and hair is a more reliable sign of fetal development, and consequently, it is a more accurate indicator of the likelihood that the fetus will live.

Afraza—אפרצת: There are various opinions with regard to the correct spelling and meaning of this term. Some commentaries identify it with the oleander, which is indeed poisonous. Others suggest that it is a species of plant containing a high concentration of oxalic acid, such as Oxalis pes-caprae, or sour grass, which is very common in Eretz Yisrael. It is harmful and possibly deadly to animals.

Oleander

Yellow iris

Sour grass

The Gemara raises another objection to the assumption that an item for which there is a use does not reduce the dimensions of a window, even if it is not susceptible to impurity, from a baraita (Tosefta, Oholot 14:6). With regard to grass—a plant that one plucked and placed in a window or that grew on its own in windows; and scraps of fabric that do not measure three by three fingerbreadths; and a limb or flesh dangling from an animal or a beast; and a bird resting in the window, and a gentle sitting in the window—"and a child born after eight months of pregnancy," who is not expected to survive, that is placed in the window; and salt, and an earthenware vessel; and a Torah scroll, all these reduce the dimensions of the window.

The Gemara proceeds to challenge Shmuel's ruling from each of the cases of the baraita. The Gemara asks: But according to Shmuel, who says that an item that has a use is not considered part of the window and does not reduce the dimensions of the space, grass is fit for consumption by one's animal, so it will not remain in the window. Yet the baraita states that grass reduces the dimensions of the window. The Gemara answers: This is referring to afraza, which is poisonous grass that is unfit for an animal to consume.

## Notes

- Grass—פקק: Even if grass is suitable for use as animal food, it is not susceptible to ritual impurity as food, because it is not fit for human consumption (Ramah).
- Scraps of fabric—תומ小說. Three by three fingerbreadths is the smallest measure of fabric that is susceptible to impurity (see Makhshirin 14).
- And a gentle sitting—פעקה יונית: By Torah law a gentle is not susceptible to ritual impurity while he is alive. Although the Sages decreed that gentiles have the status of a zav, since this level of impurity is by rabbinic law, a gentle reduces the dimensions of the window (Tosafot; Ramban).
- And a Torah scroll—טורה תפוק: A Torah scroll is not considered a vessel, and therefore it does not contruct impurity. Although the Sages decreed that sacred writings impart impurity to one's hands and disqualify teruma, since this level of impurity is of that space with regard to impurity (Ramah).
- But snow, hail, etc.—עקר显示器 לשבר תקרת ורד מים: These items do not reduce the dimensions of a window because they will eventually melt of their own accord (Rashab).
- Frost (geisf), ice (kefor)—קרוב שקרב involv. Some commentaries explain that these terms both refer to frozen water. The difference is that geisf refers to thick ice, whereas kefor means a thin layer of frozen water (Ramah; see Rash).

## Halakha

- Grass that one plucked—פקק פקק: Plucked grass that is positioned in a window serves as a barrier before impurity and reduces the dimension of the space, provided that the grass is bitter and unsuitable for food for animals (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- Scraps of fabric—תומ novità: Scraps of fabric that are smaller than three by three fingerbreadths and are also stiff, dirty, and unsuitable for wiping blood reduce the dimensions of a window (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- And a limb or flesh dangling—יד פרקה: A limb or flesh dangling from a non-kosher animal reduces the dimensions of a window. This ruling refers to a situation where the animal is tied in place and is too lean to be sold to a gentile (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- And a bird resting in the window—תלדה פרקה: A non-kosher bird resting in a window reduces the dimensions of the window. This halakha applies if the bird is one that scratches people and is therefore not suited for playing with a child, and provided it is tied in place (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- And a gentle sitting in the window—תלדה פרקה יונית: If a gentle is tied to a window as a prisoner of the monarchy and people are afraid to release him, he reduces the dimensions of that window (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- And a child born after eight months of pregnancy—נולד: If a child is born after eight months of gestation and is placed in the window on Shabbat, he reduces the dimensions of that space with regard to impurity (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- And salt—קיסר: Bitter salt that sits on a small earthenware shard in a window and contains thorns reduces the dimensions of the window (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
- And an earthenware vessel—קיסר: If a window is blocked with an earthenware vessel facing outward, the vessel reduces the dimensions of the window and serves as a barrier to the spreading of impurity. This is the case provided that the vessel is cracked and repulsive and therefore has no use, which means that it is unlikely to be moved (Rambam Sefer Tahara, Hilkhot Tumat Met 15:4).
- And a Torah scroll—טורה תפוק: If a worn-out Torah scroll is placed in a window with the intent that it be stored there, it reduces the dimensions of the window and serves as a barrier to the spreading of impurity (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).

Snow, hail— yourselves. Snow, hail, frost, ice, and water placed in a window do not reduce the dimensions of the window (Rambam Sefer Tahara, Hilkhot Tumat Met 15:2).
The Gemara asks: But even so, he will take it and sell it to a gentile. The Gemara responds: It is referring to a bird that is non-kosher and will not be slaughtered. The Gemara challenges: Even if the animal does not move, there is a use for the part that is dangling, since he can cut it off and throw it to the dogs. The Gemara answers: Since there is suffering to an animal if he cuts it off, he will not do that.

The Gemara further asks: And a bird resting in the window reduces its dimensions. The Gemara challenges: But it will fly away, and therefore it should not be considered as part of the window. The Gemara answers: This is referring to a bird that is tied in place. The Gemara further challenges: But the owner will take it and slaughter it. The Gemara answers: This is referring to a non-kosher bird, which he will not slaughter. The Gemara continues: Even if it is non-kosher he will take it and sell it to a gentile. The Gemara responds: It is referring to a kelanita, a type of bird that is so bony that no one would purchase it to consume it.

The Gemara asks: But even so, he can give it to a child to play with, so why does it reduce the dimensions of the window? The Gemara answers: It is referring to a bird that scratches. The Gemara challenges: But a kelanita does not scratch. The Gemara answers: The baraita is referring to a type of bird that is like a kelanita in that it is bony, but is inclined to scratch people.

The baraita teaches: Or grass that grew on its own also reduces the dimensions of the window. The Gemara asks: But since the grass damages the wall, the owner will remove it. Therefore, it should not serve as a barrier to impurity. Rabba says: This is referring to a wall of a ruin, whose structural integrity is insignificant, and therefore the owner will not trouble himself to remove the grass. Rav Pappa says: The baraita may even be referring to a wall in a settled house, and it is referring to a case where the grass comes from three handbreadths beyond the window. In other words, the grass does not grow on the window but takes root some distance away, and from there it reaches the window. The homeowner is not particular about this grass and will not uproot it.

The Gemara further asks: Why do scraps of fabric reduce the dimensions of the window? After all, they are fit for patching a tear in a garment. The Gemara answers: This is referring to thick scraps, which are unsuitable for patching. The Gemara challenges: Nevertheless, they are fit for a bloodletter to wipe up the blood at the point of incision. The Gemara answers: It is referring to sackcloth, which scratches the skin, and would not be used for that purpose.

The Gemara asks: If it is referring to sackcloth, why does the baraita state that it is not three by three fingerbreadths? It should have said that it is not four by four handbreadths. Rough woven material of the kind used for sacks rather than clothes is susceptible to impurity only if its area measures at least four by four handbreadths. The Gemara answers: It is not actual sackcloth; rather, it is like sackcloth, i.e., it is stiff, and will therefore not be used by a bloodletter, but is woven like regular clothing.

The baraita teaches: And a bird resting in the window reduces the dimensions of a window. The Gemara asks: According to the opinion of Shmuel, why should this be so? After all, the animal can arise and escape, and therefore it should not be considered as part of the window. The Gemara answers: This is referring to an animal that is tied in place.

The Gemara challenges: But the owner of the animal will take it and slaughter it. The Gemara answers: It is referring to an animal that is non-kosher and will not be slaughtered. The Gemara challenges: Even so, he will take it and sell it to a gentile. The Gemara responds: It is referring to a lean animal, which no one will buy. The Gemara continues: Even if the animal does not move, there is a use for the part that is dangling, since he can cut it off and throw it to the dogs. The Gemara answers: Since there is suffering to an animal if he cuts it off, he will not do that.

The baraita further teaches: And a limb or flesh dangling from an animal or a beast reduces the dimensions of a window. The Gemara asks: What is a limb or flesh that is tied in place? The Gemara answers: It is referring to a type of bird that is so bony that no one would purchase it to consume it.

The Gemara asks: But even so, he can give it to a child to play with, so why does it reduce the dimensions of the window? The Gemara answers: It is referring to a bird that scratches. The Gemara challenges: But a kelanita does not scratch. The Gemara answers: The baraita is referring to a type of bird that is like a kelanita in that it is bony, but is inclined to scratch people.

**Kelanita** - הקְלַנִיתָא Various explanations have been offered for the origin of this term. It is possibly Greek for a swallow. Yet, swallows do not fit the descriptions given here. Some commentaries suggest that this refers to a seabird, e.g., the petrel, which is bony and whose meat is tough and virtually inedible.
Due to the danger – אינון ספק מובטח. Most commentators explain that this refers to the danger posed to the mother due to the buildup of milk. Others claim that although the child is not expected to survive, any immediate danger it faces is cause for concern (Ramah).

Bitter salt – מלח מריר. When salt is harvested from the sea, other minerals besides cooking salt are collected as well, e.g., magnesium chloride, MgCl₂, which has a bitter taste. Table salt will be unusable if it is not separated from this substance.

Perek II
Daf 20 Amud b

The baraita further states: And a gentle sitting in the window reduces its dimensions. The Gemara asks: But the gentle will arise and leave, so why does he reduce the dimensions of the window? The Gemara answers: This is referring to someone who is tied in place. The Gemara continues: Another person will come and release him. The Gemara answers: This is referring to a leper, whom people are afraid to touch. The Gemara challenges: Another leper will come and release him. Rather, this is referring to a prisoner of the monarchy. Since he is confined as a punishment, others are afraid to release him.

The baraita teaches: And a child born after eight months of pregnancy who is placed in the window reduces its dimensions. The Gemara challenges: Perhaps his mother will come and remove him from there. The Gemara answers: This is referring to Shabbat, when it is prohibited to move this child, as it is taught in a baraita: A child born after eight months is like a stone with regard to the halakhot of set-aside [nuktzeh], and therefore it is prohibited to move him; but his mother may bend over the child and nurse him, due to the danger that failure to nurse will cause her to fall ill.

The baraita teaches: Salt reduces the dimensions of a window. The Gemara challenges: It is fit for use and people will remove it from there. The Gemara answers: This is referring to bitter salt, which is not used as a seasoning. The Gemara challenges: Nevertheless, it is fit for tanning hides. The Gemara responds: It is referring to salt that has thorns mixed with it, and therefore it will not be used for tanning.

The Gemara challenges: Even so, since this salt is damaging to the wall, he will remove it from there. The Gemara answers: This is referring to a case where it sits on a shard of earthenware, and consequently it does not damage the wall. The Gemara states: If it is resting on earthenware, let the shard itself serve as a barrier against the spreading of the impurity. Why, then, is the salt mentioned?

The Gemara answers: This is referring to a case where the shard does not have the sufficient measure⁴ for ritual impurity, and is therefore considered insignificant. As we learned in a mishna (Shabbat 82a): One who carries a shard of earthenware on Shabbat is liable only if it is equivalent in size to that which is used to place between one pillar and another when they are piled on the ground, to strengthen the pillars.

The baraita teaches: An earthenware vessel reduces the dimensions of a window. The Gemara challenges: But it is fit for one to use; therefore, it is likely to be removed from the window. The Gemara answers: This is referring to a case where the earthenware is dirty. The Gemara challenges: Even so, it is fit for a bloodletter to collect the blood. It would not matter to him if the earthenware were dirty. The Gemara answers: It is referring to a case where it is perforated and therefore unfit for that use.

The baraita teaches: A Torah scroll reduces the dimensions of a window. The Gemara challenges: But it is fit for reading; therefore, it might be removed. The Gemara answers: This is referring to a Torah scroll that is worn out and unfit for reading. The Gemara challenges: But one is required to place the Torah scroll in a repository for unusable sacred books; therefore, he will certainly remove it to be stored away. The Gemara answers: This is referring to one who determines that its repository will be there. In other words, it was placed in the window with the intent of storing it there in its worn-out state.

It does not have the sufficient measure – בֵּית בֵּית בַּלְעֶש. Rashi explains that because the earthenware shard is small and insignificant it is considered as though it is completely absent, just as it is too small to have significance with regard to carrying on Shabbat. Others question this explanation, as, if the dimensions of the window are reduced, what need is there for a precise measurement (Rambam)? Some versions of the text omit this clause altogether (Ramah; Meiri). One explanation is that the Gemara is referring to a case where the earthenware shard is too small to reduce the window to less than the minimum size, but the salt together with the shard reduces the size of the window. The Gemara then explains that although there is a possibility that one will move the shard, a shard so small has no use and therefore one will not move it (Tosafot).

But one is required to place it in a repository for books – הדא עשה. A worn-out Torah scroll must be placed in an earthenware jar and stored in the grave of a Torah scholar. The same applies to other sacred writings (Rambam: Sefer Avoth, Hilchos Tefillin U’Mesuzah, Sefer Torah 10:3; Shulhan Arukh, Orach Hayyim 543 and Magen Avraham there).

The Gemara teaches: A Torah scroll reduces the dimensions of a window. The Gemara challenges: But it is fit for reading; therefore, it might be removed. The Gemara answers: This is referring to a Torah scroll that is worn out and unfit for reading. The Gemara challenges: But one is required to place the Torah scroll in a repository for unusable sacred books; therefore, he will certainly remove it to be stored away. The Gemara answers: This is referring to one who determines that its repository will be there. In other words, it was placed in the window with the intent of storing it there in its worn-out state.
With regard to the halakha of the baraita referring to salt, the Gemara cites that which Rav says: One can construct a barrier to delineate a private domain on Shabbat or to block the spreading of ritual impurity with anything except for salt and fat, as salt crumbles and fat melts in the heat. And Shmuel says: Even salt can be used as a barrier. Rav Pappa said: And they do not disagree, as this ruling of Shmuel is referring to Sodomite salt, which is like stone and can be used as a barrier, and that ruling of Rav is referring to isterokanit salt, which is taken from the sea and is composed of grains.

The Gemara adds: And now that Rabba said: If a person makes two piles of salt at the opening to an alleyway and places a cross beam on top of them, so that the salt supports the cross beam and the cross beam supports the salt by weighing it down and compressing it, he can use this beam to render it permitted to carry on the alleyway on Shabbat, one can say that even isterokanit salt can be used as a barrier. And even so, Rav and Shmuel do not disagree: This ruling of Shmuel is referring to a case where there is a cross beam to weigh the salt down, and that ruling of Rava is referring to a case where there is no cross beam.

The mishna teaches that one must distance a mill from a neighbor’s wall by a distance of three handbreadths from the lower stone of the mill, which is four handbreadths from the upper stone of the mill. The Gemara asks: What is the reason that one must distance a mill from the property of his neighbor? It is due to the vibrations it causes. The Gemara asks: But isn’t it taught in a baraita: And the measure for distancing a mill on a base is three handbreadths from the lower millstone isterobil, which is four handbreadths from the mouth hakellet, where the wheat is fed in? But there, what vibrations are there? Rather, the reason for the distancing is due to the noise generated by the mill.

The mishna teaches: And there must be a distance of three handbreadths from the protruding base of an oven until the wall, which is four handbreadths from the narrow upper rim of the oven. Abaye said: Learn from the mishna that the base of an oven is a handbreadth wider than its rim. The practical difference of this observation is with respect to buying and selling, i.e., a buyer should know that this is the proper ratio for the dimensions of an oven.

Background

A mill on a base – Ḥorei Shabbat: This type of mill, which was found in various excavations, is comprised of a lower millstone, isterobil, beneath the kelet, the upper millstone, which resembles an hourglass. The seeds are poured into the funnel-shaped top. Poles are fixed into the kelet, which helps people or donkeys turn the mill. This mill was called rehyamin shel harom, literally, a donkey mill, due to the base upon which it sat or because donkeys were employed to work it. The base and structure of the mill prevented the ground from shaking, although it created a fair amount of noise.

Notes

And places a cross beam on top of them – מַאי טִירְיָא אִיכָּא? אֶלָּא מִשּׁוּם טִירְיָא אִיכָּא. Some claim that these are synonymous with the lower and upper millstones (Gelomin). Others suggest that these are located underneath the mill, as the kelet is a kind of depression in which the mill sits, while the isterobil is the receptacle into which the flour falls. Yet others agree with Rashi that the kelet is a type of funnel through which the wheat is directed into the mill (R. Migash; Ramah).

What vibrations are there – אַכְפָּה יֵשׁ נוֹזֵס כֹּה יָדְרָה. Since the mill is positioned on a base, the vibrations of the mill do not affect the surrounding area, nor do they damage the wall.

Rather it is due to the noise – לָא יֵשׁ נוֹזֵס כֹּה יָדְרָה. Many early commentaries omit the word: Rather, which indicates a change from the previous explanation. Their reasoning is that the vibrations do in fact cause damage to the wall, and the Gemara is simply stating that the noise is also a reason to distance the mill. Some add that it is not uncommon for sound to cause vibrations and thereby damage a wall (Rasha).
MISHNA A person may not set up an oven inside a house unless there is a space four cubits high above it, i.e., between the top of the oven and the ceiling, to avoid burning the ceiling, which serves as the floor of the residence above. If one was setting up an oven in the upper story, there must be a plaster floor beneath it, which serves as the ceiling of the lower story, at least three handbreadths thick, so that the ceiling below does not burn. And in the case of a stove the plaster floor must be at least one handbreadth thick.

And if he causes damage in any case, he pays compensation for that which he damaged. Rabbi Shimon says: They said all of these measurements to teach only that if he causes damage he is exempt from paying, as he took all reasonable precautions.

The mishna continues: A person may not open a bakery or a dye shop beneath the storeroom of another, and he may not establish a cattle barn there, as these produce heat, smoke, and odors, which rise and damage the items in the storeroom. The mishna comments: In truth, the halakha is that in the case of a storeroom of wine the Sages rendered it permitted to set up a bakery and a dye shop beneath, as the heat that rises does not damage the wine. But they did not render it permitted to establish a cattle barn, because its odor damages the wine.

GEMARA The Gemara asks: But isn’t it taught in a baraita that in the case of an oven the plaster floor must be four handbreadths thick, and with regard to a stove it must be three? By contrast, the mishna says that the plaster floor beneath and oven and a stove must be three handbreadths and one handbreadth thick, respectively. Abaye said: When that baraita is taught it is with regard to ovens and stoves of bakers.

Since they bake all day long, their implements get very hot. The oven discussed in our mishna is similar to a baker’s stove, which is why in both cases a distance of three handbreadths is required.

The mishna teaches that one may not open a bakery or a dye shop beneath the storeroom of another, and he may not establish a cattle barn there. A Sage taught: If the cattle barn preceded the storeroom it is permitted, i.e., the barn owner is not required to move it. With regard to this point, Abaye raises a dilemma: If he cleaned and sprinkled the area, i.e., he prepared it for use as a storeroom but he has not yet filled it, what is the halakha? Is it considered a storeroom already, and therefore others may no longer put a cattle barn beneath it, or perhaps the halakha is that as long as it is empty he cannot prevent others from establishing a cattle barn?

HALAKHA A person may not set up an oven in his house unless there are four cubits of space between the oven and the ceiling that serves as the floor of a neighbor above. This is the halakha even if the opening of the oven is to its side. Similarly, one who lives on an upper floor may not set up an oven unless there is a plaster floor beneath it with a thickness of three handbreadths. A single handbreadth is sufficient beneath a stove if there are four cubits above it (Sma). Even when these precautions are observed, the owner of an oven or stove is liable for damage caused if a fire ensues (Rambam Sefer Kinyan, Hilkhot Shekhenim 155:1).

A person may not open a bakery or a dye shop beneath an individual’s storeroom of fruit, oil, or wine, he may not convert it to a bakery, a dye shop, or a cattle barn. Furthermore, he may not use it for any other business that generates heat or creates a stench. In Eretz Yisrael it is permitted to establish bakeries or dye shops beneath wine storerooms, but not barns, as the odor from a barn spoils the wine (Rambam Sefer Kinyan, Hilkhot Shekhenim 9:12; Shulhan Arukh, Hoshen Mishpat 155:2).

With regard to ovens of bakers: One may not set up a baker’s oven in an upper story unless there is a plaster floor beneath it with a thickness of four handbreadths. A baker’s stove must be positioned on a floor three handbreadths thick (Rambam Sefer Kinyan, Hilkhot Shekhenim 9:11; Shulhan Arukh, Hoshen Mishpat 155:5).

If the cattle barn preceded the storeroom it is permitted, i.e., the barn owner is not required to move it. But isn’t it taught clean and sprinkled the area, i.e., he prepared it for use as a storeroom but he has not yet filled it, what is the halakha? Is it considered a storeroom already, and therefore others may no longer put a cattle barn beneath it, or perhaps the halakha is that as long as it is empty he cannot prevent others from establishing a cattle barn?

Cleaned and sprinkled: If the owner of an upper story indicates his desire to use his space for a storeroom by cleaning and sprinkling the floor or by adding windows to the walls, he can prevent his downstairs neighbor from setting up an enterprise that increases heat from below. Once the downstairs neighbor has already set it up, the upstairs neighbor cannot force him to move (Rambam Sefer Kinyan, Hilkhot Shekhenim 9:13; Shulhan Arukh, Hoshen Mishpat 155:2).
Similarly, if he added windows\(^8\) for ventilation, which demonstrates his intention to use it as a storeroom, what is the halakha? Likewise, if he establishes an enclosed veranda beneath the storeroom,\(^7\) what is the halakha? If he built an upper room\(^9\) on top of his house for storage, what is the halakha? None of these questions are answered, and the Gemara declares that they shall stand unresolved. The Gemara cites a similar question: Rav Huna, son of Rav Yehoshua, raises a dilemma: If he placed dates and pomegranates\(^7\) there, what is the halakha? Is this considered the start of its use as a storeroom or not? An answer was found to this question either, and the Gemara declares: The dilemma shall stand [\textit{teiku}] unresolved.

\(^7\) The mishna teaches that in truth, it is permitted in the case of wine but not in the case of a cattle barn. The Gemara states that a Sage taught: They permitted it in the case of wine\(^8\) because the heat and the smoke improve the wine. But they did not permit one to establish a cattle barn, because a barn creates a bad odor. Rav Yosef said: This wine of ours spoils quickly, and therefore even the smoke of a candle also damages it. Rav Sheshet said: And alfalfa [\textit{w’espasta}]\(^9\) is considered like a cattle barn in this regard, because it rots over time and creates a foul odor.

**MISHNA**

If a resident wants to open a store in his courtyard,\(^7\) his neighbor may protest to prevent him from doing so and say to him: I am unable to sleep due to the sound of people entering\(^{18}\) the store and the sound of people exiting. But one may fashion utensils in his house and go out and sell them in the market, despite the fact that he is not allowed to set up a store in the courtyard, and the neighbor cannot protest against him doing so and say to him: I am unable to sleep due to the sound of the hammer you use to fashion utensils, nor can he say: I cannot sleep due to the sound of the mill that you use to grind, nor can he say: I cannot sleep due to the sound of the children. It is permitted for one to make reasonable use of his own home.

**GEMARA**

The Gemara asks: What is different in the first clause of the mishna, which states that one can prevent his neighbor from opening a store in the courtyard because the noise keeps him awake, and what is different in the latter clause, which states that one cannot protest when his neighbor performs labor that is noisy? Abaye said: In the latter clause we arrive at the case of one who operates in another courtyard, i.e., one cannot prevent activity in a separate courtyard that is connected to the alleyway in which he lives. Rava said to him: If so, let it teach that in a different courtyard it is permitted. Why does the mishna not specify that it is referring to a different courtyard? Rather, Rava said:
When the Sages saw that not everyone was capable of teaching their children and Torah study was declining, they instituted an ordinance that teachers of children should be established in Jerusalem. The Gemara explains: What verse did they interpret homiletically that enabled them to do this? They interpreted the verse: “For Torah emerges from Zion” (Isaiah 2:3). But still, whoever had a father, his father ascended with him to Jerusalem and had taught him, but whoever did not have a father, he did not ascend and learn. Therefore, the Sages instituted an ordinance that teachers of children should be established in one city in each and every region [pelekhi]. And they brought the students in at the age of sixteen and at the age of seventeen.

But as the students were old and had not yet had any formal education, a student whose teacher grew angry at him would rebel against him and leave. It was impossible to hold the youths there against their will. This state of affairs continued until Yehoshua ben Gamla came and instituted an ordinance that teachers of children should be established in each and every province and in each and every town, and they would bring the children in to learn at the age of six and at the age of seven. With regard to the matter at hand, since this system was established for the masses, the neighbors cannot prevent a scholar from teaching Torah in the courtyard.

Concerning that same issue, Rav said to Rav Shmuel bar Sheilat, a teacher of children: Do not accept a student before the age of six, as he is too young, and it is difficult for him to learn in a steady manner. From this point forward, accept him and stuff him with Torah like an ox. And Rav further said to Rav Shmuel bar Sheilat: When you strike a child  for educational purposes, hit him only with the strap of a sandal, which is small and does not cause pain. Rav further advised him: He who reads, let him read on his own; whoever does not read, let him be a companion to his friends, which will encourage him to learn to read.

Yehoshua ben Gamla was one of the last High Priests during the Second Temple period. He was mentioned by Josephus as Yehoshua ben Gamliel. He was appointed as High Priest by King Agrippa II and was killed during the destruction of the Temple. Some authorities maintain that there were two individuals by this name, although this is probably incorrect. While the Sages disapproved of the way he attained his office, they nevertheless enumerated his achievements (see Yoma 32a). He is praised for having donated golden lottery cards to the Temple, as well as for his efforts to promote Jewish education by establishing a wide-ranging system of schools in every town and region, as described by the Gemara here.
Who wishes to become a doctor – מדריך לแพทยים? If a resident of an alley or a courtyard wishes to become a doctor and see patients, or a bloodletter, or a weaver whose wares custom-orders come to see, or a teacher of gentile children (Rambam); or a teacher of subjects other than Torah (Shulhan Arukh), or a scribe who writes documents for the townspeople, his neighbors can protest against him when he resides in a house near their houses. This type of work is not a mitzva, and since many people seek his services, the residents of the courtyard can prevent him from performing this job near their houses.

§ With regard to the ordinance of Yehoshua ben Gamla, and concerning teaching children in general, Rava says: From the time of the ordinance of Yehoshua ben Gamla, that schoolteachers must be established in each town, and onward, one does not bring a child from one town to another. Rather, each child is educated where he resides. But one does bring them from one synagogue where they learn to another synagogue. And if a river separates the areas one does not bring the children across, lest they fall into the river. And if there is a bridge spanning the river one may bring them across the river. But if there is only a narrow bridge one does not bring them.

HALAKHA

With regard to a courtyard, the Gemara concluded that it is permitted for one to establish an elementary school to teach Torah and the neighbors cannot protest. The Gemara raises an objection to this ruling from a baraita: With regard to one member of a courtyard who wishes to become a doctor, a bloodletter, a weaver, or a teacher of children, the other members of the courtyard can prevent him from doing so. This indicates that neighbors can protest the teaching of children in their shared courtyard. The Gemara answers: With what are we dealing here, i.e., when can they protest his teaching children? We are dealing with a case of gentile children, as there is no mitzva to educate them. In this situation, the neighbors can protest against the noise.

Come and hear another baraita: With regard to two people who are residing in one courtyard, and one of them sought to become a doctor, a bloodletter, a weaver, or a teacher of children, the other can prevent him from doing so. The Gemara answers: Here too, we are dealing with a case of gentile children.

The Gemara suggests: Come and hear another baraita: One who has a house in a jointly owned courtyard may not rent it to a doctor, nor to a bloodletter, nor to a weaver, nor to a Jewish teacher (sofer), nor to a gentile teacher. This indicates that one’s neighbors can prevent him from teaching Jewish children. The Gemara answers: With what are we dealing here? We are dealing with the scribe of the town, who does not teach children but writes documents and letters for residents of the town. This type of work is not a mitzva, and since many people seek his services, the residents of the courtyard can prevent him from performing this job near their houses.

NOTES

With gentile children – מדריכות ל นอกจาก עלות מספר השnees: The early commentaries write that the same halakhah applies in the case of Jewish children who are being taught subjects other than Torah (Rambam’s Commentary on the Mishna; Rabbeinu Yona, Rashba).

Scribe (sofer) of the town – מדריך כל תושב ערים. Most commentaries agree with Rabbeinu Hananel that this is referring to the regular scribe, who writes documents for its citizenry. Since his occupation does not involve a mitzva, the neighbors can protest against the number of people entering the courtyard. They can have no complaint if he is writing a Torah scroll or other sacred writings (Ri Migash). According to Rash, this refers to a teacher of the city’s youth. Since he establishes a large school in this location, this creates a lot of noise due to the great number of children (see Ramban). One version of the clause reads sooper, i.e., the local barber (Rabbeinu Gershon Meor HaGola; see Tosafot).

One does not bring a child – מדריך ל yankee ובהם: One does not bring a child to learn in a neighboring town, even if there is a better teacher there (Rambam). Instead, the local community must hire a teacher for its town (Rashi). Some commentaries claim that this is the case only if there are at least twenty-five students, as Rava subsequently states (Tosafot). Most early commentaries disagree and maintain that one forces the local residents to hire a teacher even if there are fewer than twenty-five students (see Rabbeinu Yona, Rashba, and Riva).
And Rava said: The maximum number of students for one teacher104 of children is twenty-five children. And if there are fifty children in a single place, one establishes two teachers, so that each one teaches twenty-five students. And if there are forty children, one establishes an assistant, and the teacher receives help from the residents of the town to pay the salary of the assistant.

And Rava said: If there is a teacher of children who teaches a few subjects, and there is another who teaches more subjects than him, one does not remove the first teacher from his position to hire the second, as perhaps the other teacher will come to be negligent105 due to the lack of competition. Rav Dimi from Neharde’a said: On the contrary, all the more so is it the case that he will teach106 in a better manner if he knows that he is the sole instructor in the place, as jealousy among teachers increases wisdom. The one who was dismissed will try to refine his skills so that he will be rehired, and this will prevent negligence on the part of the other teacher.

The Gemara cites a proof for the opinion of Rav Dimi of Neharde’a: This is as it is written: “For Joab and all Israel remained there six months until he had cut off every male in Edom” (1 Kings 11:16). When Joab came before King David after this episode, David said to him:

The maximum number for one teacher – בֵּין שֵׁשִּׁים כְּבֵן שֶׁבַע. In other words, if there are fewer than twenty-five children, the townspeople are not compelled to hire a teacher (Tosafot). Most early commentaries disagree and say that this refers to the ideal number of students in a classroom, and that one cannot force a division into a smaller group (Ramban). Similarly, when there is a group of more than twenty-five students, a teacher cannot be forced to instruct it, and an additional teacher or aide must be hired (Rabbeinu Yona).

And if there are forty – בֵּין אֵלֶּה אֵילֶּה. Some early commentators state that if there are between twenty-five and forty students an assistant must be hired, whereas if there are more than forty students a new teacher is hired (Rabbeinu Yona; Raishia). Others claim that a solitary teacher can be expected to teach up to forty students. An assistant is hired if there are between forty and fifty students, and another teacher is hired if there are more than fifty (Rashi).

The teacher will come to be negligent – בֵּין מְטֵינַן יְנוּ ָא. According to Rashi, the chosen educator will come to believe that he is so good that he need not make an effort, and he will become negligent. Others explain that if the first teacher is replaced, the new teacher will be negligent, as he will assume that he too will soon be replaced by a better teacher (She’lhot De’ah Aha’ Gaon). Yet others suggest that the teacher who has been dismissed will be negligent, will forget his studies, and will no longer be able to teach (Ri Migash).

All the more so he will teach – בֵּין מְטֵינַן יְנוּ ָא. Rashi states that the teacher who rema ins will fear that the one who was dismissed will, out of jealousy, try to find fault with his teaching, and consequently the former will exert himself to be a better teacher. Others explain that as the remaining teacher knows that an incompetent teacher can be fired, he will try to avoid being negligent (Rabbeinu Gershon Meor Hagola). Yet others suggest that the teacher who has been replaced will work harder to be rehired (Ri Migash).

NOTES

The maximum number for one teacher – The appropriate number of students for one class is twenty-five children. If there are between twenty-five and forty students, an assistant must be hired, paid for by the townspeople. (Ramban, citing Nimmukei Yoṣef). If there are more than forty students, a second teacher is hired. Some authorities claim that if a town lacks twenty-five students, a teacher is not hired (Haggahot Maimoniyot; Rabbeinu Yenham). The Nimmukei Yoṣef rules that a teacher must be employed even if there are fewer than twenty-five students (Rambam Sefer HaMadda, Hilkhot Talmud Torah 25; Shulchan Arukh, Yoreh De’ah 245:15, and in the comment of Rema).

All the more so he will teach – בֵּין מְטֵינַן יְנוּ ָא. If a town has a teacher of children and a more competent one arrives, the first one can be dismissed in favor of the second teacher, as stated by Rav Dimi (Shulchan Arukh, Yoreh De’ah 245:18).

One hires the instructor who is precise – בֵּין מְטֵינַן יְנוּ ָא. If there are two teachers, and one of them covers a lot of material but is imprecise, while the other is more exact in his teaching but does not cover as much material, the one who is more precise is hired, in accordance with the opinion of Rav Dimi (Rambam Sefer HaMadda, Hilkhot Talmud Torah 25 and Kesef Mishne and Lehem Mishne there; Shulchan Arukh, Yoreh De’ah 245:19).

HALAKHA

The maximum number for one teacher – בֵּין שֵׁשִּׁים כְּבֵן שֶׁבַע. If a town has a teacher of children and a more competent one arrives, the first one can be dismissed in favor of the second teacher, as stated by Rav Dimi (Shulchan Arukh, Yoreh De’ah 245:18).

One hires the instructor who is precise – בֵּין מְטֵינַן יְנוּ ָא. If there are two teachers, and one of them covers a lot of material but is imprecise, while the other is more exact in his teaching but does not cover as much material, the one who is more precise is hired, in accordance with the opinion of Rav Dimi (Rambam Sefer HaMadda, Hilkhot Talmud Torah 25 and Kesef Mishne and Lehem Mishne there; Shulchan Arukh, Yoreh De’ah 245:19).
And Rava says: With regard to a teacher of children, a professional tree planter, a butcher, a bloodletter, and a town scribe, all these are considered forewarned. In other words, they need not be exhorted to perform their jobs correctly, as if they err in the performance of their duties they can be dismissed immediately. The principle of the matter is: With regard to any case where loss is irreversible, the individual is considered forewarned.

How did you read this word to us? – A professional tree planter, who actually destroys trees, as it is clear that this individual must pay for the damage he caused. Rather, it means one who plants in such a manner that the trees do not grow properly. Although this is irretrievable damage, the owner has no legal claim against the planter (Tosafot).

Butcher – אֲרוּר עֹשֶׂה מְלֶאכֶת הָם: It is clear that if a butcher renders the animal meat forbidden he must pay for the damage. There is an additional loss that might be incurred, e.g., if a host is unable to honor his guests properly by serving them meat, and this would be cause for the butcher's dismissal (Rabbeinu Yona).

Town scribe – אֲרוּר עֹשֶׂה מְלֶאכֶת הָם: Based on Rashi, this apparently refers to a scribe who transcribes sacred writings, e.g., those of a Torah scroll. Tosafot are surprised by this explanation, as if a scribe errs his mistake can be corrected. The early commentaries explain that it might refer to a case where there are too many errors to salvage the Torah scroll. Most commentaries agree with Rabbeinu Hananel that this refers to one who writes documents and whose imprecision might lead to considerable financial losses. According to the letter of the law the scribe would not be liable to pay in this case because he is only indirectly responsible for the loss (Tosafot; Rabbeinu Yona). Other commentaries suggest that this is referring to a town official, whose mistakes might cause a loss of public funds (Geonim).
The Gemara suggests: Let us say that a baraita supports his opinion: One must distance fish traps from fish,\(^6\) i.e., from other fish traps, as far as the fish travels, i.e., the distance from which the fish will travel. The Gemara asks: And how much is this distance? Rabba bar Rav Huna says: Up to a parasang [parsa]. This indicates that one must distance himself from the place where another has established his business. The Gemara responds that this is no proof: Perhaps fish are different, as they look around.\(^8\) One fish explores the area ahead of the others, indicating to them where to go. Once they encounter the first trap, they will not approach the second.

Ravina said to Rava: Shall we say that Rav Huna spoke in accordance with the opinion of Rabbi Yehuda? As we learned in a mishna (Bava Metzia 60a): Rabbi Yehuda says: A storekeeper may not hand out toasted grain and nuts\(^6\) to children who patronize his store, due to the fact that he thereby customizes them to come to him at the expense of competing storekeepers. And the Rabbis permit doing so. This indicates that according to the opinion of Rabbi Yehuda, all forms of competition are prohibited, which would include the scenario concerning the mill.

The Gemara rejects this suggestion: You may even say that Rav Huna holds in accordance with the opinion of the Rabbis. The Rabbis disagree with Rabbi Yehuda only there, as the storekeeper can say to his competitor: If I distribute walnuts, you can distribute almonds [shiyuskei].\(^9\) But here, with regard to a resident of an alleyway who sets up a mill in that alleyway where another mill already exists, even the Rabbis concede that the owner of the first mill can say to him: You are disrupting my livelihood, as beforehand whoever required grinding came to me, and you have provided them with another option.

The Gemara raises an objection from a baraita: A man may establish a shop alongside the shop of another, and a bathhouse alongside the bathhouse of another, and the other cannot protest, because the newcomer can say to him: You operate in your space, and I operate in my space.

The Gemara answers: This entire matter is a dispute between tanna’im, as it is taught in a baraita: The residents of an alleyway can compel one another\(^4\) to agree not to allow among them\(^3\) in that alleyway a tailor, a Tanner, a teacher of children, nor any type of craftsman. They can bar outside craftsmen from plying their trade in that alleyway. But one cannot compel his neighbor, i.e., one who already lives in the alleyway, to refrain from practicing a particular occupation there. Rabbah Shimon ben Gamliel says: One can even compel his neighbor not to conduct such work in the alleyway. Rav Huna holds in accordance with the opinion of Rabbah Shimon ben Gamliel.

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<td>One must distance fish traps from fish – רshi explains that if a fisherman intends to catch a particular fish, no one else may cast his net in the same place. Others explain that the phrase: From fish, means from a fish trap. The reason a trap would be referred to as: Fish, is that it was common practice to put one fish in the trap in order to attract other fish (Rabbeinu Hanane). See Rabbeinu Yona). Generally, one does not acquire an item that has not yet entered his possession, and one who seizes it beforehand is not considered wicked. Nevertheless, this principle refers only to an item that is available only on occasion, e.g., a found item. If one goes fishing near a place where another is already fishing, he is negatively affecting the other’s steady livelihood.</td>
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As they look around – רshi explains that a fish searches for food, and therefore one who puts food in his trap will certainly catch the fish. This is not the case with regard to a mill, where customers freely choose whom to patronize. Others state that fish can see other fish feeding from a distance of a parasang, which attracts them. For this reason they are considered caught in the net of the first fisherman (Rabbeinu Hanane). Alternatively, if the fish food is dispersed in one location, it can cause fish to migrate from the place where the second fisherman has cast his net to the area of the first fisherman (Arukh, citing Rabbeinu Gershon Meor HaGola). This is considered theft (Ramban). Yet others maintain that this refers to scouting fish who lead their school away from traps in general, including those of both fishermen mentioned here (Ri Migash).

Not to allow among them – רshi explains: Some commentators write that this refers to a place where there is already a craftsman of that type present, and therefore one who puts food in his trap will certainly catch the fish. This is not the case with regard to a mill, where customers freely choose whom to patronize. Others state that fish can see other fish feeding from a distance of a parasang, which attracts them. For this reason they are considered caught in the net of the first fisherman (Rabbeinu Hanane). Alternatively, if the fish food is dispersed in one location, it can cause fish to migrate from the place where the second fisherman has cast his net to the area of the first fisherman (Arukh, citing Rabbeinu Gershon Meor HaGola). This is considered theft (Ramban). Yet others maintain that this refers to scouting fish who lead their school away from traps in general, including those of both fishermen mentioned here (Ri Migash).

Toasted grain and nuts – רshi: It is permitted for a storekeeper to distribute toasted grain and nuts to children, or to reduce his prices in order to attract customers. Other storekeepers cannot protest this practice, in accordance with the opinion of the Rabbis (Rambam Sefer Kinyan, Hilkhos Shekhemin 6:8; Shulhan Arukh, Hoshen Mishpat 128:18).

The residents of an alleyway can compel one another – רshi: It is taught in a baraita, as it is taught (Rabbeni Yona). Generally, one does not acquire an item that has not yet entered his possession, and one who seizes it beforehand is not considered wicked. Nevertheless, this principle refers only to an item that is available only on occasion, e.g., a found item. If one goes fishing near a place where another is already fishing, he is negatively affecting the other’s steady livelihood. One can even compel his neighbor not to allow among them in that alleyway a tailor, a Tanner, a teacher of children, nor any type of craftsman. They can bar outside craftsmen from plying their trade in that alleyway. But one cannot compel his neighbor, i.e., one who already lives in the alleyway, to refrain from practicing a particular occupation there. Rabbah Shimon ben Gamliel says: One can even compel his neighbor not to conduct such work in the alleyway. Rav Huna holds in accordance with the opinion of Rabbah Shimon ben Gamliel.

Almonds [shiyuskei] – רshi: The precise origin and meaning of this term are subject to dispute. Rashi explains that it means almonds, whereas elsewhere he says it means prunes. The Arukh identifies this fruit as the peach, while others maintain that it refers to the Ziziphus jujuba, i.e., the fruit of a leafy tree with a large stone.
With regard to perfume salesmen who travel from one town to another – דְּעַיָּן חָלוֹצִים בְּרֵיהֶם דְּרַב יְהוֹשֻׁעַ. Perfume salesmen who travel from town to town selling their wares to Jewish women cannot be prevented by local residents from doing so; despite the fact that other kinds of merchants can be barred (Rema). Even perfume salesmen cannot set up a permanent business, and instead must travel from town to town. Torah scholars and schoolteachers are permitted to operate wherever they want (Rambam Sefer Kinyan, Hilkhot Shekhenim 6:12).

**NOTES**

With regard to those who teach children – בְּרֵיהֶם דְּרַב יְהוֹשֻׁעַ. A teacher of children is permitted to work alongside another teacher (Rambam Sefer Kinyan, Hilkhot Shekhenim 6:12 and Sefer HaMadda, Hilkhot Talmud Torah 27; Shulhan Arukh, Hoshen Mishpat 156:3 and Beur HaGra there).

**HALAKHA**

A resident of another alleyway – דְּלָא מָצֵי מְעַכֵּב. The question is as follows: According to the opinion of the Rabbis in the baraita, who maintain that one cannot prevent his neighbor from establishing his trade, is a citizen of the city who is a resident of a different alleyway considered a neighbor, whom one cannot prevent from performing his trade in the alleyway, or is he considered an outsider (Rashi)? Some commentators explain that this refers to an individual who seeks to set up shop in a nearby alleyway, and the question is whether that is close enough to allow the neighbors to protest (Rabbeinu Yona; see Rambam).

**NOTES**

If he is a Torah scholar – אֵלָי תְּרוּם הָבָרְאָה בַּעַל בָּכֶם. It is permitted for a Torah scholar to set up shop to sell his perfumes in a place he is visiting, and he need not go door to door or from town to town. The commentators note that this is permitted only in the case of perfume salesmen, as they serve Jewish women, but not in the case of other types of merchants (Rabbeinu Hananel; Ramah).

**HALAKHA**

Jealousy among teachers increases wisdom.

Rav Nahman bar Yitzḥak said: And Rav Huna, son of Rav Yehoshua, who said that townspeople can bar craftsmen who come from other cities, concedes with regard to perfume salesmen who travel from one town to another⁴ that the townspeople cannot prevent them from entering their town. As the Master said: Ezra instituted an ordinance for the Jewish people that perfume salesmen shall travel from town to town so that cosmetics will be available to Jewish women. Since this ordinance was instituted on behalf of Jewish women, the Sages ruled that these peddlers could not be barred from entering a town.

The Gemara continues: And this matter applies only to one who seeks to travel from town to town as a salesman. But if he wants to establish a shop, this ruling was not stated, and the townspeople can prevent him from doing so. And if he is a Torah scholar⁵ he may even establish a shop as a perfume salesman. This is like that incident in which Rava permitted Rabbi Yoshiya and Rav Ovadya to establish a shop not in accordance with the halakha. What is the reason for this ruling? The reason is that since they are rabbis, they are likely to be distracted from their studies should they be required to travel from place to place.

The Gemara challenges: And let us be concerned lest the teachers who raise the standard of behavior, and to enhance domestic harmony. This particular ordinance, allowing competition among teachers of schoolchildren, is not included in that list, although it may be a subcategory of the ordinance requiring the public reading of the Torah during the week. Both ordinances share the common denominator of spreading the knowledge of and dedication to Torah.
Basket sellers – נַפְלֵי שָׁפָרְיָה. According to Rashi this refers to basket sellers, while others say it is referring to those who sell cauldrons. Some claim that the Gemara is referring to sellers of pots (Remah).

And they sell to those from outside – מָשָׂלְהוּ לֵיהּ. Since people come from other towns on market days, the residents of that town do not have the right to prevent non-local merchants from selling to them. Such conduct on the part of visiting merchants should not be seen as competing with local salesmen.

Smell his jar – לְאַרוּ עַל אֶת פֵּאָתְוּ הַנֹּה. This expression is derived from the practice of testing wine by smelling it in a jug. Here it means that Rava warns Rav Adda bar Abba to test Rav Dimi to determine whether or not he is a Torah scholar as Rav Dimi claimed.

An elephant that swallowed – בֵּין מִשְׁעֵי מוֹאָב וְעַל מֶלֶךְ אֱדוֹם לַסִּיד גְּרוֹגָרוֹת. An elephant that swallowed a wicker basket – בְּעָא מִינֵּיהּ. This is now considered a utensil that is susceptible to impurity, or whether the reeds are considered like dung, which cannot become impure (see Tosafot).

They came from outside – נַפְלֵי שָׁפָרְיָה. If merchants arrive from another town, the local townspeople can prevent them from selling their wares. They cannot prevent them from doing so on market days, provided that they sell only in the market, as opposed to going from door to door. It is permitted for salesmen who are owed money to sell as much as they need to survive until they can collect the debts. Some commentators write that the residents can prevent outsiders from selling their products only if the prices and quality of their wares are equal to those offered by the local salesmen (Remah). They cannot protest if the traveling salesmen offer lower prices or superior-quality goods (Tur, citing Tosafot and Rashi). This is also the halakha if the visitors are offering a slightly different product (Rambam Sefer Kinyan, Hilkhah Shekhinim 6:10; Shulhan Arukh, Hoshen Mishpat 156:5).

Reserve the market for him – בֵּין מִשְׁעֵי מוֹאָב וְעַל מֶלֶךְ אֱדוֹם לַסִּיד גְּרוֹגָרוֹת. Reserve the market for him on market days, i.e., to prevent the market from being occupied by the traveler. A Torah scholar does not reserve the market, only for the sake of selling his merchandise, it is not permitted for other salesmen to sell their wares until he disposes of his entire stock (Rambam Sefer HaMadda, Hilkhot Tahara, Hilkhot Kelim 1:7). Rav Dimi of Neharde’a – רַבּוּ דִּימִי מִנְּהַרְדְּעָא. Rav Dimi was an amora from Babylonia who lived in the fourth and fifth generations of amoraim. Although he was apparently a younger contemporary, Rav Yosef considered him an important Torah scholar, as he engaged in disputes with Abaye and Rava. Rav Dimi was probably a merchant. Based on the many halakhot cited in his name, he was also the leader of the town where he lived. According to Rav Sherira Gaon, Rav Dimi enjoyed a long life and served as head of the yeshiva of Pumbedita between the years 385 and 388 CE.

Rav Adda bar Abba – רַבּוּ אָדָא בַּר אָבָּא. This amora lived in Babylonia during the fourth and fifth generations of amoraim, during the period of Rav Yosef. He was the outstanding student of Rava, although he also studied with Abaye. Reports about him illustrate that he was particularly sharp and expressed himself pointedly in his disputes with the Sages. Little is known of Rav Adda bar Abba’s life, although as indicated by the Gemara here, he apparently died young.
The Gemara reports that Rav Adda bar Abba died. Rav Yosef said: I punished him, i.e., I am to blame for his death, as I cursed him. Rav Dimi from Nehardea’s said: I punished him, as he caused my loss of dried figs. Abaye said: I punished him, i.e., he was punished on my account because he did not exhibit the proper respect for me. As Rav Adda bar Abba said to the Sages: Instead of gnawing the bones in the school of Abaye, you would do better to eat fatty meat in the school of Rava, i.e., it is preferable to study with Rava than with Abaye. And Rava said: I punished him, as when he would go to the butcher to buy a piece of meat, he would say to the butchers: I will take meat before Rava’s servant, as I am greater than he is.1

Rav Nahman bar Yitzḥak said: I punished him, i.e., he was punished because of me, as Rav Nahman bar Yitzḥak was the head of the kalla lectures, the gatherings for Torah study during Elul and Adar. Rav Nahman bar Yitzḥak would teach the students immediately following the lesson taught by the head of the academy. Every day, before he went in for the kalla lecture, he reviewed his lecture with Rav Adda bar Abba, and then he would enter the study hall for the kalla lecture.

On that day Rav Pappa and Rav Huna, son of Rav Yehoshua, seized Rav Adda bar Abba, because they had not been present at the conclusion of Rava’s lecture. They said to him: Tell us how Rava stated these halakhot of animal tithe.2 Rav Adda bar Abba said to them: Rava said this and Rava said that. Meanwhile, it grew late for Rav Nahman bar Yitzḥak, and Rav Adda bar Abba had not yet arrived.

The Sages said to Rav Nahman bar Yitzḥak: Arise and teach us, as it is late for us. Why does the Master sit and wait? Rav Nahman bar Yitzḥak said to them: I am sitting and waiting for the bier of Rav Adda bar Abba, who has presumably died. Meanwhile, a rumor emerged that Rav Adda bar Abba had indeed died. The Gemara comments: And so too, it is reasonable to conclude that Rav Nahman bar Yitzḥak punished him, i.e., he died as a result of Rav Nahman bar Yitzḥak’s statement, as the unfortunate event occurred just as he announced that Rav Adda bar Abba’s bier was on its way.

MISHNA One whose wall was close3 to the wall of another may not build another wall close to the neighbor’s wall unless he distances it four cubits from the wall of the neighbor. And one who desires to build a wall opposite the windows of a neighbor’s house must distance the wall four cubits from the windows, whether above,4 below, or opposite.

GEMARA The Gemara comments: Before addressing the construction of the second wall, one could ask: And with regard to the first man, how did he place his wall close to the neighbor’s wall in the first place? Rav Yehuda said that this is what the tanna is saying:

HALAKHA One whose wall was close – what is present: If one has a wall that is near a neighbor’s wall, the neighbor may not build another wall parallel to the first wall unless he distances it from the neighbor’s wall by four cubits (Rambam Sefer Kinyan, Hilkhot Shekhinah 1:9; Shulhan Arukh, Hoshen Mishpat 155:2).

The windows…whether above – what is present: If one has a window in his wall and a neighbor establishes a courtyard next to it (see Smda), the owner of the courtyard cannot compel the owner of the window to block the window. If the owner of the courtyard wants to build a wall opposite the window to prevent his neighbor from looking into his courtyard, he must keep it a distance of four cubits from the window so that the light entering the window is not blocked. With regard to the height of the wall, if the window is built into the lower part of the wall, its owner can force the owner of the courtyard to raise the wall to four cubits above the window. If the window is built into the upper part of the wall, the top of the wall must be at least four cubits above the top of the window or four cubits below the bottom of the window, respectively (Rambam Sefer Kinyan, Hilkhot Shekhinah 21:3; Shulhan Arukh, Hoshen Mishpat 154:21).
One who comes to place a wall close to his neighbor’s wall may place that wall close to the neighbor’s wall only if he distances his wall four cubits from the existing wall. Accordingly, the mishna is discussing one constructing a wall close to his neighbor’s wall the first time. Rava objects to this explanation: But the mishna teaches: One whose wall was near the wall of another, which indicates that there had already been a wall there.

Rather, Rava said that this is what the mishna is teaching: In a case of one whose wall was near the wall of another at a distance of four cubits and it fell, he may not place another wall close to his neighbor’s wall unless he distances the wall four cubits from it. What is the reason that this distance must be observed? The reason is that walking here benefits there, i.e., the ground is strengthened by people walking on the land in the area between the walls.

Rav says: They taught that one must leave a space of four cubits between his wall and that of his neighbor only if he builds it alongside the wall of his neighbor’s garden, where people do not usually walk due to the seeds. But with regard to the wall of a courtyard, where people walk, if he comes to place his wall close by, he may place it close by. By contrast, Rabbi Oshaya says: With regard to both the wall of a garden and the wall of a courtyard, if one comes to place his wall close by, he may not place his wall close by.

Rabbi Yosei bar Hanina said: And the two amora’im do not disagree, as they are referring to different cases. This statement of Rav is referring to an old city, whose ground is well trodden and stable, and that statement of Rabbi Oshaya is referring to a new city, where even the wall of a courtyard requires walking on its adjacent ground to strengthen it.

### Background

One whose wall was near the wall of another – פַּעַם יְהִי פָּנָיו מִשְׁקֵר וּמִשְׁקֵר בַּעַדּוֹ כּוֹתֶל סָמוּךְ לְכוֹתֶל חֲבֵירוֹ בְּרִחוּ. A wall may not be placed alongside a neighbor’s wall of a garden or a courtyard in a new town, where the ground has not yet been strengthened by people walking on it. In a situation where the ground has been strengthened by people walking on it, e.g., next to the wall of a courtyard of an old town constructed at least sixty years ago, it is permitted to build a wall close by (Rambam Sefer Kinuyan, Hilkhot Shekhenim 9:9, Shulhan Arukh, Hoshen Mishpat 15:12–13, and in the comment of Rema, and Shukh and Beur HaGra there).

### Halakha

They taught this only if he builds alongside the wall of a garden – פַּעַם יְהִי פָּנָיו מִשְׁקֵר וּמִשְׁקֵר בַּעַדּוֹ פַּעַם יְהִי פָּנָיו מִשְׁקֵר וּמִשְׁקֵר בַּעַדּוֹ כּוֹתֶל סָמוּךְ לְכוֹתֶל חֲבֵירוֹ בְּרִחוּ. A wall may not be placed alongside a neighbor’s wall of a garden or a courtyard in a new town, where the ground has not yet been strengthened by people walking on it. In a situation where the ground has been strengthened by people walking on it, e.g., next to the wall of a courtyard of an old town constructed at least sixty years ago, it is permitted to build a wall close by (Rambam Sefer Kinuyan, Hilkhot Shekhenim 9:9, Shulhan Arukh, Hoshen Mishpat 15:12–13, and in the comment of Rema, and Shukh and Beur HaGra there).

### Notes

But the mishna teaches, one whose wall was near the wall of another – פַּעַם יְהִי פָּנָיו מִשְׁקֵר וּמִשְׁקֵר בַּעַדּוֹ. Another version of the text here simply reads: What is another? In other words, the mishna states that one may not build another wall, which indicates that one was built there already.

This is what the mishna is teaching, one whose wall – פַּעַם יְהִי פָּנָיו מִשְׁקֵר וּמִשְׁקֵר בַּעַדּוֹ. The early commentators at length discuss at length the meaning of Rava’s explanation of the mishna, as there are variant readings of the text. According to Rashi, this refers to one who has a wall situated four cubits from his neighbor’s wall and it collapses. When the owner reconstructs his wall, he must distance it four cubits from his neighbor’s wall and is not permitted to move it any closer. The commentators explain that this is a novel ruling, as one might have thought that since a wall stood there previously, the ground has been sufficiently trampled on and requires no further strengthening. Nevertheless, the wall may not be built any closer to the neighbor’s wall than the previous one was (Rabbeinu Hananel, Sefer HaYashar).

Rabbeinu Hananel also cites this version of the text but suggests a different explanation: If one’s neighbor’s wall collapsed, one may not build his wall within four cubits of where the neighbor’s wall stood; because if the neighbor later wishes to rebuild his wall, he will be forced to move it away from its original location.

The term: And it fell, does not appear in certain versions of the text. The early commentaries discuss at length what this term means. In one version of the text here it simply reads: What is another? In other words, the mishna states that one may not build another wall, which indicates that one was built there already.

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The statement of Rabbi Oshaya is referring to a new city, where even the wall of a courtyard requires walking on its adjacent ground to strengthen it.
With regard to the claim that the halakha of the mishna is due to the need for space for people to walk on the ground between the walls, the Gemara asks: We learned in the mishna: And one who desires to build a wall opposite the windows of a neighbor’s house must distance the wall four cubits from the windows, whether above or below or opposite. And it is taught in a baraita with regard to this ruling: Concerning the requirement of a distance above, the wall must be high enough so that one cannot peer into the window and see into the window; concerning the requirement of a distance below, the wall must be low so that he will not be able to stand on top of it and see into the window; and concerning the requirement of a distance opposite, one must distance the wall from the windows so that it will not darken his neighbor’s house by blocking the light that enters the house through the window.

The Gemara analyzes this statement: The reason that distance is required opposite the window is so that he will not darken his neighbor’s house by blocking the light that enters the house through the window, but it is not due to the fact that walking will strengthen the ground. The Gemara answers: With what are we dealing here? We are dealing with a wall that is positioned to the side, i.e., perpendicular to the wall with the window in it, and therefore it blocks the light from entering the house through the window but does not prevent walking along the length of the neighbor’s wall.

The Gemara asks: And how far must one distance his wall if it is perpendicular to the other wall? Yeiva, the father-in-law of Ashyan bar Nidbah, says in the name of Rav: As much as the full width of the window? The Gemara asks: But why is this sufficient? Can’t he still peer into the window if he is that close? Rav Zevid says: This is referring to one who slopes his wall, i.e., he fashions an incline on the upper surface of the wall so that he will not be able to stand on top of it and look through the window.

The Gemara asks: But didn’t we learn in the mishna that one must keep the wall four cubits away from the window? The Gemara answers: This is not difficult; here, he builds the wall on one side of the window, whereas there, in the mishna, he builds walls on two sides of the window. In the latter case, if he builds the walls any closer he will block the light from entering the house through the window even if they are perpendicular.

The Gemara suggests: Come and hear a further difficulty from the mishna below with regard to the claim that the requisite gap between the walls is for the purpose of walking, as the mishna teaches: And one must distance his wall four cubits from a roof gutter so that his neighbor can lean a ladder in the empty space to clean and repair the gutter. The Gemara analyzes this statement: The reason this distance is required is due to the fact that he will be able to lean a ladder, but it is not due to the fact that walking will strengthen the ground. The Gemara answers: With what are we dealing here? We are dealing with a sloping roof gutter, which protrudes beyond the boundary of the wall. As in this case, if the reason for distancing the wall is due to walking, one can walk back and forth beneath it. Nevertheless, a distance of four cubits from the roof gutter is required so that repairs can be performed.

**HALAKHA**

That is positioned to the side – бבא פָּנָיו: One who builds a wall next to his neighbor’s window must distance the structure one handbreadth from the actual window, not the frame. The top of the wall must be raised so that it is four cubits above the top of the window or altered to prevent anyone from standing atop it and peering into the window. The Rosh and Tur rule that both precautions must be observed (Rambam Sefer Kinyan, Hilkhot Shekhenim 7:4; Shulhan Arukh, Hoshen Mishpat 154:22).

There he builds on two sides – בָּשָׁא מִשְׁמָעְתָּו: One who builds two walls perpendicular to a neighbor’s window must allow four cubits of space between the walls, with the width of the window included in the four cubits of space (Sma: Shakh). Others claim that the width of the window is not included in the requisite four cubits (Tur). Should the owner of the walls wish to lay a cover over them, he must distance the cover four cubits from the wall with the window so that it does not block the sunlight (Rambam Sefer Kinyan, Hilkhot Shekhenim 7:5; Shulhan Arukh, Hoshen Mishpat 154:24).
The owner of that wall now wishes to build an additional wall parallel to his neighbor’s wall, in which case he is obligated to distance the second wall from the first by an amount of space that is equal to the width of that particular window, whether that is a large or small window. If he builds two walls in parallel, then he must distance the second wall from the first by an amount of space that is equal to the width of the window in the building. If one’s actions in his courtyard will cause immediate damage to his neighbor’s property, he must distance it four cubits from the neighbor’s wall. Even Rabbi Yosei accepts in accordance with the opinion of Rabbi Yosei, doesn’t he say with regard to planting a tree next to a neighbor’s cistern: This one digs within his land, and that one plants within his land, and neither individual need consider what is happening in the property of the other? The Gemara answers: You may even say that the mishna follows the opinion of Rabbi Yosei, as didn’t Rav Ashi say: When we were studying in the study hall of Rav Kahana, he would say to us that Rabbi Yosei concedes with regard to his arrows, i.e., he concedes that one must distance himself if his actions will cause damage to his neighbor. Here too, sometimes when he places the ladder, the mongoose might be sitting in a hole and will immediately jump up and climb the ladder to the dovecote. The Gemara challenges: But that is indirect damage, as he is not the immediate cause. Rav Tovi bar Mattana said: That is to say that it is prohibited to cause even indirect damage.”

The Gemara relates: Rav Yosef had certain small palm trees [datei], and

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Remove these crowing birds – ḥalakah: If one’s occupation involves blood or carcasses that attract crows, which disturb the neighbors with their noise, the neighbors can force him to relocate. This is the halakha if a neighbor is elderly or ill, if the crows sully the fruit on the courtyard trees with blood, or if a neighbor is sensitive. In this case one applies the principle that there is no acquired privilege of use if it causes damage (Rambam Sefer Kinuyim, Hilkhot Shekhinim 11:5; Shulhan Arukh, Hoshen Mishpat 155:39).

There is no acquired privilege in cases of damages – ḥalakah: In most cases where one causes damage to his neighbor, if the neighbor permits the activity to continue or if he assists him in performing that activity, he has legally waived his rights to protest. Nevertheless, there are certain situations in which this principle does not apply. Constant smoke that is blown into a courtyard by a typical wind, an exposed bathroom, dust, and shaking of the ground are examples in which the neighbor is not considered to have waived his rights, notwithstanding his apparent consent (Rambam Sefer Kinuyim, Hilkhot Shekhinim 11:4; Shulhan Arukh, Hoshen Mishpat 155:34–39).

One must distance a dovecote – ḥalakah: A dovecote must be kept a distance of fifty cubits from the city. Furthermore, one may set up a dovecote in his field only if it is fifty cubits away from settled areas in all directions. Nevertheless, if one bought a dovecote he need not move it even in the absence of this space, as he retains the privilege of use (Rambam Sefer Nezikin, Hilkhot Gazeza va-Vakdei 6:9; Shulhan Arukh, Hoshen Mishpat 155:24).

**Background**

**Area…for sowing four kor of seed – halakha**

A bet ha’aron is the area of land in which one would sow one kor, or thirty se’ah, of grain. The amount of land required for one se’a is fifty cubits by fifty cubits, i.e., 2,500 square cubits. A bet ha’aron is therefore an area of 75,000 square cubits, which is approximately 18,750 sq m.

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**Mishna**

One must distance a dovecote fifteen cubits from the city to prevent doves from eating seeds in the town. And a person should not establish a dovecote within his own property unless he has fifty cubits in each direction between the dovecote and the edge of his property. 

Rabbi Yehuda says that one must have surrounding the dovecote the area required for sowing four kor of seed on each side, which generally extends as far as a dove flies in a single flight. And if one bought the dovecote with the land, he has the acquired privilege of its use even if it has surrounding it only the area required for sowing a quarter-kor of seed (beit roya) around it, and he need not remove it from there.

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**Notes**

Remove these crowing birds – ḥalakah: The commentaries note that Rav Yosef did not protect the bloodletters’ use of the location for their activity. Rather, his complaint concerned the crows that came to his trees (Tosafot). Based on the context, he apparently did not protest the loss of the fruit to the crows, either through consumption or pecking, as an acquired privilege to use property is not negated even if the use causes monetary loss. Instead, Rav Yosef was expressing revulsion at the bloodied fruit and the noise of the crows (Ritva).

There is no acquired privilege in cases of damages – ḥalakah: Some commentaries claim that not only is there no right based on acquired privilege, but even if one has conclusive proof that the neighbor waived his rights, this is disregarded. The reason is even if the one using the property bought the rights to use it in this manner from the owner, the latter can later claim that he had thought he would be able to tolerate the damage, but now realizes that he cannot (Tosafot; citing Ribbeinu Tam). Others maintain that a conclusive proof is effective (Ramban). Some commentaries claim that if the neighbor performed an act of acquisition recorded in a document, he cannot renego. The early commentators further dispute whether uninterrupted possession of three years is effective to establish an acquired privilege (see Ramah and Ri Migash).

To a bathroom – ḥalakah: According to Rashi this refers to outhouses that were not fully enclosed and that were situated in fields (see Tosafot). Other commentators claim that the issue is not dependent on whether or not it was enclosed, but on whether it produces an intolerable odor.

For me as I am sensitive – ḥalakah: The commentaries infer from here that the principle that there is no acquired privilege of use in cases of damage does not apply exclusively to damage caused by smoke and bathrooms. Rather, these are merely examples of damage that people cannot tolerate (Ribbeinu Hananel). The Rambam apparently concurs. The early commentators explain that while it is generally presumed that if one does not protest a matter he is considered to have consented to it, with regard to circumstances that induce suffering, there is no need to protest, as their unpleasantness is evident. It is assumed that one is merely waiting for an opportunity to complain (Ribbeinu Yona).

A dovecote fifty cubits from the city – ḥalakah: Rashi explains that the doves eat garden seeds. Alternatively, the birds devour the grains and seeds that are laid out to dry on the town’s rooftops (Tosafot).
One may spread out traps for doves only if at a distance—אִי הָיָה שְׁלֹֹשִׁים דָּרוֹסִין לְיוֹנִים אֶלָּא אִם כֵּן הָיָה מִן הַיִּשְׁוּב שְׁלֹֹשִׁים רִיס!—because the birds that are there are assumed to belong to people. A trap may be set only if it is at least four mil away from a town. Some commentaries write that dove traps must be placed four mil away from the settled area, but if there are vineyards in the vicinity no traps may be spread out even within a distance of one hundred mil, as doves will travel a great distance by stopping at the vineyards. (Tur). Traps may not be spread out even near dovecoops that belong to gentiles, ones that are ownerless, or ones that belong to the one setting the traps, as birds belonging to others may be caught as well (Rambam Sefer Nezikin, Hilkhot Gazette 6:8; Tur, Hoshen Mishpat 310).

And if you wish say it is referring to dovecotes of a gentile—דֵי אָמַר אֵיבָּעֵית אֵימָדְתָּךְ לָא אֲסַמְּכֵּא אֵנְם. This answer is valid even according to those who maintain that it is prohibited to steal from gentiles. The reason is that in a case that does not involve outright theft, e.g., trapping doves, which are not associated exclusively with a single owner like other animals, taking the item is prohibited by a rabbinic ordinance, which the Sages did not apply in the case of a gentile. The reason is that gentiles themselves do not consider this theft, so there is no profanation of God's name involved in taking the item. According to those commentaries who claim that this kind of theft from a gentile is prohibited, the Gemara provides the alternative answer that the doves are ownerless (Ritva).

The Gemara asks: Why is it necessary for Rav Pappas to state this halakha? We already learn this with regard to an heir (41a): In the case of land that comes as an inheritance, one is not required to make a claim as to how the land came into his benefactor’s possession when one’s ownership of the land is challenged. The Gemara answers: It was necessary for him to state this halakha with regard to a buyer. The Gemara asks: With regard to a buyer as well, we learn this in a mishna (60a): If one bought a courtyard in which there are projections and balconies—גּוֹזְעָצוֹר—as extending into the public domain, this courtyard retains its presumptive status, i.e., the owner has the acquired privilege of their use, and the court does not demand their removal.

The Gemara raises a contradiction from a mishna (Bava Kamma 79b): One may spread out traps [neschavin] for doves only if this was performed at a distance of at least thirty ris, or four mil, which is eight thousand cubits, from any settled area, to avoid catching birds that belong to another. Apparently, doves fly a distance of thirty ris, whereas the mishna here states fifty cubits.

Abaye said: Doves do fly great distances, which is why one must avoid catching others’ birds by keeping traps thirty ris away from settled areas. But as they eat along their way, their stomachs are filled after a distance of fifty cubits, at which point they will do no more damage to seeds. The Gemara asks: And do they fly only thirty ris and no more? But isn’t it taught in a baraita: And in a settled area, one may not spread out a trap even if the area under his control extends as far as one hundred mil in each direction? Rav Yosef says: That baraita is referring to a settled area of vineyards, i.e., a contiguous region of vineyards and gardens. In that case the doves pass from place to place even over a great distance.

Rava said: The baraita is referring to a settled area of dovecotes, i.e., where many dovecotes are distributed. The Gemara asks: And according to Rava, let the tanama derive that one may not establish a new dovecote there due to the other dovecotes themselves, as he will trap doves belonging to others. The Gemara answers: If you wish, say that this is referring to his own dovecotes. And if you wish, say it is referring to the dovecotes of a gentile, whose property one is not obligated to protect from harm. And if you wish, say it is referring to ownerless dovecotes.

Traps [neschavin]—מַעָלָה. Similar to the Arabic term, ‘anthyaya, which is used to indicate trapping in a net.

Ris—רוֹסִין. A shortened form of the Persian asprēs, meaning stadium or place where horses are raced. The length of a ris is calculated in different sources as the distance an arrow can fly, 266 cubits or between 133 and 152 m (see Arukh). This is slightly more than one eighth of a mil, as a mil is two thousand cubits. A variation of this term is rus, whose Hebrew letters have the numerical value of 266, the number of cubits in a ris.

Balcony [gezunno]—קַּדָּמָה. From the Greek ἐξωτήρια, meaning a balcony or an area that protrudes from a building.

The early commentaries write that this answer is referring to dovecotes of a gentile—דֵי אָמַר אֵיבָּעֵית אֵימָדְתָּךְ לָא אֲסַמְּכֵּא אֵנְם. The Gemara asks: Must one distance a dovecote only fifty cubits from the city and no more? Is that as far as one can expect a dove to fly? And the Gemara raises a contradiction from a mishna (Bava Kamma 79b): One may spread out traps [neschavin] for doves only if this was performed at a distance of at least thirty ris, or four mil, which is eight thousand cubits, from any settled area, to avoid catching birds that belong to another. Apparently, doves fly a distance of thirty ris, whereas the mishna here states fifty cubits.

Abaye said: Doves do fly great distances, which is why one must avoid catching others’ birds by keeping traps thirty ris away from settled areas. But as they eat along their way, their stomachs are filled after a distance of fifty cubits, at which point they will do no more damage to seeds. The Gemara asks: And do they fly only thirty ris and no more? But isn’t it taught in a baraita: And in a settled area, one may not spread out a trap even if the area under his control extends as far as one hundred mil in each direction? Rav Yosef says: That baraita is referring to a settled area of vineyards, i.e., a contiguous region of vineyards and gardens. In that case the doves pass from place to place even over a great distance.

Rava said: The baraita is referring to a settled area of dovecotes, i.e., where many dovecotes are distributed. The Gemara asks: And according to Rava, let the tanama derive that one may not establish a new dovecote there due to the other dovecotes themselves, as he will trap doves belonging to others. The Gemara answers: If you wish, say that this is referring to his own dovecotes. And if you wish, say it is referring to the dovecotes of a gentile, whose property one is not obligated to protect from harm. And if you wish, say it is referring to ownerless dovecotes.

§ Rabbi Yehuda says that one must have surrounding the dovecote the area required for sowing four kor of seed on each side, which is as far as a dove flies in a single flight. And if one bought the dovecote with the land, he has the acquired privilege of its use. Rav Pappas said, and some say it was Rav Zevid: That is to say that a court issues a claim on behalf of a buyer, and issues a claim on behalf of an heir. This is referring to the halakha of taking possession. If one has been physically in possession of an item for a period of time, generally three years, this serves as proof that he is in fact the legal owner. This possession must be accompanied by a claim of how one acquired the item; he cannot simply state that no one protested his possessing the item for three years. Rav Pappas is saying that the court will lodge a claim on behalf of a buyer or heir that they acquired the item from someone who was the owner, just as here the court assumes that the previous owner of the dovecote came to an agreement with his neighbors that he may use it.
A dove chick that was found – halakhot

The Gemara answers: It was necessary for the tanna of the mishna to state this halakha in both cases, as, if he had taught us this only there, in that mishna, one might have said that it applies specifically with regard to a protrusion or a balcony that extends into the public domain, as one can say that perhaps it is a case where the seller had drawn back into his own land before adding the projections and balconies, and they in fact do not extend into the public thoroughfare. Alternatively, perhaps the public waived their right to him and allowed him to place them over the common area, as otherwise they would have protested. But here, where he causes damage to private individuals, one might have thought that the buyer does not have a privilege of use, and therefore the mishna teaches us otherwise.

And if he had taught this only in the mishna here, one might say that since the party potentially suffering damage is an individual, the owner of the dovecote appeased his neighbor by paying him to permit him to construct it. Alternatively, the neighbor might have waived his right to him. But in a case where damage is caused to the public, one might argue: Whom did he appease, and who yielded to him? Consequently, one might say that the purchaser does not retain the privilege of use. Therefore, it is necessary for the tanna to state the halakha in this case as well.
HALAKHA

By Torah law one follows both proximity and the majority. When these considerations conflict, one follows the majority (Rambam Sefer Nezikin, Hilkhat Rotze‘ah UShmirat HaNefesh 9:6, Tur, Ya‘eh De‘a 129 and Hoshen Mishpat 259).

There might be another that is larger – הרוב ורוב. Although the Torah states that in the case of a murder victim whose murderer is unknown the closest town must bring the heifer whose neck is broken, this obligation is imposed on a more distant town if its population is greater (Rambam Sefer Nezikin, Hilkhat Rotze‘ah UShmirat HaNefesh 9:6).

GEMARA

Rabbi Hanina says: When resolving an uncertainty with regard to the halakhic status of an item, e.g., a found item, if the status of the majority of like items indicates that it has one status but the item in question is proximate to a source that indicates otherwise, one follows the majority. And even though the *halakha* of majority applies by Torah law and the *halakha* of proximity also applies by Torah law, even so the majority is preferable.

Rabbi Zeira raises an objection from the Torah’s statement with regard to a murder victim where the identity of the murderer is unknown. In a case of this kind, the court measures the distances between the corpse and the nearby towns, in order to determine which town is closest and must consequently perform the rite of the heifer whose neck is broken. The verse states: “And it shall be, that the city that is nearest to the slain man, the Elders of that city shall take a heifer of the herd… and shall break the heifer’s neck” (Deuteronomy 21:3–4). And this town is chosen even though there might be another town that is larger in population than it. According to Rabbi Hanina, in a case of this kind one should follow the majority.

The Gemara answers: This verse is referring to a situation where there is no other town that is larger than that one. The Gemara asks: And still, if one follows the majority, why should the court follow the closest city? Let us follow the majority of the world, as most people are found elsewhere. The Gemara answers: This is referring to a case where the city sits in isolation between mountains, and therefore it is unlikely that the murderer arrived from elsewhere.

The Gemara continues to discuss the issue of majority as opposed to proximity. We learned in the mishna: With regard to a dove chick that was found within fifty cubits of a dovecote, it belongs to the owner of the dovecote. And as the mishna does not make a distinction between different cases, it indicates that this is the *halakha* even though there is another dovecote that is larger than the proximate one in terms of number of birds. This shows that closeness, not majority, is the determining factor. The Gemara answers: This is referring to a case where there is no other dovecote in the area.

The Gemara asks: If so, say the latter clause of the mishna: If it was found beyond fifty cubits from a dovecote, it belongs to its finder. And if there is no other dovecote in the area, it certainly fell from that dovecote. How, then, can it be given to the finder? The Gemara answers: *With what are we dealing here?* We are dealing with a chick that hops from place to place but does not yet fly. As Rav Ukva bar Hama says: With regard to any creature that hops, it does not hop more than fifty cubits. Consequently, any bird found within fifty cubits of a dovecote is assumed to have come from there. If it is farther away than that, it likely came from elsewhere or was dropped by travelers.

NOTES

One follows the majority – הרוב ורוב. Some early commentators maintain that Rabbi Hanina is not teaching that one follows a majority rather than proximity, as this is stated later (2a) with regard to the nine stores. Rather, the novelty of his statement is that even in the presence of an obviously close determinate, one follows the majority, although it is ostensibly logical to rule based on proximity.

Where there is no other – הרוב ורוב. In other words, none of the towns close to the corpse is larger than the closest one (Rashi). The commentators discuss whether in a situation where there is a large town farther from the corpse than the closest town if the heifer is brought by the larger town (Rambam) or whether no heifer is brought, as the requirement of the closest town cannot be fulfilled (Rid).

With a chick that hops – אינא ימיות דק. Once this answer has been accepted, the mishna can be explained as referring even to a case where there is a larger dovecote nearby, but beyond fifty cubits from where the chick was found. Since the chick would not hop that far, the bird belongs to the owner of the closer dovecote (Rashi).

Does not hop more than fifty – אינא ימיות דק. Rashi explains that if the chick is found beyond fifty cubits from a dovecote, it means that the bird is now capable of flight, in which case it might have come from anywhere. In this case one follows the majority of the world, and it belongs to the finder.
Rabbi Yirmeya raises a dilemma: If one leg of the chick was within fifty cubits of the dovecote, and one leg was beyond fifty cubits, what is the halakha? The Gemara comments: And it was for his question about this far-fetched scenario that they removed Rabbi Yirmeya from the study hall,4 as he was apparently wasting the Sages’ time.

The Gemara further suggests: Come and hear the mishna: In a case where it was found between two dovecotes, if it was close to this one, it belongs to the owner of this dovecote; if it was close to that one, it belongs to the owner of that dovecote. The Gemara comments: And this is the halakha even though one of them is greater in number of birds than the other one. Apparently, one rules based on proximity, not majority. The Gemara explains: With what are we dealing here? We are dealing with a situation where the two dovecotes are situated there. The Gemara asks: But even so, why should one follow the closer dovecote? Let us follow the majority of the world, as there are many other dovecotes besides these, and the number of doves they contain is greater. The Gemara responds: With what are we dealing here?

We are dealing with a path that passes between vineyards, and these two dovecotes are situated there. As, if it is so that you claim the chick came from anywhere else in the world, since it only hops, it could not have come there. The reason is that any bird that hops and turns and sees its nest will continue to hop; but if it does not see its nest because it has gone too far, it will not hop farther. Consequently, this found chick that hops must have come from one of these two dovecotes.

Abaye said: We learn in a mishna (Nidda 17b) as well that one follows the majority rather than proximity. With regard to blood that is found in the corridor [peredor],5 i.e., the cervical canal, and it is uncertain whether or not it is menstrual blood, it is ritually impure as menstrual blood, as there is a presumption that it came from the uterus, which is the source of menstrual blood. And this is the halakha even though there is an upper chamber,6 which empties into the canal, which is closer.

Rava said to Abaye, in response to this claim: You state a proof from a case where the factors of majority and frequency are both present. When there is majority and frequency, there is no one who says that one ignores the majority and follows proximity. Here, not only is the blood from the uterus greater in quantity, it also passes through the canal more frequently, as blood generally does not come from the upper chamber.

You state a proof of majority and frequency – Rashi explains that there are two relevant factors in this case. In terms of quantity, there is the majority of blood that comes from the uterus, and in terms of frequency, blood that emerges is usually menstrual, whereas blood from the upper chamber would be the result of injury or illness. Others write that the issue of frequency refers to the fact that blood from the uterus flows for a greater period of time, usually five to seven days, which is not true of blood from the upper chamber (Ritva). Yet others explain that majority and frequency are not two distinct issues; rather, the point here is that the larger quantity of blood emerging from the uterus is not a rare occurrence (Ri Migash).
The Gemara elaborates: The two cases are analogous, as the woman here is considered like the locked gates of the city, i.e., there is only a single majority, and even so we follow the majority.

The Gemara asks: But Rava is the one who says with regard to the case of the blood that when there is majority and frequency, there is no one who says that one ignores the majority and follows the proximity. In other words, Rava rejected this case as proof of the principle that one follows the majority even when it is not frequent. Here, by contrast, Rava claims that one can learn from the ruling of Rabbi Hyya that one follows the majority by Torah law. The Gemara answers: Rava retracted claim in favor of the opinion that one follows the majority in all cases.

§ It was stated: In the case of a barrel of wine that was found floating in a river,¹⁷ and the status of the wine was unknown, Rav says: If it was found opposite a town of which the majority are gentiles, the wine is permitted. If it was found opposite a town of which the majority are Jews, it is forbidden, as it presumably belongs to a gentile. And Shmuel says: It is forbidden even if it was found opposite a town of which the majority are Jews. Why? Regardless of where it was found, one can say that it came from that place called Dekira, where the majority of people are gentiles. In other words, there is a distinct possibility that a floating barrel came from far away.

The Gemara suggests: Shall we say that Rav and Shmuel disagree with regard to the statement of Rabbi Hanina, in that one Sage, Shmuel, is of the opinion that the ruling is in accordance with the opinion of Rabbi Hanina, and he rules based on the majority, which in this case includes even distant locales, and one Sage, Rav, is of the opinion that the ruling is not in accordance with the opinion of Rabbi Hanina, which is why he rules based on proximity.

Rava cites a proof for his statement. As Rabbi Hyya teaches: Blood that is found in the corridor is considered definite menstrual blood, and therefore if she engages in sexual intercourse, both she and her partner would be liable as a result of it to receive karet for entering the Temple intentionally when ritually impure or to bring an offering for entering unwittingly. And one burns teruma due to it, if the woman touches such produce. Evidently, the status of this blood is not considered uncertain.

And Rava says: Learn from that which Rabbi Hyya said three conclusions: Learn from his statement that when the relevant factors are majority and proximity, follow the majority; and learn from his statement that the halakha that one follows the majority applies by Torah law,¹⁸ as teruma is burned in this case on account of the blood and she is liable to receive karet if she enters the Temple in this state; and learn from his statement that there is a source for that which Rabbi Zeira said.

This statement of Rabbi Zeira was issued in reference to a case discussed in tractate Ketubot (15a). If there are ten stores in a city, nine of which sell kosher meat and one of which sells non-kosher meat, and one found meat outside the stores and he does not know from which store it came, one follows the majority. The Gemara there suggests that perhaps one follows the majority only in a case where the gates of the city are unlocked, when the meat could have come to the city from the majority of kosher meat outside in a circumstance where the majority of the meat sold in the surrounding area was kosher. In this case there are two majorities, the majority of kosher meat stores inside the city, and the majority from outside. The Gemara there explains that Rabbi Zeira says that even if the city gates are locked¹⁹ one follows the majority, and the meat is kosher, as there is no need for a double majority.

The Gemara elaborates: The two cases are analogous, as the woman here is considered like the locked gates of the city, i.e., there is only a single majority, and even so we follow the majority.

A barrel that was floating in a river – דב כד פלב – With regard to a barrel of wine that is found floating on a river, one may derive benefit from it if it is found opposite a town whose population is mostly Jewish and obstacles in the river preclude it having come from anywhere else.

If the river is clear of obstacles or the majority of people in the town are gentiles, the wine is forbidden. If it is found opposite a town of gentiles, and the river lacks obstacles, and the majority of the people in the region are Jews, the wine is permitted. If there are obstacles, it is forbidden. This is in accordance with the opinion of Rav, as the halakha follows his opinion in his disputes with Shmuel with regard to ritual law (Rambam Setar Kesuba, Hilkeit Ma’akhkeret Assuor 1228; Shulhan Arukh, Yoreh De’ah 191:7).

¹⁷ A barrel of wine that was found floating in a river.
¹⁸ By Torah law.
¹⁹ Even though the gates of the city were locked.
The Gemara relates that Ravina deemed permitted a certain barrel of wine that was found hidden in a vineyard where there were orla grapes, and he was not concerned that the wine might be from the grapes of that vineyard. The Gemara asks: Shall we say that this is because he holds in accordance with the opinion of Rabbi Hanina that one follows the majority of vineyards, which are not orla, rather than proximity?

The Gemara answers: It is different there, as, if thieves had stolen the barrel from that very vineyard they would not have hidden it there. Since the barrel was hidden there, it is reasonable to assume that it was stolen from somewhere else. The Gemara comments: And this matter, that thieves would not hide a stolen barrel in the same vineyard from which they stole it, applies only to wine; but they would hide grapes there, as grapes are not readily identifiable by the owner. Consequently, there is a concern that grapes found hidden there might be from that same vineyard.

The Gemara further relates that there were these jugs of wine that were found between vines of a Jew. Rava deemed the contents permitted and was unconcerned that they might be wine owned by a gentile. The Gemara asks: Shall we say that Rava does not hold in accordance with the opinion of Rabbi Hanina, who says that one follows the majority, in this case gentiles? The Gemara answers: There it is different, as the majority.

**Background**

Orla: It is prohibited to eat or to derive benefit from fruit that grows from a tree during the first three years after the tree has been planted (see Leviticus 19:23). This prohibition applies only to the fruit, and not to the other parts of the tree. The prohibition does not apply to trees planted as a fence for property delineation or as a wind buffer, rather than for their fruit.

Jugs: Jugs were generally made from whole hides taken from different types of animals. These jugs were used for many purposes and were especially useful for carrying objects and food items. When a jug was to be used for liquids, e.g., water, wine, or oil, care was taken to remove the animal’s hide intact, including the hide of the legs. A spout, usually fashioned from a hollow reed tube, was inserted into one of the legs.

**Notes**

They would not have hidden it there – אַרְכִּי מַנְחִי לֹא הָוְי. The thieves would be afraid that the grape harvesters might come to the vineyard and find the stolen barrels (Rashi).

Between vines [bei koferei] – בֵּי כַּפְּרֵי. This translation follows Rashi’s interpretation. Other commentators claim that Bei Koferei is the name of a place where the majority of people were Jews (Rabbeinu Hananel; Arukh; Rabbeinu Yona). It is possible that the place was named after its vineyards.

**Language**

Vines (koferei) – כַּפְּרֵי. Some indicate that kofo means vineyard, vine, or the sprig from a grapevine. Other commentators cite the Latin ceppa, meaning sprig or vine, as a possible source.
HALAKHA

One must distance a tree...from the city – הָאִילָן מִן הָעִיר.
When trees are planted in Eretz Yisrael, they must be at least twenty-five cubits away from cities that are under Jewish control (Maggid Mishne; see Beit Yosef), in order to preserve the city’s beauty. Carobs and sycamore trees must be kept at a distance of fifty cubits. A tree that is closer than this must be cut down. If the trees were there before the city was built, the owners of the trees receive compensation when they are cut down. If it is unknown whether or not a tree preceded the city, no money is paid when the tree is cut down (Rambam Sefer Kinyan, Hilket Shekhenim 10:5, Tur, Hoshen Mishpat 155).

A field into an open area – שָׁנַח מִנָּה. In the case of Levite cities, part of the city may not be converted into an open area nor an open area into part of the city. Likewise, the area of fields surrounding the open areas may not be converted into open areas, nor may the open areas be converted into fields. This halakha is in accordance with the opinion of the Rabbis (Rambam Sefer Zera’im, Hilket Shemitta VeYovel 134).

BACKGROUND

Carob tree – כֵּדֶד:

Leaves of the carob tree

Sycamore tree – לִשְׁכֹּן:

Leaves and fruit of the sycamore fig

MISHNA

One must distance a tree twenty-five cubits from the city, and in the cases of a carob tree and of a sycamore tree, which have a great many branches, they must be distanced fifty cubits. Abba Shaul says: Every barren tree must be distanced fifty cubits. And if the city preceded the tree, as one later planted the tree alongside the city, he cuts down the tree, and the city does not give money to the tree’s owner in compensation. And if the tree preceded the city, which expanded after one planted the tree until it reached the tree, he cuts down the tree and the city gives money to its owner. If it is uncertain whether this one was first or that one was first, he cuts down the tree and the city does not give money.

GEMARA

The Gemara asks: What is the reason that one must distance a tree from a city?

Ulla says: It is due to the beauty of the city, as it is unattractive for a city’s walls to be obscured by tree branches. The Gemara suggests: And let him derive this halakha from the statement in tractate Arakhan (33b) that one may neither convert a field of a city into an open area surrounding the city, nor may one convert an open area into a field, as these have fixed places and measurements (see Numbers 35:1–8). If one plants trees in a city’s open area, he thereby turns the open area into a field.

The Gemara answers: No, it is necessary to supply the reason given by Ulla according to the opinion of Rabbi Elazar, who says: One may convert a field into an open area, and an open area into a field. Here, we do not plant trees, due to the beauty of the city.

NOTES

And if there are large jugs – מַרְחִי וּלָא צְרִיכָא. Some commentaries provide an opposite explanation of the Gemara: That all of the jugs are considered to belong to travelers and are therefore forbidden. The reason is that travelers sometimes take along large jugs to balance the smaller ones (Rabbeinu Gershom). And let him derive this halakha from the statement in tractate Arakhan (33b) that one may neither convert a field of a city into an open area surrounding the city, nor may one convert an open area into a field, as these have fixed places and measurements (see Numbers 35:1–8). If one plants trees in a city’s open area, he thereby turns the open area into a field.

One may neither convert a field into an open area – מָרְחִי וּלָא צְרִיכָא. In Numbers 35:1–8 the Torah describes Levite cities and mentions a city’s open area and field. As explained by Rabbi Eleazar, son of Rabbi Yosei HaGallili, in tractate Sota (27b), an open area is the area of one thousand cubits around a city that is kept undeveloped, while a field is the two thousand cubits beyond that, which may be cultivated. Some commentaries maintain that the halakha that a field cannot be turned into an open area is a principle that applies to all cities, whether or not they are in Eretz Yisrael (Ramah). There are those who claim that even according to this opinion, the prohibition is restricted to cities that are populated mostly or entirely by Jews (Winket HaMihne). Others maintain that these halakhot of open areas and the beauty of cities apply only to cities in Eretz Yisrael, whose appearance must be maintained by Jews. This requirement does not apply outside of Eretz Yisrael (Ramban).
The Gemara asks: If the owner of the tree has collected money and it is prohibited to carry there on Shabbat. This shows that planting trees in an enclosed area that was surrounded with a barrier for the purpose of residence, it is permitted to carry within it on Shabbat regardless of its size, as it is considered a private domain.

If subsequently the greater part of it was sown with seed crops, it is considered like a garden, which is not a place of residence, and it is prohibited to carry anything within it on Shabbat. If the greater part of it was planted with trees, it is considered like a courtyard, which is a place of dwelling, and it is permitted to carry there on Shabbat. This shows that planting trees in an enclosure does not transform the area into a field, as is the case when seeds are planted.

A karpef greater than two bêt se’ata – If a karpef larger than two bêt se’ata was surrounded with a barrier for the purpose of residence, and later most of it was planted with trees, it remains a private domain. If most of it is planted with seeds, it ceases to be a private domain and one may not carry inside it on Shabbat. Even if a small part of it is planted with seeds, if that area is greater than two bêt se’ata the karpef is not considered a private domain, and one may not carry within it on Shabbat (Rambam, Sefer Zemanim, Hilḥakot Shabbat 16:6, Shulḥan Arūkh, Orah Hayyim 359:9).

Notes

Enclosure (karpef – נקרפ): By Torah law, an area that is surrounded by a barrier ten handbreadths high has the status of a private domain. The Sages decreed that a large area, bigger than two bêt se’ata, that is surrounded by a barrier for purposes other than human residence is considered a karmelit. A karmelit is an intermediate domain defined by the Sages as neither a private nor a public domain. It is prohibited to carry to a karmelit on Shabbat, as in a public domain. Similarly, one may not carry from a karmelit to a public or to a private domain on Shabbat. Here the Gemara discusses the case of an area that was surrounded with a barrier for the purpose of residence but was later planted with seeds; an action that grants it the status of a karmelit.

If the greater part of it was planted with trees it is considered like a courtyard – א提拔 ירא מקומא. It is common for people to plant trees in their courtyards, and doing so does not turn the area into a field (Ri Migash).

A pot belonging to partners – קרשא לכולא אין ירא מקומא. Since this matter is not dependent on a single individual, a good deal of time is likely to pass before money is collected for the tree’s owner. If the owner of the tree has the right to wait to receive the money before cutting down the tree, the tree will not be cut down. One cannot claim that this is the resident’s problem and if they do not deal with it they will simply suffer, as this issue reflects on the honor and beauty of Eretz Yisrael (Rashi; see Ramah). As for the option that the tree should first be cut down and then the owner paid, there is a concern that the owner of the tree might delay cutting down the tree until he gets his money (Tosafot).
One must distance a permanent threshing floor – מַרְחִי גּוֹרֶן. A permanent threshing floor must be distanced fifty cubits from a city. If the threshing floor preceded the city, its owner must still remove it, but once he has done so he is compensated for his loss. If it is uncertain which was there first, the owner is not paid (Rema). One may set up a threshing floor in his field only if he has open space of fifty cubits in all directions between the threshing floor and the property of his neighbors (Rambam Sefer Kinyan, Hilkhos Shehenim 102; Shulhan Arukh, Hoshen Mishpat 155:22).

**BACKGROUND**

Winnow – תָּפוּקַת. Winnowing was often performed with a dedicated shovel or fork.

**MISHNA**

One must distance a permanent threshing floor fifty cubits from the city, so that the chaff will not harm the city’s residents. Furthermore, a person should not establish a permanent threshing floor even on his own property unless he has fifty cubits of open space in every direction. And one must distance a threshing floor from the plantings of another and from another’s plowed field far enough that it does not cause damage.

**GEMARA**

The Gemara asks: What is different in the first clause of the mishna, which states a fixed measurement for the distance of a threshing floor from a city, and what is different in the latter clause, which does not provide a measurement but simply states in general terms: Enough that it does not cause damage? Abaye said: In the latter clause we arrive at the case of a threshing floor that is not permanent. This threshing floor must be far enough from a neighbor that it does not cause damage to his property.

The Gemara asks: What are the circumstances of a threshing floor that is not permanent? Rabbi Yosei, son of Rabbi Hanina, says: It refers to any threshing floor where one processes such a small quantity of grain that he does not winnow with a winnowing shovel, but employs some other method that does not scatter the chaff as far. This is one resolution of the contradiction.

Rav Ashi said that the phrase: Enough that it does not cause damage, is not referring to a distance but provides an explanation. In other words, the tanna is saying: What is the reason for the ruling of the first clause, as follows: What is the reason that one must distance a permanent threshing floor fifty cubits from the city? It must be far enough away that it does not cause damage.

The mishna teaches that it is uncertain whether this one was first or that one was first, he cuts down the tree and the city does not give money. The Gemara asks: In what way is this case different from that of a tree alongside a cistern, concerning which you said in the mishna (25b) that in a case of uncertainty the owner of the tree need not cut down the tree? The Gemara answers: There, if it were a case of certainty the tree would not be subject to being cut down; therefore, in a case of uncertainty too, we do not say to the owner of the tree: Cut it down. In that case, if the tree preceded the cistern, the owner of the tree would not be required to cut it down. Here, if it were a case of certainty, the tree would be subject to being cut down even if it preceded the city, and the only uncertainty is whether or not the owner of the tree would need to be compensated. Consequently, in a case of uncertainty too, we say to the owner of the tree: Cut it down. And if the owner of the tree lodges a claim a case of the tree, as he wants compensation for it, we say to him: Bring proof that your tree came first, and take your money. Since he has no proof, he does not receive any money.

*Halakha*:

Kesef ha’em midos ha’em mide – קְסֶף הַהֵא מְדֻוָּס הַהֵא מְדַי. What is the reason for the ruling of the latter clause, which does not provide a measurement but simply states in general terms: Enough that it does not cause damage.

There, if it were a case of certainty – מַיָּא לְכָל רֵישָּׁא וּמַיָּא לְכָל שֶׁאֵינוֹ זוֹרֶה. The Gemara asks: What is different in the first clause of the mishna, which states a fixed measurement for the distance of a threshing floor from a city, and what is different in the latter clause, which does not provide a measurement but simply states in general terms: Enough that it does not cause damage. Abaye said: In the latter clause we arrive at the case of a threshing floor that is not permanent. This threshing floor must be far enough from a neighbor that it does not cause damage to his property.

With a winnowing shovel – מַרְחִי. To winnow, one casts the grain up high with a shovel and the wind blows the chaff away. Without the use of the shovel, the wind will not carry the chaff as far (Rashi). Some explain that when a shovel is used the chaff travels in a single direction based on the prevailing wind. Without a shovel, the chaff flies in all directions (Rabbeinu Hananel).
The Gemara raises an objection against the opinion of Abaye: One must distance a permanent threshing floor fifty cubits from the city; and just as one distances it fifty cubits from the city, so too does one distance it fifty cubits from the gourds, cucumbers, plantings, and plowed field of another, enough that it does not cause damage. Granted, this works out well according to the opinion of Rav Ashi, as he claims that in both clauses the same distance is required. One must move a threshing floor fifty cubits from a plowed field and from those plantings. But according to the explanation of Abaye, it is difficult. The Gemara comments: Indeed, it is difficult.

The Gemara asks with regard to the baraita: Granted, one must distance his threshing floor from his neighbor’s cucumbers and gourds,9 as the chaff from the threshing floor goes and penetrates into the heart of the flower and dries it out. But why must one distance the threshing floor from another’s plowed field? Rabbi Abba bar Zavda said, and some say it was Rabbi Abba bar Zutra: It is because he turns it into manure, i.e., the chaff acts like manure, and an excessive amount of manure damages the seeds.

MISHNA

One must distance animal carcasses,9 and Graves, and a tannery [haburseki],10, a place where hides are processed, fifty cubits from the city. One may establish a tannery only on the east side9 of the city, because winds usually blow from the west and the foul smells would therefore be blown away from the residential area. Rabbi Akiva says: One may establish a tannery on any side9 of a city except for the west, as the winds blowing from that direction will bring the odors into the city, and one must distance it fifty cubits from the city. One must distance from vegetables water in which flax is steeped,11 because this water ruins them; and likewise one must distance leeks from onions,12 and mustard from beans. And Rabbi Yosei permits one not to do so in the case of mustard.

HALAKHA

One must distance carcasses, etc. – מַרְחִי בּוּרְסְקְוָא אֶת עֵצְיָא וּמַרְחִי בּוּרְסָי אֶת קָרְפֹּסְקְוָא אֶת גּוֹרֶן וּמַרְחִי בּוּרְסָי אֶת כַּרְפֹּסְקְוָא אֶת הַבַּשָּׁלִים, אֶת הַחַרְדָּל אֶת הַכְּרֵישִׁין מִן הַבְּצָלִים וּמַרְחִי בּוּרְסְקְוָא אֶת הַנְּבֵלוֹת וּמַרְחִי בּוּרְסְקְוָא אֶת הַגּוֹרֶן. One must distance animal carcasses, etc. – מַרְחִי בּוּרְסְקְוָא אֶת עֵצְיָא וּמַרְחִי בּוּרְסָי אֶת קָרְפֹּסְקְוָא אֶת גּוֹרֶן וּמַרְחִי בּוּרְסָי אֶת כַּרְפֹּסְקְוָא אֶת הַבַּשָּׁלִים, אֶת הַחַרְדָּל אֶת הַכְּרֵישִׁין מִן הַבְּצָלִים. Carcasses, graves, and tanneries must be kept a distance of fifty cubits from the city. The same applies to public ovens and bees (Rambam Sefer Kinyan, Hilkhot Shekhenim 10:3; Shulhan Arukh, Hoshen Mishpat 155:23).

One may establish a tannery only on the east side9 of the city, because winds usually blow from the west and the foul smells would therefore be blown away from the residential area. Rabbi Akiva says: One may establish a tannery on any side9 of a city except for the west, as the winds blowing from that direction will bring the odors into the city, and one must distance it fifty cubits from the city. One must distance from vegetables water in which flax is steeped,11 because this water ruins them; and likewise one must distance leeks from onions,12 and mustard from beans. And Rabbi Yosei permits one not to do so in the case of mustard.

BACKGROUND

From his cucumbers and gourds – מַרְחִי בּוּרְסְקְוָא אֶת עֵצְיָא וּמַרְחִי בּוּרְסָי אֶת קָרְפֹּסְקְוָא. This refers to plots of land where gourds and cucumbers are grown. These plants are mentioned because the chaff can enter their large flowers and harm them. This is not the case with other plants, whose smaller flowers are not vulnerable to such damage.

Tannery [burseki] – בּוּרְסָי. From the Greek βυρσικὸς, bursikos, which refers to matters relating to the tanning of hides and leather.

BACKGROUND

On any side – מַרְחִי בּוּרְסָי. In Eretz Yisrael the most frequent wind comes from the west, off the sea. Throughout most of the country the wind blows even in the summer, at least in the evening hours. For this reason Rabbi Akiva prohibited the positioning of any nuisance on the western side of the city, as the wind is likely to carry its foul odors toward the populace.

NOTES

Only on the east side – מַרְחִי בּוּרְסָי. Generally speaking, eastern winds are not very strong (Rashi). Rambam, in his Commentary on the Mishna, adds that this is true in Eretz Yisrael and to the east of Eretz Yisrael. He further claims that the eastern wind mitigates the harmful effects of bad odors.

One must distance from vegetables water in which flax is steeped – מַרְחִי בּוּרְסָי אֶת קָרְפֹּסְקְוָא אֶת הַבַּשָּׁלִים. The mishna does not mandate distances for each of the items that follow. The commentaries explain that in each particular case, the item must be moved enough to prevent harm (Ramban). Other commentators maintain that according to the first tanna, the distance for each item is fifty cubits, the measurement stated earlier in the mishna (Rashba; Riva).

Leeks from onions – מַרְחִי בּוּרְסָי אֶת גּוֹרֶן. The commentaries explain that leeks that grow close to onions are less pungent (Rambam’s Commentary on the Mishna).
The southern wind – רוח דרומית: Southerly winds in the Middle East generally come from the desert and are dry and very hot. Consequently, they are detrimental to plants and people.

Ben Netz – בן נטץ: Although these matters were stated in a homiletic vein, they do provide an accurate description of the world. The southern wind and the hot dry weather it brings cause severe damage, which is exacerbated over time. Following such an occurrence, a cold front usually appears that causes the wind to change direction. The subsequent cold winds break the hot spell.

The Gemara cites a proof: Come and hear, as it is taught in a baraita: Rabbi Akiva says that one may establish a tannery on any side of the city and distance it fifty cubits, except for the west side, where one may not establish a tannery at all.

With regard to the last statement of the baraita, Rava said to Rav Nahman: What does frequent mean in this context? If we say it means frequent among the winds, i.e., this wind blows all the time, that is difficult. But doesn’t Rav Ḥanån bar Abba say that Rav says: Four winds blow every day from different directions, and the northern wind blows with each of the other three; as, if this were not so, i.e., if it did not blow, the world would not exist for even one hour, as the northern wind is pleasant and tempers the bitter effects of the other winds. And the southern wind is harsher than all of them, and were it not for the angel named Ben Netz, who stops it from blowing even harder, it would destroy the entire world, as it is stated: “Does the hawk [Netz] soar by your wisdom, and stretch her wings toward the south?” (Job 39:26). This indicates that the northern wind is the most constant, not the western wind.

Rather, what is the meaning of frequent? It means frequent with the Divine Presence, i.e., the Divine Presence is found on the western side, and therefore it is inappropriate to set up a tannery there with its foul odors. As Rabbi Yeḥoshua ben Levi says: Come and let us be grateful to our ancestors who revealed to us the place of prayer, i.e., the verse does not provide a definitive proof.

The Gemara comments: Indeed, this is difficult, i.e., the verse does not provide a definitive proof.

The Gemara comments: And Rabbi Oshaya holds that the Divine Presence is found in every place, as Rabbi Oshaya says: What is the meaning of that which is written: “You are the Lord, even You alone, You have made heaven... You preserve them all alive and the northern wind blows with each of the other three; as, if this were not so, i.e., if it did not blow, the world would not exist for even one hour, as the northern wind is pleasant and tempers the bitter effects of the other winds. And the southern wind is harsher than all of them, and were it not for the angel named Ben Netz, who stops it from blowing even harder, it would destroy the entire world, as it is stated: “Does the hawk [Netz] soar by your wisdom, and stretch her wings toward the south?” (Job 39:26). Since the celestial bodies move from east to west, they bow in that direction, which indicates that the Divine Presence is in the west.

Rav Aḥa bar Ya’akov objects to this: But perhaps the celestial bodies are like a servant who receives a gift from his master and walks backward while bowing. If so, the Divine Presence is in the east and the celestial bodies are moving backward. The Gemara comments: Indeed, this is difficult, i.e., the verse does not provide a definitive proof.

The Gemara comments: And Rabbi Oshaya holds that the Divine Presence is found in every place, as Rabbi Oshaya says: What is the meaning of that which is written: “You are the Lord, even You alone, You have made heaven... You preserve them all alive and the hosts of heaven bow down to You” (Nehemiah 9:6). Since the celestial bodies move from east to west, they bow in that direction, which indicates that the Divine Presence is in the west.

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The Gemara comments: And Rabbi Yishmael, too, holds that the Divine Presence is in every place, as one of the Sages of the school of Rabbi Yishmael taught: From where is it derived that the Divine Presence is in every place? As it is stated: “And behold the angel who spoke with me went forth, and another angel went out to meet him” (Zechariah 2:7). Although both angels were coming from the Divine Presence, the verse does not state: After him, but: “And to meet him,” which teaches that the Divine Presence is in every place, and therefore the angels depart for their missions from every place.

And Rav Sheshet, too, holds that the Divine Presence is in every place, as Rav Sheshet said to his servant: Set me facing the back of the world. Alternatively, heretics refers to Christians, as is generally the case.

The commentaries maintain that kedem is termed from the strength of the world, as Rav Yehuda agrees with Rabbi Yehoshua ben Levi and Rabbi Abbahu that the Divine Presence is in the west (Rabbeinu Gershon Meor HaGola).

Which devalues [mazzelet] gold – עשו בז א.LoadScene – if this wind grows stronger, it clears the sky of clouds. Although the wind is relatively pleasant, it can also be accompanied by drought, which drives up the price of grain, which in turn leads to the deprecation of the price of gold (Rashi). Some commentators interpret mazzelet in a positive manner and claim that this is a blessing, as the northern wind brings rain, which increases the grain crop. This enriches grain farmers, providing them with gold (Tora’ Hayim; see Maharam).

As the small rain [kisirim] – עשו בז את树木 – if this wind grows stronger, it clears the sky of clouds. Although the wind is relatively pleasant, it can also be accompanied by drought, which drives up the price of grain, which in turn leads to the deprecation of the price of gold (Rashi). Some commentators interpret mazzelet in a positive manner and claim that this is a blessing, as the northern wind brings rain, which increases the grain crop. This enriches grain farmers, providing them with gold (Tora’ Hayim; see Maharam).

The heretics instruct people to pray in that direction – האים על יד ב – רפיי – because the heretics instruct people to pray in that direction. Others suggest that there is a difference between the contents of the heretics’ prayer which they pray in that direction and which they do not pray in that direction. The heretics instruct people to pray in that direction – האים על יד ב – רפיי –: The heretics instruct people to pray in that direction. The early Christians initially did not choose a particular direction for their prayers, but they built their structures either to face Jerusalem, or to face west or east. The Gemara here is apparently referring to heretical sects that were associated with the cult of the sun. These sects were widespread during Rav Sheshet’s lifetime.

**NOTES**

The commentaries explain that the heretics pray to the sun, which rises in that direction (Rabbeinu Gershon Meor HaGola; see Ezekiel 8:16). The Jews in the Temple would deliberately act contrary to this practice (see Sukkah 52b). Rashi claims that the term heretics refers to Christians, as is generally the case.

Oriya – עָריִיָה: Most commentaries maintain that oriya is a name for the west? It means from the back of the world, as Rav Yehuda agrees with Rabbi Yehoshua ben Levi and Rabbi Abbahu that the Divine Presence is in the west (Rabbeinu Gershon Meor HaGola).

BACKGROUND

The heretics instruct people to pray in that direction – האים על יד ב – רפיי: Here, groups, which included Christians, were many and varied in talmudic times. The early Christians initially did not choose a particular direction for their prayers, but they built their structures either to face Jerusalem, or to face west or east. The Gemara here is apparently referring to heretical sects that were associated with the cult of the sun. These sects were widespread during Rav Sheshet’s lifetime.
is similar to a partially enclosed veranda [אכסדרה, akhsadra], enclosed on three sides, and the northern side of the world is not enclosed with a partition like the other directions. The sun begins its revolution in the east and passes to the south and the west, and once the sun reaches the northwestern corner it turns around and ascends throughout the night above the sky to the east side and does not pass the north side. And Rabbi Yehoshua says: The world is similar to a small tent [לקחב], and the north side is enclosed with a partition as well, but once the sun reaches the northwestern corner it emerges from this small tent, and circles and passes behind the dome, i.e., outside the northern partition, until it reaches the east.

As it is stated: “The sun also rises and the sun goes down, and hastens to its place, where it rises again. It goes toward the south, and turns about to the north; round and round goes the wind, and on its circuits the wind returns” (Ecclesiastes 1:5–6). The verse is understood as describing the sun's movements, as follows: “It goes toward the south during the day, “and turns about to the north,” on the outside of the firmament, at night. “Round and round goes the wind [רוח] and the wind returns again to its circuits”; as the word רוח can also mean direction or side, Rabbi Yehoshua explains that these are the face of the east and the face of the west. Sometimes, in the short winter days, the sun turns about them without being seen, and sometimes, in the long summer days, it traverses them visibly.

The baraita continues: Rabbi Yehoshua would say: With this we arrive at the opinion of Rabbi Eliezer that the world is like a partially enclosed veranda. He cites a verse as proof that the north side is open: “Out of the chamber comes the storm”; this is the southern side. “And cold out of the dispersed parts” (Job 37:9); this is the northern side, which is open, and from which a cold wind comes. “By the breath of God ice is given”; this is the western side. “And the breadth of the waters is straitened” (Job 37:10); this is the eastern side, from which the rains come.
The Gemara asks: But doesn’t the Master say that the southern wind raises showers and causes herbs to grow? The Gemara answers that this is not difficult: This is referring to rain that falls gently, which waters plants and brings growth; that is referring to a downpour of rain that causes damage.

Rav Hisda said: What is the meaning of that which is written: “Out of the north comes gold” (Job 37:22)? This is the northern wind, which devalues gold by causing a drought that raises the price of grain. And, in addition, it says: “You who lavish gold out of the bag” (Isaiah 46:6).

Rafram bar Pappa says that Rav Hisda says: From the day the Temple was destroyed the southern wind has not brought rain, as it is stated in the description of the destruction of the Temple: “He decrees on the right and there is hunger, and consumes on the left and they are not satisfied” (Isaiah 9:19). This means that God decreed that the southern wind, which is called right, shall bring famine with it. And it is written: “North and right, You have created them” (Psalms 89:13). This proves that the term right means south.

And Rafram bar Pappa says that Rav Hisda says: From the day the Temple was destroyed, the rains no longer descend from the good storehouse, as it is stated: “The Lord will open to you His good storehouse, the skies, to give the rain of your land in its season” (Deuteronomy 28:12). In a time when the Jewish people perform God’s will, and the Jewish people are settled in their land, rain descends from the good storehouse. In a time when the Jewish people are not settled in their land, rain does not descend from the good storehouse.

Rabbi Yitzḥak says: One who wishes to become wise should face south,” and one who wishes to become wealthy should face north. And your mnemonic for this is that in the Temple the Table, which symbolized blessing and abundance, was in the north, and the Candelabrum, which symbolized the light of wisdom, was in the south of the Sanctuary. And Rabbi Yeḥoshua ben Levi says: One should always face south, as once he becomes wise he will subsequently also become wealthy, as it is stated with regard to the Torah: “Length of days is in her right hand; in her left hand are riches and honor” (Proverbs 3:16).

The Gemara asks: But Rabbi Yeḥoshua ben Levi says that the Divine Presence is in the west. How, then, can one pray facing south? The Gemara explains that one should turn aside slightly, so that he faces southwest. Rabbi Hanina said to Rav Ashi: An individual such as you, who lives to the north of Eretz Yisrael, should face south when you pray. And from where do we derive that Babylonia is located to the north of Eretz Yisrael? As it is written in a prophecy concerning the destruction of Jerusalem by the Babylonians: “Out of the north evil shall break forth upon all the inhabitants of the land” (Jeremiah 1:14).

Notes:
- One who wishes to become wise should face south – וְתוֹלֵךְ בֵּיהּ הַזָּלִים זָהָב מִכִּיס (Job 37:22). This means that one should pray facing the south (flash; Rabbeinu Hananel). Rabbeinu Hananel also suggests an alternative explanation, that facing south means to go study from the Sages of the south of Eretz Yisrael. Some claim that south and north in this context refer to right and left, respectively. One who devotes himself entirely to Torah study with the strength of his right hand, while expending less effort on other matters, parallel to the weakness of one’s left hand, will earn the rewards of wisdom and wealth (Ruf).
- That Babylonia is… to the north – מִקְרָא וּמְנוֹרָה בַּדָּרוֹם (Bava batra 94:2, and in the comment of Rema). This is the north.
- כְּגוֹן אַתּוּן דְּיָתְבִיתוּ בִּצְקָרָיו וְסָבֵעָיו (Bava batra 25b). The commentaries write that one may face his body toward Jerusalem while turning his face to the south or to the north (Shulhan Arukh, Orach Hayyim 94:2, and in the comment of Rema).
- The Table was in the north and the Candelabrum was in the south – כְּגוֹן אַתּוּן דְּבָבֶל לִצְיָהוֹן וּמְנוֹרָה בַּדָּרוֹם. The Candelabrum stood in the south of the Sanctuary, while the Table was in the north (Rambam Sefer Avoda, Hilchot Bein Habayit 1:7).
The cistern is below and the tree is above, etc. –

The mishna teaches that one must distance from vegetables the water in which flax is steamed, and distance mustard from bees. A Sage taught that Rabbi Yosei permits one not to do so in the case of mustard because he can say to the beekeeper: Before you tell me: Distance your mustard from my bees, I can tell you: Distance your bees from my mustard, as they come and eat my mustard plants. In other words, you are also causing damage to my property. Since they each cause damage to the other, neither can force his neighbor to move.

MISHNA One must distance a tree twenty-five cubits from a cistern, and in the case of a carob and of a sycamore tree, whose roots extend farther, one must distance the tree fifty cubits. This is the halakha whether the cistern or tree is located above or to the side of the other. If the digging of the cistern preceded the tree, the owner of the tree need not distance the tree and the owner of the cistern pays him money. And if the tree preceded the cistern the owner of the tree need not cut down the tree. Rabbi Yosei says: Even if the cistern preceded the tree, the owner of the tree need not cut down the tree. This is due to the fact that this one digs in his own property, and that one plants in his own property.

GEMARA The Gemara discusses the mishna's statement that a tree must be distanced if it is above a cistern. A Sage taught: This is the halakha whether the cistern is below and the tree is above, or whether the cistern is above and the tree is below. The Gemara asks: Granted, if the cistern is below and the tree is above, it will cause damage, as the roots extend and damage the cistern when they breach its walls. But if the cistern is above and the tree is below, why should he have to distance the tree, considering that the roots extend downward? Rabbi Haggai says in the name of Rabbi Yosei: He must distance the tree because its roots form holes in the ground and ruin the floor of the cistern.

Rabbi Yosei says: Even if the cistern preceded the tree, the owner of the tree need not cut down the tree. This is due to the fact that this one digs in his own property, and that one plants in his own property. Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yosei. Rav Ashi said: When we were studying in the study hall of Rav Kahana, we would say that Rabbi Yosei concedes with regard to one's arrows, i.e., one must distance his activities from his neighbor if his actions will cause immediate damage to his neighbor, even if he is acting on his own property.
The Gemara relates that a man called Pappei Yona’a was poor and became wealthy. He built a mansion (appadna) on his land. There were these sesame seed pressers in his neighborhood who would work, and when they would press the sesame seeds their activity would shake his mansion. He came before Rav Ashi to complain. Rav Ashi said to him: When we were studying in the study hall of Rav Kahana, we would say that Rabbi Yosei concedes with regard to one’s arrows. Here too, because the sesame seed pressers cause immediate damage they must distance themselves.

The Gemara asks: And how much must the mansion shake for the owner to have the right to compel the sesame seed pressers to distance themselves?

HALAKHA

These sesame seed pressers – מַדְנָא, אֲמַר לֵיהּ, כִּי הֲוָאן בֵּי רַב כָּהֲנָא הֲוָה מֵיהּ דְּרַב אַשִּי,](https://www.hebrewbooks.org/pdfpager.aspx?req=15728&st=2&pg=3) Daf Perek ’א. Some commentaries rule that it is sufficient if the wall that this word is related to the Akkadian nakhamu, which bears a similar meaning.

Mansion (appadna) – מַדְנָא: This term, which also appears in the Bible (Daniel 11:45), is from the Old Persian apādana language.

That Babylonia is to the south, while the one who works in his courtyard, or turning his face to the south or to the north (Sefer Kinyan, Oraĥ Ḥayyim 115:15, and in the comment of Rema).

LANGUAGE

Lid (nakhtema) – נקְטֵמָא: Some versions of the text read daka. Both words have the same meaning of a thin and small item.

Mar bar Rav Ashi objects to this: In what way is this case different from one who winnows? The sun passes to the firmament’s outer face at night, it travels over the west, its path will have a southward tilt, and when it descends to the east, its path will tend back northward. Sunrise likewise varies: while the sun will never be seen further north than the coronavirus point of rising in the east. According to Rabbi Yosei (Rambam, Shulḥan Arukh, Hoshen Mishpat 155:15, and in the comment of Rema).

BACKGROUND

BACKGROUND

The Halakha notes that one causing damage must move even if his damage is not immediate each of the neighbors is permitted to act to distance himself. The Rivash notes that one causing damage must move even if his activity merely causes headaches and the like (Rambam, Shulḥan Arukh, Hoshen Mishpat 155:15, and in the comment of Rema).

One who winnows and the wind assists him – מַדְנָא: With regard to one who works in his courtyard, or at a threshing floor, or performs any other labor that might create dust, dirt, or odor, he must distance his activity so that the unpleasant by-product of his work does not reach his neighbor’s field. This is the halakha even if the by-product reaches his neighbor’s field only due to the wind. Nevertheless, even if he does not distance his activity and it leads to damage, he is not liable, due to the significant contribution of the wind (Rambam Sefer Kinyan, Hilkhot Shekhenin 115:1; Shulḥan Arukh, Hoshen Mishpat 155:34).

LANGUAGE

LANGUAGE

NOTES

NOTES

That the lid positioned at the mouth of a jug shakes – מַדְנָא: Rashi explains that a jug with its lid is hung on the wall of the house, and if the lid shakes due to the activity of the sesame seed pressers, it is considered a damaging activity. If there is less vibration than that, it is not necessary to halt the activity. Others say that a jug is placed on the floor, touching the wall, and one observes whether the lid moves (Ramaḥ; Ramban). Alternatively, the Gemara means that the activity is considered harmful if the walls move as much as the lid of a jug does when it is carried normally (Rabbenu Yitzḥak of Dampierre; Tosafot; Rabbenu Yona; Rashba).

In what way is this case different from one who winnows? Winnowing is one of the primary categories of labor prohibited on Shabbat. It can be performed with the assistance of the wind, which blows away the chaff when the grain is thrown into the air. Since this is a standard manner to perform this task, it is considered a complete act despite the fact that it requires the aid of the wind. Some commentaries explain that Ravina distinguishes between a prohibited act on Shabbat, where the determining factor is creative action, and cases of causing damage. With regard to causing damage, the scattering of the chaff is considered an indirect cause, and one is not liable for damage he causes indirectly, nor does he have to distance himself.
In Babylonia two cubits – as Shmuel said in the mishna (Eruvim 24b). Ravina rejects this comparison and claims that flying chaff is not considered one’s arrow, in what way is this situation different from that of a spark that flies from a hammer and causes damage, in which case all agree that the one wielding the hammer is liable to pay? The Gemara answers: There, it is preferable for him, i.e., it is immaterial to him, that the chaff go some distance.

**MISHNA**

A person may not plant a tree near the field of another unless he distances it four cubits from the field. This is the case whether he is planting grapevines or any kind of tree. If there was a fence between them, this one may place, i.e., plant, his grapevines or trees close to the fence from here, and that one may place, i.e., plant, his produce close to the fence from there.

If the roots were spreading into the field of another, the owner of the field may dig to a depth of three handbreadths even if he severs those roots, so that they do not impede his plow. If he was digging a cistern in that spot, or a ditch, or a cave, and he came upon the roots of his neighbor’s tree, he may cut downward normally, and the wood from the roots is his.

**GEMARA**

A tanna taught: The four cubits that the Sages stated one must leave between a vineyard and a neighbor’s field are for the work of the vineyard, so that the owner of the vineyard does not take up the plow into his neighbor’s field while working his vineyard. Shmuel says: They taught this halakha only with regard to Eretz Yisrael, but in Babylonia two cubits are sufficient, as their plows are shorter. This opinion is also taught in a baraita: A person may not plant a tree near the field of another unless he distances the tree two cubits from the field. But didn’t we learn in the mishna: Four cubits? Rather, is it not correct that there is a difference between Eretz Yisrael and Babylonia in this regard, as stated by Shmuel? The Gemara concludes: Indeed, learn from it that it is so.

And there are those who raise this matter in the form of a contradiction. We learned in the mishna that a person may not plant a tree near the field of another unless he distances it four cubits from the field. But isn’t it taught in a baraita that two cubits are sufficient? Shmuel said that this is not difficult: Here it is referring to Babylonia, whereas there it is referring to Eretz Yisrael.

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**HATAKHON**

From a spark that flies from a hammer – תחת העצם הפיס – if a smith strikes a hammer and a spark flies out, he must pay for any damage it causes (Rambam Sefer Neskin, Hilkhot Hovel U’Mekziz 6:11; Shulhan Arukh, Hoshen Mishpat 342:2).

A tree near the field of another – אכל עץ נ(productId) – one may not plant a tree near his neighbor’s trees, or vines near his neighbor’s vines, unless he leaves four cubits of space to allow for working the land around the trees. If both neighbors decide to plant at the same time, they divide the requisite amount of space (Rema, citing Maggid Mishne). This distance of four cubits applies in Eretz Yisrael, whereas only two cubits are necessary between trees and vines or vines in Babylonia, as stated by Shmuel. Four cubits must be left between vines and trees, or between trees of the same type (Rambam).

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The Gemara asks: And according to the opinion of Ravina, who rejects this comparison and claims that flying chaff is not considered one’s arrow, in what way is this situation different from that of a spark that flies from a hammer and causes damage, in which case all agree that the one wielding the hammer is liable to pay? The Gemara answers: There, it is preferable for him, i.e., it is immaterial to him, that the chaff go some distance.

**HALAKHA**

From a spark that flies from a hammer – תחת העצם הפיס: If a smith strikes a hammer and a spark flies out, he must pay for any damage it causes (Rambam Sefer Neskin, Hilkhot Hovel U’Mekziz 6:11; Shulhan Arukh, Hoshen Mishpat 342:2).

A tree near the field of another – אכל עץ נproductId: One may not plant a tree near his neighbor’s trees, or vines near his neighbor’s vines, unless he leaves four cubits of space to allow for working the land around the trees. If both neighbors decide to plant at the same time, they divide the requisite amount of space (Rema, citing Maggid Mishne). This distance of four cubits applies in Eretz Yisrael, whereas only two cubits are necessary between trees and vines or vines in Babylonia, as stated by Shmuel. Four cubits must be left between vines and trees, or between trees of the same type (Rambam) even in Babylonia. Some commentators state that even more space must be preserved (Rema, citing Tur). If there is a fence between the fields, one may plant next to the fence without maintaining any distance (Rambam Sefer Kinyan, Hilkhos Shekerim 11:8, Shulhan Arukh, Hoshen Mishpat 155:29).

If the roots were spreading – אכל עץ נproductId: If the roots of one’s tree extend into a neighbor’s field, the neighbor has the right to cut them out to a depth of three handbreadths so that they do not impede his plow. If the neighbor finds roots when digging a cistern, he may cut them. In both cases the neighbor may keep the wood of the roots if the trees are more than sixteen cubits from his field. If the trees are not that far away, the roots belong to the owner of the tree (Rambam Sefer Kinyan, Hilkhos Shekerim 11:7, Shulhan Arukh, Hoshen Mishpat 155:30).
The Gemara relates: Rava bar Rav Hanan had these palm trees that stood adjacent to the boundary of Rav Yosef’s vineyard. Birds would come and roost on the palm trees and would subsequently descend to the vineyard and damage it. Rav Yosef said to Rava bar Rav Hanan: Go and cut down3 your palm trees. Rava bar Rav Hanan said to him: But I distilled them the required amount. Rav Yosef said to him: This matter, i.e., this specific distance, applies only to trees, but a greater distance is required for vines.4

Rava bar Rav Hanan protested: But didn’t we learn in the mishna that this is the halakha whether he is planting grapevines or any kind of tree? Rav Yosef said to him: This matter applies only to the distance between one tree and another tree, or the distance between one vine and other vines. But with regard to the space between a tree and vines, one requires a greater distance.

Rava bar Rav Hanan said to him: I myself will not cut them down, as Rav said: With regard to this palm tree that produces one kav5 of fruit, it is prohibited to cut it down, due to the verse: “You shall not destroy the trees” (Deuteronomy 20:19). And Rabbi Ḥanina says: My son Shikḥat died only because he cut down a fig tree before its time. Rava bar Rav Hanan continued: If the Master is amenable to do so, he may cut them down, but I will not do it.

The Gemara further relates that Rav Pappa6 had these palm trees that stood adjacent to the boundary of the property of Rav Huna, son of Rav Yehoshua. He went and found Rav Huna digging and cutting his roots. Rav Pappa said to him: What is this? Rav Huna said to him that we learned in the mishna: If the roots were spreading into the field of another, the owner of the field may dig to a depth of three handbreadths even if he severs those roots, so that they do not impede his plow.

Rav Pappa said to him: This statement applies only up to three handbreadths, whereas the Master is digging and cutting more than that. Rav Huna said to him: I am digging cisterns, ditches, and caves, as we learned in the mishna: If he was digging a cistern, a ditch, or a cave, he may cut downward normally and the wood from the roots is his. Rav Pappa said: I told him all the proofs I could find, but I was unable to convince him that I was correct.

Go cut down – Hear, O Israel. The commentators point out that the damage caused by the birds was not a direct result of Rava bar Rav Hanan’s actions, and therefore one cannot claim that it is considered like his arrows. Why, then, should he have to cut down the trees? They answer that he might cause the birds to fly over to Rav Yosef’s vineyard. The damage in this case would in fact be considered like his arrows (Rabbeinu Yona; Rashba; Ravia).

A greater distance is required for vines – And it was. The halakic authorities rule in accordance with the opinion of Rav Yosef, but they dispute the required measurement. Some state that one must distance its tree four cubits and that Rava bar Rav Hanan had distanced it only two cubits, which is the requirement in Babylonia. According to this opinion, the halakha does not mandate a greater distance for trees (Ri Migash, citing Rif). Other commentators write that the required distance is fifty cubits (Ranah). There are also those who claim that there is no fixed distance and that the ruling depends on the judges discretion (Rabbeinu Yona).

I will not cut them down – Many commentators point out that if Rava bar Rav Hanan were causing damage, he would certainly be required to cut down his trees. Some explain that one is permitted to cut down a fruit tree only if it causes a great loss (Tosfot). Others write that Rav Yosef did not claim that the tree had to be cut down according to the strict letter of the law; rather, he wanted Rava bar Rav Hanan to do so as an act of piety, to avoid being responsible for the damage. Rava bar Rav Hanan responded that if it is an appeal to piety, one should also take into consideration the problem of cutting down fruit trees (Rashba). Yet others contend that Rava bar Rav Hanan had said that he does not maintain that this is the halakha, and that he could not follow the ruling of Rav Yosef, who was personally involved in the case. Therefore, he was unwilling to act, and he suggested that if Rav Yosef was certain of the halakha he should take action himself (Rabbeinu Yona).

Rav Pappa – Pappa: Rav Pappa, a fifth-generation amorah in Babylonia, was a student of both Abaye and Rava in Pumbedita. Rav Pappa established an academy in Neresḥ, where he was joined by his close friend Rav Huna, son of Rav Yehoshua, in teaching in the academy. After Rava’s death, many of his students came to study under Rav Pappa, who had more than two hundred students attending his lectures.

Rav Pappa’s father was a wealthy merchant who supported him in order to allow him to study. Rav Pappa later became a wealthy businessman in his own right, as a brewer of date beer as well as other business ventures. The Talmud records that he engaged in trade with both Jews and gentiles and had a reputation for fairness and generosity in his business dealings.

This palm tree that produces one kav – Even in a situation where a fruit tree causes damage, it may be cut down only if it produces a small enough amount of fruit that it is unworthy of tending. An olive tree that produces a quarter-kav of olives and a palm tree that produces one kav of dates may not be cut down (Rambam, Sefer Shoteṭrim; Hilḥot Melakḥim U/Milhemot Teshuva 6:9).
ORDINARY PERSON §

The mishna teaches that if he was digging a cistern, a ditch, or a cave, he may cut downward and the wood is his. The Sage Ya’akov of Hadeyyav raised a dilemma before Rav Hida: To whom does the wood belong? The mishna says that the wood is his, without specifying to which of the two individuals this refers, the owner of the tree or the owner of the land.

Rav Hida said to him: You learned the answer in a mishna in tractate Mel'ila (13b). If roots of a tree belonging to an ordinary person [hederot] extend into a field belonging to the Temple treasury, one may not derive benefit from them, but if one derived benefit from them he is not liable for misuse of consecrated property.

Granted, if you say that we follow the tree, and the roots are considered part of it, it is due to that reason that one is not liable for misuse, as the tree is not consecrated. But if you say we follow the land, i.e., the roots belong to the land’s owner, why is he not liable for misuse of consecrated property?

The Gemara asks: Rather, what will you say, that we follow the tree? If so, say the last clause of that mishna: If roots of a tree belonging to the Temple treasury extend into a field of an ordinary person, one may not derive benefit from them, but if one derived benefit from them he is not liable for misuse of consecrated property. But if we follow the tree, why is he not liable for misuse of consecrated property?

The Gemara responds: Are the cases comparable? In both clauses of the mishna we are dealing with growths that came thereafter, i.e., after the tree was consecrated, and the tanna of that mishna holds that with regard to growths that grew from a consecrated plant or tree, they are not subject to the halakhot of misuse of consecrated property. Only the original plant is. Consequently, there is no connection between mishna and the question of whether roots are considered part of the tree or part of the land.

Ravina said that it is not difficult: Here, in the first clause of the mishna in Mel’ila, it is referring to within sixteen cubits of the tree. In this case the roots are considered part of the tree. There, in the second clause, it is referring to roots beyond sixteen cubits, in which case the roots are considered part of the ground where they are found.
Ten saplings – עשר נטיעות: If ten saplings are planted in one bet se’a, equal to 2,500 square cubits, the entire field may be plowed on account of the saplings until Rosh HaShana of the Sabbatical Year. This ruling is a halakha transmitted to Moses from Sinai (Rambam Sefer Zera'im, Hilkhot Shemittah VeYovel 3:4).

Three trees – שלוש אינות: If three trees, either fruit trees or non-fruit trees, are planted in one bet se’a of land, and they are large enough that if they were fig trees they would produce enough figs to form cakes weighing sixty maneh, the field may be plowed on their account until Rosh HaShana of the Sabbatical Year. This is the halakha whether the trees belong to a single individual or to multiple owners, provided the plowing oven can maneuver between the trees with the plow (Rambam Sefer Zera'im, Hilkhot Shemittah VeYovel 3:2).

**BACKGROUND**

First fruits – הביא יסורים: The obligation to bring first fruits to the Temple is stated in the Torah (Deuteronomy 26:1–11) and is discussed in great detail in tractate Bikkurim, in the mishna and in the Jerusalem Talmud. This mishva applies to the seven types of fruit with which Eretz Yisrael is specially favored and involves the bringing of a small amount of first fruits, one-sixieth of the harvest, before teruma is separated from the crop. The first fruits must be brought to the Temple in Jerusalem. A large, festive ceremony accompanied the procession of the first fruits to Jerusalem. The owner of the fruit would bring his basket up to the altar, where he would wave it and recite the prayers of praise and thanksgiving that appear in the Torah. At this stage of the ritual, the status of the first fruits becomes like that of teruma, and the fruits belong to the priests.

**NOTES**

One does not bring first fruits from it – מהביא יסורים: Rashi explains that one is not obligated to bring first fruits from this tree because it does not fulfill the requirement of: “Which you shall bring in from your land” (Deuteronomy 26:2), as the land occupied by the tree does not belong entirely to him. Others maintain that it is actually prohibited to bring first fruits from this tree. The reasoning is that the tree draws nourishment from the land which puts its fruit in a category similar to that of a stolen item, and it is prohibited to offer a stolen item as an offering because this is a mitzva that comes to be fulfilled by means of a transgression (Rabbeinu Hananel).

Some early commentators point out that Ulla’s statement apparently contradicts the mishna, which rules that one need distance a tree only four cubits from a boundary. They explain that the mishna is referring to a case where there is a rock in the ground that prevents the tree from drawing nourishment from the neighboring field. For this reason the mishna does not address the issue of nourishment but simply discusses distancing from above the ground, to enable work in the vineyard (Rabbeinu Hananel; Tosafot; Rashi).

Ten saplings – עשר נטיעות: When the Temple stood it was prohibited to work the land in the period before the Sabbatical Year, as a supplement to the prohibitions of the Sabbatical Year and to avoid improving the land for that year. This prohibition included the plowing of grain fields from Passover of the sixth year and fruit orchards from Shavuot. Nevertheless, in the event that young trees have not grown sufficiently, there is a concern that if one does not plow the field they will die. In this case, the Torah permits plowing the field until Rosh HaShana of the Sabbatical Year, a halakha that was transmitted to Moses from Sinai. This leniency applies only if there are ten trees, as a field with fewer than ten trees does not require plowing (Tosafot). Alternatively, the reason is that an arrangement of fewer than ten trees is not classified as a field of trees but as a scattering, which is treated like a grain field (Ri Migash). This leniency applies only when there are precisely ten trees, but not more, as if there are more than ten trees it is assumed they will not be left to grow so crowded together, but are slated for removal.

Some commentators maintain that this halakha came into effect only following the destruction of the Temple (Ramah).

Three trees – שלוש אינות: This refers to large trees that may be owned by three separate people. The area around them may be plowed on their account because they are situated in a single plot of land. According to Rashi the mishna is referring to plowing the land until Shavuot. Others cite a version of the text that states that the land may be plowed until Rosh HaShana (Ra’avad; Rabbeinu Yona). This is in accordance with the statement (Moed Katan 30a) that at a later stage Rabban Gamliel and his court permitted plowing until Rosh HaShana in all fields.

**LANGUAGE**

Cubits [גرمز] – גرمز: Garmida is the Aramaic name for a forearm; the basis for the measurement of a cubit. This term appears in the Bible with a slightly different spelling, as gamzad (Judges 3:16). In Aramaic it is extended with an added letter resh.
HALAKHA

One who buys a tree and its land – אוד כלresher שֶׁהוּא לְךָ;
If one buys a tree that is situated in the field of another, לָא דַּשִּׁי לֵיהּ דְּעוּלָּא! לָא דַּשִּׁי לֵיהּ;
he does not bring first fruits, as this purchase does not include the land automatically. If he bought the tree and the land, he brings first fruits and recites the relevant verses (Rambam Sefer Zera’im, Hilkhot Bikurim 2:13 and Kesef Mishne there).

The Gemara asks: One can say that we say that a Sage was not precise in his measurements when his ruling leads to a stringency; but do we say that he was not precise if his measurements lead to a leniency? According to the previous explanation, Ulla exempted the owner of a tree from first fruits even in a case where his tree does not in fact draw nourishment from his neighbor’s field.

According to Rashi, if one calculates Ulla’s measurement not as sixteen cubits but as 16½, each tree receives roughly 816 square cubits, which is about one-third of a beit se’a, 833⅓. Rashi points out that it would be more precise to say two-thirds of a square cubit, but the Gemara was inexact. He further adds that there are versions of the text that state that number (see Rabbeinu Tam in Tosafot). In defense of the standard version of the text, other commentators write that one must take the area of the tree itself into consideration, which is roughly one square cubit. Consequently, the area is 16½ cubits on each side (Ravadav; Tosafot; R. Judah). Others state that one-third of a square cubit should be added for the space of the tree itself, which brings the measurement closer to 833⅓, even if one initially adds only half a square cubit for a tree (Tosafot). Some commentators suggest that the half of a square cubit does not count for each tree but is deducted from each end of the beit se’a. This yields close to 816 square cubits for each tree.

The Gemara answers: Do you maintain that we say the roots extend that far in a square, i.e., one measures sixteen cubits to each side of the tree? Not so; we say this with regard to a circle, that is, the roots extend in a circle surrounding the tree, as the area of a circle is smaller than that of the square circumscribing it.

The Gemara answers: Ulla exempted the owner of a tree from first fruits even in a case where his tree does not in fact draw nourishment from his neighbor’s field. This is why we said that Ulla was not precise, and he was not precise in a manner that leads to a stringency, as one brings first fruits even from a tree that stands just sixteen cubits from the boundary, rather than 16½.

The Gemara cites a proof against the opinion of Ulla. Come and hear the following mishna (Bikurim 1:11): One who buys a tree and its land brings first fruits and recites the requisite Torah verses (Deuteronomy 26:5–11) over them. What, is it not referring to a case where one buys any amount of land with the tree? The Gemara rejects this claim: No; it is referring to a case where one buys sixteen cubits of land around the tree.

NOTES

One-quarter – הין: This number is not precise, as it is predicated on the assumption that the ratio of the circumference of a circle to its diameter is precisely three to one, when in fact this number, known as π, is closer to 3.14. Rambam’s Commentary on the Mishna (Eiruvin 1:5) notes that since the true ratio can only be approximated, as it is an irrational number, the Sages expressed the ratio in terms of whole numbers. Others explain, based on a verse (see I Kings 7:23), that for halakhic purposes, the Sages had a tradition that the ratio should be considered three to one. See Tochetz, who discusses whether this smaller ratio is applied only in cases where it results in a stringency, or even in cases where it results in a leniency.

There still remains half a cubit – חצי ל”א פָּלֵג אַנּוּכָה: According to Rashi, if one calculates Ulla’s measurement not as sixteen cubits but as 16½, each tree receives roughly 816 square cubits, which is about one-third of a beit se’a, 833⅓. Rashi points out that it would be more precise to say two-thirds of a square cubit, but the Gemara was inexact. He further adds that there are versions of the text that state that number (see Rabbeinu Tam in Tosafot). In defense of the standard version of the text, other commentators write that one must take the area of the tree itself into consideration, which is roughly one square cubit. Consequently, the area is 16½ cubits on each side (Ravadav; Tosafot; R. Judah). Others state that one-third of a square cubit should be added for the space of the tree itself, which brings the measurement closer to 833⅓, even if one initially adds only half a square cubit for a tree (Tosafot). Some commentators suggest that the half of a square cubit does not count for each tree but is deducted from each end of the beit se’a. This yields close to 816 square cubits for each tree.
The Gemara suggests: Come and hear an additional proof from another mishna (Bikkurim 1:6): If one bought two trees in the field of another, he brings first fruits and does not recite the verses, because the land does not belong to him. It may be inferred from here that if he bought three trees he does bring first fruits and recite the verses. What, is it not referring to a case where one buys any amount of land with the trees? The Gemara rejects this claim as well: No, here too it is referring to a case where he acquires sixteen cubits of land around the trees.

Bought two trees – קָרָא מֵאֲשֶׁר עוֹרָא, וַאֲשֶׁר רְזוֹבְוּל הָא שְׁלֹשָׁה מֵבִיא: The commentators point out: This indicates that even if the buyer has no land, since one who purchases two trees does not automatically acquire the land upon which they are situated, he nevertheless brings first fruits. This presents a difficulty for the opinion of Ulla, who states that if a tree draws nourishment from another’s field, no first fruits are brought (Rash). The Rambam explains that when one buys a tree he acquires the right to draw nourishment from the land for as long as the tree grows there, and there is consequently no robbery in this case. Nevertheless, one does not recite the verses, because the land does not belong to him.

And a lender can write a prosbol for it: הָא שְׁלֹשָׁה מֵבִיא: One who buys a tree and its land – רְזוֹבְוּל הָא שְׁלֹשָׁה מֵבִיא: When one buys two trees that are located in the field of another, he brings first fruits by means of an agent and does not recite the verses, as it is uncertain whether or not he owns land (Rambam Sefer Zera’im, Hilkhot Bikkurim 4:4). If one bought two trees – קָרָא מֵאֲשֶׁר עוֹרָא: If one buys two trees that are located in the field of another, he brings first fruits by means of an agent and does not recite the verses, as it is uncertain whether or not he owns land (Rambam Sefer Zera’im, Hilkhot Bikkurim 2:13).

The owner of land of any size is obligated in pe’a – קָרָא מֵאֲשֶׁר עוֹרָא: Land of any size is subject to pe’a, even if it is owned by partners (Rambam Sefer Zera’im, Hilkhot Mattenot Aninyim 2:13). If he bought three trees, he does bring – קָרָא מֵאֲשֶׁר עוֹרָא מֵאֲשֶׁר רְזוֹבְוּל הָא שְׁלֹשָׁה מֵבִיא: One who buys three trees must bring first fruits and recite the verses. It is considered as though he purchased the land occupied by the trees even if he did not actually do so (Rambam Sefer Zera’im, Hilkhot Bikkurim 2:13).

BACKGROUND

Pe’a – קָרָא מֵאֲשֶׁר עוֹרָא: The Torah states that it is prohibited for a farmer to harvest the produce in the corner of his field. He must allow the poor to collect this produce for themselves. The Sages issued a decree that the area of the corner must be at least one-sixtieth of the field. This mitzva appears in the Torah (Leviticus 19:9, 25:23), and tractate Pe’a is devoted to the details of this mitzva.

Prosbol – προβολή: This term is clearly of Greek origin; its precise source remains unclear. Some commentaries suggest it is related to the word προξενεῖν, prosbolē, which refers to a declaration before a court or communal gathering. Some associate it with the Greek προσβολή, prosbolē, meaning the conclusion of a sale.
And he can acquire property that does not serve as a guarantee along with it—i.e., movable property, along with it. There are specific modes of acquisition for movable property, but if one is acquiring any amount of land at the same time as the movable property, the mode of acquisition employed to acquire the land suffices for the acquisition of the movable property as well. Apparently, any amount of land is subject to first fruits, whereas according to Ulla a tree acquired with less than sixteen cubits of land surrounding it draws nourishment from the land surrounding it and is exempt from first fruits. The Gemara rejects this: With what are we dealing here? We are dealing with wheat, which is subject to the halakhot of first fruits and requires very little land to nourish it.

The Gemara comments that the language of the mishna is also precise, as it teaches: Land of any size, which indicates even a miniscule amount, and all normal trees certainly require more land than that. The Gemara affirms: Learn from it that it is so.

The Gemara further suggests: Come and hear a proof from a baraita (Tosefta, Ma’asrot 2:22): If there is a tree, part of which is in Eretz Yisrael and part of which is outside of Eretz Yisrael, it is considered as though untithed produce, i.e., produce that is subject to the halakhot of terumot and tithes, and non-sacred produce, i.e., produce that is exempt from the halakhot of terumot and tithes, are mixed together in each one of this tree’s fruits. This is the statement of Rabbi Yehuda HaNasi.

Rabban Shimon ben Gamliel says: With regard to the fruits in the part of the tree that is growing in a place where there is an obligation to separate tithes, i.e., in Eretz Yisrael, the owner is obligated to separate tithes. With regard to the fruits that are growing in a place where there is an exemption from separating tithes, i.e., outside of Eretz Yisrael, the owner is exempt.

The Gemara comments: They disagree only in that one Sage, Rabban Shimon ben Gamliel, holds that there is retroactive designation, and therefore it is assumed that the nourishment drawn from Eretz Yisrael sustained the fruit that grew on that side of the tree, and the nourishment drawn from outside Eretz Yisrael sustained the fruit that grew there. And one Sage, Rabbi Yehuda HaNasi, holds that there is no retroactive designation, and the fruit is considered mixed.

But if the tree grew entirely in a place where there is an exemption from separating tithes, i.e., outside Eretz Yisrael, all agree that the owner is exempt, even though the tree might have roots within sixteen cubits of Eretz Yisrael and draw nourishment from there. This presents a difficulty for the opinion of Ulla, as he claims that the place from where a tree draws its nourishment is decisive with regard to first fruits.

The Gemara answers: With what are we dealing here? We are dealing with a case where a rock divides the roots up to the trunk, and therefore it is possible to distinguish between the parts of the tree that draw nutrients from Eretz Yisrael and the parts that draw nutrients from outside of Eretz Yisrael. The Gemara asks: If so, what is the reasoning of Rabbi Yehuda HaNasi? Why does he view the fruits as being mixed? The Gemara answers: He holds that although there is a division between the roots, they cannot be distinguished from one another, as they then become mixed in the body of the tree.

The Gemara asks: And with regard to what principle do they disagree? The Gemara answers: One Sage, Rabbi Yehuda HaNasi, holds: The air above the ground mixes the nutrients, and one Sage, Rabban Shimon ben Gamliel, holds: This part of the tree stands alone and this part of the tree stands alone. From the roots up to the branches, it is as if the tree were cut along the line of the border.
The Gemara raises a difficulty against Ulla’s opinion from a different perspective: And do roots extend sixteen cubits and no more? Didn’t we learn in a mishna (35b): One must distance a tree twenty-five cubits from a cistern? This indicates that tree roots reach more than sixteen cubits. Abaye said: The roots extend farther, but they weaken the ground only up to sixteen cubits; with regard to an area any more distant than that, they do not weaken the ground.

Concerning this matter the Gemara relates that when Rav Dimi came from Eretz Yisrael he said: Reish Lakish raised a dilemma before Rabbi Yoĥanan: With regard to a tree that is within sixteen cubits of a boundary, what is the halakha? Rabbi Yoĥanan said to him: The owner is a robber, and one does not bring first fruits from it.

By contrast, when Ravin came from Eretz Yisrael, he related that Rabbi Yoĥanan said: Both in the case of a tree that is close to a boundary and a tree that leans into a neighbor’s yard, one brings first fruits and recites the verses, as it was on this condition that Joshua apportioned Eretz Yisrael to the Jewish people, i.e., that they would not be particular about such matters.

**MISHNA**

With regard to a tree that leans into the field of another, the neighbor may cut the branches to the height of an ox goad raised over the plow, in places where the land is to be plowed, so that the branches do not impede the use of the plow. And in the case of a carob tree and the case of a sycamore tree, whose abundance of branches cast shade that is harmful to plants, all the branches overhanging one’s property may be removed along the plumb line, i.e., along a line perpendicular to the boundary separating the fields. And if the neighbor’s field is an irrigated field, all branches of the tree are removed along the plumb line. Abba Shaul says: All barren trees are cut along the plumb line.

**GEMARA**

A dilemma was raised before them: Is Abba Shaul referring to the first clause of the mishna, which states that a tree extending into a neighbor’s field is cut only to the height of an ox goad, and Abba Shaul maintains that barren trees have the same halakha as carob and sycamore trees in that they are cut along the plumb line? Or is he referring to the latter clause, which discusses an irrigated field, and he permits cutting only barren trees along the plumb line, but not fruit trees?

The height of an ox goad – דב כז

The Gemara raises a difficulty against Ulla’s opinion from a different perspective: And do roots extend sixteen cubits and no more? Didn’t we learn in a mishna (35b): One must distance a tree twenty-five cubits from a cistern? This indicates that tree roots reach more than sixteen cubits. Abaye said: The roots extend farther, but they weaken the ground only up to sixteen cubits; with regard to an area any more distant than that, they do not weaken the ground.

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A dilemma was raised before them: Is Abba Shaul referring to the first clause of the mishna, which states that a tree extending into a neighbor’s field is cut only to the height of an ox goad, and Abba Shaul maintains that barren trees have the same halakha as carob and sycamore trees in that they are cut along the plumb line? Or is he referring to the latter clause, which discusses an irrigated field, and he permits cutting only barren trees along the plumb line, but not fruit trees?
An irrigated field – see §3. The commentaries explain that the trees prevent dew from forming on the field. Since this type of field is not watered naturally and needs to be irrigated, the damage is more extensive (Rambam).

He is referring to the first clause – see §3. Abba Shaul permits one to cut any barren tree growing over a field that is watered by natural sources, in addition to barren trees but not carob trees or sycamores, because their fruit is eaten (Rabbeinu Gershom Meor HaGola; Rambam’s Commentary on the Mishna).

A tree that extends into the public domain – see Abba Shaul. If the branches of a tree extend into the public domain, they are cut so that a camel with its rider can pass underneath. The halakha is in accordance with the opinion of the first tanna (Rambam: Sefer Nezikin, Hilkhhot Nokei Mamor 15:26; Shulhan Arukh, Hoshen Mishpat 417:4).

The Gemara answers: Come and hear a resolution to this dilemma, as it is taught in a baraita: With regard to an irrigated field, Abba Shaul says: All types of trees are cut along the plumb line, because the shade is harmful to an irrigated field. This shows that he does not dispute the halakha of the latter clause. Learn from it that he is referring to the first clause of the mishna. The Gemara affirms: Learn from it that it is so.

Rav Ashi said that the wording of the mishna is also precise, as it teaches: All barren trees. Granted, if you say that Abba Shaul is referring to the first clause of the mishna, this is the reason that Abba Shaul teaches: All barren trees. But if you say that he is referring to the latter clause, he should have said simply: Barren trees, as the first tanna permits one to cut down any type of tree. Rather, isn’t it correct to conclude from it that he is referring to the first clause? The Gemara affirms: Learn from it that it is so.

With regard to a tree that extends into the public domain, one cuts its branches so that a camel can pass beneath the tree with its rider sitting on it. Rabbi Yehuda says: One cuts enough branches that a camel loaded with flax or bundles of branches can pass beneath it. Rabbi Shimon says: One cuts all branches of the tree that extend into the public domain along the plumb line, so that they do not hang over the public area at all, due to ritual impurity.

The Gemara asks: Who is the tanna who taught that with regard to damage one follows the current assessment, and future damage is not taken into account? The mishna states that the tree’s branches are cut to the height of a camel and its rider or load but no more, despite the fact that they will certainly grow again.

Reish Lakish says: This halakha is taught as a dispute, and it is the opinion of Rabbi Eliezer. As we learned in a mishna (60a): One may not make an empty space beneath the public domain by digging pits, ditches, or caves. Rabbi Eliezer permits one to dig a pit if it is subsequently covered with material strong enough that a wagon loaded with stones can travel on it without it collapsing. If the cover can withstand such weight when the pit is dug, it is permitted, despite the fact that the cover might eventually rot.

Rabbi Yoḥanan said: You may even say that the mishna here represents the opinion of the Rabbis, who prohibit one from digging beneath the public domain under any circumstances. The difference is that there, the cover will occasionally deteriorate, and as this matter is not on his mind it will cause damage. But here, as each branch grows he cuts it off. Since the potential cause of damage is visible, there is no concern that it might be neglected.

The mishna teaches that if the branches of a tree extend into the public domain, one may cut them to allow a camel and its rider to pass underneath; Rabbi Yehuda says: One cuts enough branches that a camel loaded with flax or bundles of branches can pass beneath it. A dilemma was raised before the Sages: Is Rabbi Yehuda’s measure greater, or is perhaps the Rabbis’ measure greater? Which reaches a greater height, a camel and rider or a camel loaded with flax?

The Gemara answers: It is obvious that the Rabbis’ measure is greater, as, if it enters your mind that Rabbi Yehuda’s measure is greater, how would the Rabbis act in the circumstance of Rabbi Yehuda’s measure? It is clear that a camel will have to pass beneath the tree with a burden, and it would not be able to do so. The Gemara expresses surprise at this claim: Rather, what then would you say? That the Rabbis’ measure is greater? If so, how would Rabbi Yehuda act in the circumstance of the Rabbis’ measure? It is also clear that a camel will have to pass there with its rider. The Gemara answers: It is possible for the rider to bend over and to pass underneath the branches.
The mishna teaches that Rabbi Shimon says: One cuts all branches of the tree that extend into the public domain along the plumb line, due to ritual impurity. The Gemara explains: A tanna taught in a baraita that this is due to ritual impurity imparted in a tent. Branches over a corpse might create a tent, thereby transferring impurity to whatever is beneath the branches, rendering impure those passing under the tree in the public domain. The Gemara expresses surprise at this statement: It is obvious that this is the reason. We already learned that it is due to ritual impurity. How else could ritual impurity be transferred through branches other than by means of a tent?

The Gemara answers: If this is learned from the mishna alone, I would say that the concern is that perhaps a crow might bring a source of impurity and perch on the tree’s branches and throw it there. And if that were the only concern, a mere scarecrow [bedaĥlulei] would be sufficient to frighten the crows away and prevent that type of impurity. Therefore, the tanna of the baraita teaches us that the concern is due to impurity imparted in a tent.

**NOTES**

Scarecrow [daĥlulei] – Some commentators explain that this term refers to hollowness [ḥalal], i.e., one simply needs to cut some branches to form a space between them. This will prevent any item that imparts impurity from being stuck in the tree’s branches (Rashi; Rabbeinu Gershom Meor HaGola). Most commentaries maintain that this refers to a scarecrow (Tosafot; Tosefot Baraita; Rambam’s Commentary on the Tosefot; Rashba).

**LANGUAGE**

Scarecrow [daĥlulei] – From the Aramaic ḥalal, meaning fear. In Modern Hebrew this term became daĥal, meaning scarecrow.
This chapter examined cases in which one performs an activity on his own property and thereby causes damage to his neighbor. With regard to damage inflicted upon a neighbor, the halakha is in accordance with the opinion of Rabbi Yosei that the responsibility to distance oneself is not on the one whose activities might cause damage to his neighbor. Consequently, one who performs an activity on his own property that might cause damage to another at a later stage is not required to take steps to avoid this scenario. This principle applies only if the damage he inflicts is indirect. If the damage occurs immediately, or it begins to take effect immediately and its effects gradually increase, it is considered as though he has shot his neighbor with his arrows, and the neighbor can object to his activity. This applies to damage that is caused by one’s actions to the neighbor’s property, e.g., his walls, pit, and various plantings on his property, as well as damage that is caused by noise or foul odors. Similarly, if one plants trees and the like whose roots or branches extend into his neighbor’s property and potentially cause damage, that neighbor is entitled to chop them down as necessary.

The Sages established certain limits within which the damaged party may compel a neighbor to distance the source of the damage from his private or jointly owned property. If one did distance these activities from a neighbor, he is nevertheless still liable for any damage he may cause.

Neighbors who live in the same courtyard can prevent one another from performing an activity that will lead to an increase in visitors to the courtyard, whether their objection is due to the noise or simply because they do not want crowds passing through their property. This right to protest applies only to visitors who will enter the outdoor area of the courtyard. If one wishes to work within the confines of his own home, the neighbors cannot prevent him from doing so even if his activity is noisy.

As neighbors and residents of the same courtyard can prevent someone from causing them damage, this applies all the more so to residents of a town that are suffering from the acts of a private individual. The rights of the public in this regard include the removal of stumbling blocks, items that interfere with traffic, and articles that spread ritual impurity, and imposing restrictions on activities that discharge foul odors into the city. Likewise, the residents can prevent an individual from spoiling the city landscape. The community can cut down interfering trees and the like, even if the owner originally planted them in a permitted manner. Furthermore, in a case of uncertainty the public can remove such obstructions without having to pay compensation.

Incidental to these discussions, the Gemara discusses several halakhot concerning teachers of children, and it includes a short aggadic passage about the different effects of winds that come from various directions.
According to halakha, one must perform a formal act of acquisition in order to become the owner of property, whether movable property or real estate. Mere possession of movable property, the farming of land, or living in a house is not in and of itself an act of acquisition. Therefore, if one was, for example, living in a house, and another claimed that the house in fact belongs to him and is able to prove that he had been the owner in the past, the one living in the house would be required to substantiate his ownership by producing documentation or witnesses who testify that he had acquired it.

The Sages understood that it is unrealistic to expect those who purchase property to retain their documentation indefinitely. They therefore ruled that if the one in possession is able to prove that for a significant duration he had been in possession of and profited from a property as an owner would, and the prior owner had not lodged a protest concerning his usage, this is sufficient to establish the presumption of ownership, and no further proof is needed. This presumption of ownership is referred to as ĥazaka.

The chapter addresses many details of this principle: What is the requisite time for establishing the presumption of ownership? Is it the same with regard to all types of property? What types of use are considered to be indicative of ownership? How is testimony with regard to presumptive ownership presented?

Additionally, the chapter explores the aspects of this issue that pertain to what is expected of one who claims to own property that another has taken possession of. How does he lodge a protest? Must the protest be lodged in the presence of the one in possession of his property? Must it be lodged in front of a court, or in front of witnesses?

A similar issue discussed is the methods by which one can obtain an acquired privilege, also referred to as ĥazaka, to make use of the property of another for a specific purpose.

The term ĥazaka is employed in an additional manner. It is a mode of acquisition, in addition to giving money or writing a bill of sale, with regard to land. Here, it refers to a specific act of taking possession, by which ownership of the property is transferred. This chapter examines how one takes possession using this act of acquisition with regard to different types of landed property.

These issues were often the subject of real-world dilemmas, as there were often conflicts between litigants pertaining to ownership of property. For this reason, many incidents that occurred in the courts of the talmudic Sages are quoted throughout the chapter.
MISHNA

With regard to the presumptive ownership of houses; and of pits; and of ditches; and of caves, which are used to collect water; and of dovecotes; and of bathhouses; and of olive presses; and of irrigated fields, which must be watered by people; and of slaves; and of similar property that constantly, i.e., throughout the year, generates profits, their presumptive ownership is established by working and profiting from them for a duration of three years from day to day.

If the one in possession of the property can prove that he worked and profited from it for the previous three full years, there is a presumption that it belongs to him, and would remain in his possession if another were to claim that the property belonged to him or to his ancestors.

With regard to a non-irrigated field, i.e., one that is watered by rain, in which produce grows during certain seasons during the year, its presumption of ownership is established in three years, but they are not from day to day, since the fields are not worked and harvested continually throughout the three-year period.

Rabbi Yishmael says: Three months of possession in the first year, three months of possession in the last year, and twelve months of possession in the middle, which are eighteen months, suffice to establish the presumption of ownership with regard to a non-irrigated field.

Rabbi Akiva says: A month of possession in the first year, and a month of possession in the last year, and twelve months of possession in the middle, which are fourteen months, suffice to establish the presumption of ownership with regard to a non-irrigated field.

Rabbi Yishmael said: In what case is this statement, that eighteen months are required for a non-irrigated field, said? It is said with regard to a white field, i.e., a grain field. But with regard to a field of trees, once he gathered his produce, and then harvested his olives, and then gathered his figs, these three harvests are the equivalent of three years. Since he harvested three types of produce, this is equivalent to having possessed the field for three years.

NOTES

The presumptive ownership of houses – The Ritva writes that the presumptive ownership, hozako in Hebrew, discussed here differs from the same term when employed with regard to acquisition. Here, the fact that he has been living on the land for a certain amount of time is viewed as a proof that it is indeed his, but it is not in and of itself a mode of acquiring the land. The same term when employed with regard to acquisition is used to describe one who actually acquires land by treating it as only an owner would, even for a minimal amount of time. The simplest way to establish that one has title to inmovable property is by presenting a bill of sale signed by witnesses or to have witnesses testify that he has purchased it. In the absence of either of these, one can establish the presumption of ownership by acting with regard to the property as an owner would, for the length of time specified in the mishna, in accordance with the various opinions stated there. The first third of this chapter focuses on instances where there is a dispute as to who owns property. The one currently in possession of it, or another individual who claims to be the owner.

Three years from day to day – The Sefer Hattur cites Rabbeinu Tam’s explanation that one need not actually profit from the land every day during those three years. Rather, this means that he makes use of the land on a regular basis throughout the year, just as an owner of the land would (Rashba; Ran).

But they are not from day to day – According to Rashi, as well as Rabbi Ovadya Bartenura and Tiferet Yom Tov, this is a general statement that is then explained by Rabbi Yishmael and Rabbi Akiva in turn, and that the Gemara (36b), which claims that the Rabbis disagree with the opinions of Rabbi Yishmael and Rabbi Akiva, does not refer to the unattributed statement presented here. By contrast, other commentaries explain that the unattributed statement here does represent a third opinion, which is that the presumption of ownership is established if the field is worked for three full years, even if its produce is consumed only once a year, which is usually the hozako with regard to non-irrigated fields. Rabbi Yishmael and Rabbi Akiva disagree with that, and hold that three full years are not required (Rabbeinu Hananel; Ramah). See the Rashba, who writes at length and explains that the Rif agrees with this opinion.

Gathered his figs – Rashi and most commentaries explain that the term koyisit refers to figs that are cut and then dried. Others write that the term refers to summer produce, e.g., figs and grapes (Rambam’s Commentary on the Mishna).
Those who travel to Usha – ארץ בר גיון, ששנאה טעויות
If witnesses testify that an animal intentionally attacked by goring, kicking, striking, or biting three times within three days, it becomes forewarned with regard to that act (Ra’avad). Upon attacking a fourth time, its owner must pay full damages for any harm caused (Rambam, Sefer Nizkei Mamon 6:1; see Shulhan Arukh, Ḥoshen Mishpat 389:5).

The Gemara asks: If that is so, according to the explanation that the forewarned ox is the source for the presumption of ownership with regard to land, even possession that is not accompanied by a claim, i.e., where the possessor has no explanation as to how he acquired it, should be sufficient to establish the presumption of ownership, just as goring three times automatically establishes its having the status of a forewarned ox. Why did we learn in a mishna (41a): Any possession that is not accompanied by a claim explaining how the possessor became the owner is not sufficient to establish the presumption of ownership?

The Gemara answers: What is the reason that possession that is not accompanied by a claim is not sufficient to establish the presumption of ownership? Because in a standard case where one has presumptive ownership, we say that even if the claimant proves that the field was once his, since the other is in possession of the land, perhaps the truth is as he says, that he purchased it from the previous owner. But now that he himself does not claim that he purchased it, will we claim this for him?

What is the reason, because we say – מה שמענה ארץ בר גיון.
In other words, presumptive ownership serves only to corroborate his claim to ownership in lieu of another proof, such as a bill of sale or witnesses, but profiting from the land is not a mode of acquisition in and of itself. Therefore, if the possessor does not claim to have purchased it, it remains the possession of the prior owner.
Caper bush – קַפָּר. The most common species of caper bush in Israel is the thorny caper bush, Capparis spinosa, a deciduous bush that grows to a height of 1.5 m. Its rounded leaves range in color from purple to green and alongside each leaf there is a pair of thorns. The caper has large white flowers, approximately 6 cm in diameter, with purple stamens. The buds of the caper bush, in rabbinic Hebrew כפרין, from the Greek κάππαρις, kapparís, meaning caper bush or fruit of the caper bush, are the buds of flowers that have not yet bloomed. Nowadays, in Provence, Greece, and other Mediterranean regions, the caper bush is grown primarily for its buds, which are pickled and eaten. If not harvested, these buds open into new flowers on a daily basis and are then pollinated and wither on that same day. The ripe berry of the caper bush is similar in shape to a date or small squash and grows to 6 cm. The bush's young, purple-green branches and its leaves were in ancient times pickled and eaten. They are called shultai in Aramaic. Botanically, the fruit of the caper bush is the berry, which even today is generally eaten pickled.
Jerusalem (Rabbeinu Yona). The Ramban and others claim that the good advice is to bury the documents in clay jars since they will not be returning for some time. The Gemara asks: According to the Rabbis, who hold that three years, and not three harvests, are required to establish the presumption of ownership, what is the source for the concept of this type of presumptive ownership?

Rav Yosef said that it is written in the verse detailing the purchase of a field from Hanamel by Jeremiah, his cousin, during the time of the siege of Eretz Yisrael: "Men shall buy fields for money, and subscribe the deeds, and seal them" (Jeremiah 32:44). This describes the writing of a bill of sale to serve as proof of ownership of the field, since he was unable to remain living there for three years to establish the presumption of ownership. As the prophet Jeremiah stood in the tenth year of King Zedekiah's reign and warned people to write bills of sale for the eleventh year, when Eretz Yisrael would be overrun. Consequently, despite the fact that one purchasing a field there would be able to live on the land for two years, this would not be sufficient to establish the presumption of ownership, which is why he said that they should have bills of sale written.

Abaye said to him: Perhaps there he merely teaches us good advice, that it is advisable to have documents to preclude the need to present witnesses that can attest that one had been living on the land. This is not a proof that the presumption of ownership cannot be established in less than three years.

Alfalfa (asposta) – כַּפַּרְי: From the Pahlavi word aspasta, meaning fodder for horses. Because alfalfa is animal food, people do not wait for the grain to mature enough to produce fruit. Rather, they cut it relatively early so that it will grow again. Where it grows a little and he cuts and consumes it - דְּרָא כְּתִיב: Good advice – טָבָה בַּכֶּס: The good advice is to keep hold of the document to avoid the need for litigation and finding witnesses (Rashi). Other commentaries write that the good advice that Jeremiah offers here is to purchase houses, since the Jewish people will return to Jerusalem (Rabbeinu Yona). The Ramban and others claim that the good advice is to bury the documents in clay jars since they will not be returning for some time.
A person is not particular – רבי והאiger רבי יואל: There are those who are not particular to rush to court to protest against those living on their land, as they do not want to become embroiled in litigation, and they hope that the person will leave on his own. Therefore, their silence does not represent a concession that the field is not theirs (Rashbam).

Those of the bar Elyashiv household – רב בעיון ורב בעיון: The Rashba points out that this question is not easily understood, since if all people other than the household of bar Elyashiv are particular only after three years, why should the aberrant behavior of one family cause a change in the halakha? The Meiir answers that in fact there are many people who are particular about this matter, and the bar Elyashiv household was selected only as a well-known example. The Ritva explains that the point of the Gemara is that there is in fact no standard duration of time after which people become particular, but it is idiosyncratic to each household, with the bar Elyashiv household serving as one example.

A person is careful – רבי והאiger רבי יואל: This cannot be the full explanation as to why the presumption of ownership is established after three years, because then it would not be necessary for him to profit from the land all at once, merely living on the land for three years would suffice. The early commentaries explain that in fact, as soon as one is living on the land and profiting from it, thereby acting as the owner, he should be considered its owner, but if he is therein for fewer than three years, if he were not in possession of a bill of sale, this would call into question the legitimacy of his claim that he had purchased the field. After three years have passed, this is no longer relevant; as it is common for people to lose track of their documents after this duration (Ritva; Ramban 42a). Others explain that when one has profited from the land for three years without anyone lodging a claim, he then tends to become careless with the bill of sale, as he is confident that no one will lodge a claim in the future. One who has not been profiting from the land is aware that the fact that no one has lodged a claim is not decisive, and will keep the bill of sale even beyond three years (Ran).

PERSONALITIES

The bar Elyashiv household – רב בעיון ורב בעיון: This family, who lived in Babylonia, is mentioned several times in the Talmud. From descriptions of them it seems that they were wealthy and very particular about protecting their property. They employed all available methods to do so, including force and deceit.

HALAKHA

For more than that he is not careful – רבי והאiger רבי יואל: The reason one is considered to have established the presumption of ownership as owner after profiting from a field for three years while claiming that he purchased the land or received it as a gift, and he is not required to produce a document to prove his claim, is that people are not careful to hold on to their documents for more than three years if no one has challenged his possession of it, in accordance with the explanation of Rava (Rambam Sefer Mishpatim, Hilkhhot Tovin VeNetin 11:5; Shulhan Arukh, Hoshen Mishpat 11:5).

Your friend has a friend – ו cycles ו_cycles; A protest lodged against one in possession of a field is effective even if it is not lodged in his presence, as long as it is lodged before two witnesses. This is so even if it is lodged in a different country, assuming there are conveyors that travel between the locations, because the people who heard the protest will tell others about it and word will reach the one in possession of the land (Rambam Sefer Mishpatim, Hilkhhot Tovin VeNetin 11:5; Shulhan Arukh, Hoshen Mishpat 14:1).

Because if you do not say so, then when he states: “Build houses, and dwell in them, and plant gardens, and eat the fruit of them” (Jeremiah 29:5), what halakhic statement was he saying? Rather, he teaches us good advice, and here too he teaches us good advice. The Gemara comments: Know that this was mere advice, as it is written: “And put them in an earthen vessel; that they may continue many days” (Jeremiah 32:14). This is obviously good advice to preserve the items properly, and is not a halakhic statement. Therefore, this is not a proof that the presumption of ownership cannot be established in under three years.

Rather, Rava said a different reason: A person who sees another profiting from his field might waive his rights during the first year, and he might waive his rights for two years, but he will not waive his rights for three years. Therefore, if one does not lodge a protest by the end of the third year, it is tantamount to a concession that the land is not his.

Abaye said to him: If that is so, when it becomes clear that the land is in fact owned by another and it is returned to its owner, it should be returned, save for the produce that the possessor consumed during the first two years, as the owner waived his rights to it. Why did Rav Nahman say: The land is returned and the produce is returned?

Rather, Rava said a different reason: A person is not particular the first year to lodge a protest, and he is not particular for two years, even though he does not waive his rights to the produce. He is particular to lodge a protest when he sees another profiting from his field for three years. Therefore, if one does not lodge a protest by the end of the third year, it is tantamount to a concession that the land is not his.

Abaye said to him: If that is so, for people such as those of the bar Elyashiv household, who are particular even with regard to one who goes on the boundary of their field, here too, will you say that presumptive ownership is established immediately, as soon as one makes use of their property without their lodging a protest? And if you would say that is indeed the halakha, if so, you have subjected your statement to the varying circumstances of each case, as there will be a different length of time needed to establish the presumption of ownership depending on who the prior owner is. This is untenable.

Rather, Rava said a different reason: A person is careful with his document detailing his purchase of land for the first year after the purchase, and he is also careful for two and three years. For more time than that, he is not careful and might discard the document if no one has lodged a protest concerning his possession of the land. Therefore, the Sages ruled that after three years have passed, he can prove his ownership by means of presumptive ownership.

Abaye said to him: If that is so, a protest that is lodged not in his presence should not be a valid protest, and if three years pass without a protest in his presence, presumptive ownership should be established even if there was a protest lodged before other people. This is because the one possessing the land can say to the claimant: If you had protested in my presence, I would have been careful with my document and would not have discarded it.

The Gemara explains that this claim would not be accepted, because the claimant can say to him: Your friend has a friend, and your friend’s friend has a friend, and the assumption is that word of the protest reached you.
HALAKHA

Three years that the Sages said – ולשה שלוש ישנים ש었던: The three years that are required to establish the presumption of ownership must be consecutive. If one plants in one year but leaves the field to lie fallow the next year he has not established the presumption of ownership, even if he does so several pairs of years in succession, in accordance with the opinion of Rav Huna (Rambam, Sefer Mishpatim, Hilkhot To'en VeNitan 12:4; Shulhan Arukh, Hoshen Mishpat 142:8, 141:2).

With regard to locations where they leave fields to lie fallow – אֲמַר לֵיהָ: If one plants a field in one year and lets the field lie fallow the next year, and such is the prevalent local custom, even though some plow year after year, he has established the presumption of ownership if he was in possession of the field for three years of planting, and he plowed in the off years (Tor, citing Rashbam). This is in accordance with the opinion of Rav Hama (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 12:4; Shulhan Arukh, Hoshen Mishpat 141:3).

LANGUAGE

Fields (בגאי) – בגאי. From the Middle Persian word baga, which in the original means a garden but is used in Aramaic to refer to open spaces.

 Lưu ý: với trường hợp này, chủ sở hữu phải làm việc trong vòng 3 năm liên tiếp để chứng minh quyền sở hữu. Nếu chủ sở hữu chỉ làm việc trong 3 năm nhưng không liên tiếp, ông ta không thể chứng minh quyền sở hữu.

NOTES

When he profited in consecutive years – יָדְעִי בִּימָמָא: The reasoning here is that, if he did not profit in consecutive years, perhaps all he did was seize the opportunity to take the produce without the owner’s being aware, without intention to actually take possession of the land. Observing this behavior, the owners did not protest (Rabbeinu Yona).

And...concedes with regard to locations where they leave fields to lie fallow – דְּמַובְּרֵי בָּאגָא: Even in such a location, three years of profiting from the land are required to establish the presumption of ownership, but in this case they can be spread out over the course of five years (Rashbam). Others hold that the year that the field is left to lie fallow can also contribute to establishing the presumption of ownership, provided that the possessor at least plows the field during that year (Ra’avan).

Rav Huna says: The three years that the Sages said are required to establish the presumption of ownership is referring to when he worked and profited from the field in consecutive years. The Gemara asks: What is Rav Huna teaching us with this statement? We learned this in the mishna: Their presumption of ownership is established by use for a duration of three years from day to day. The Gemara answers: Lest you say that the phrase: From day to day, serves to exclude partial years and to teach that each of the three years must be full, and actually even scattered, i.e., non-consecutive, years are sufficient, therefore, Rav Huna teaches us that the years must be consecutive.

Rav Hama says: And Rav Huna concedes with regard to locations where they leave fields to lie fallow by planting in alternate years, that the three years combine despite not being consecutive, as that is the manner in which owners profit from the land.

The Gemara asks: Isn’t it obvious that this is the halakha? The Gemara answers: No, it is necessary to state this with regard to locations where there are some people who leave the fields to lie fallow and there are some people who do not leave the fields to lie fallow, and this man left the field to lie fallow. Lest you say that the claimant can say to him: If it is so that the land is yours, you should have sown it, therefore, Rav Hama teaches us that the possessor can say to the claimant: I am not able to hire someone to guard one parcel of land within an entire field, and I acted like those who own other land in this location and let the field lie fallow.

And alternatively, the possessor can say to the claimant: In this manner of farming it is beneficial for me to farm, because the land produces more later, and I do not wish to plant year after year and weaken the soil.

The Gemara clarifies Rav Huna’s statement that the presumption of ownership can be established only by consecutive use. We learned in the mishna about the presumptive ownership of houses. But with regard to the use of houses, where the witnesses testifying to its use know who uses the house only in the day, but they do not know who uses the house in the night, how then can one establish the presumption of ownership in the case of a house? The possessor’s use is not consecutive, as it is continually interrupted by the nights.

Abaye said: Who testifies about houses? Neighbors, and neighbors know who is inside in the day and in the night.
When two come and say – One establishes the presumption of ownership with regard to a house by residing in it for three years, day and night, or by renting it to someone who does so. If the claimant then states definitely, and according to the Rambam even if he suggests, that the house had not been lived in at night, the one in possession of the house must have the neighbors testify that he had lived there at night. If the claimant persists in his claim that the possessor had not been there at night, the latter can establish the presumption of ownership only if he can produce witnesses who testify that they had rented the house and lived there day and night for three years. The Rema writes that Rabbeinu Tam and the Rosh hold that if neighbors testify that he had lived in the house day and night as an owner generally would, that is sufficient to establish the presumption of ownership, even if they cannot testify with regard to every day and night of the three years. It is permitted for them to testify that he had been living there for three years even without having observed him there on each day and night of the three years (Rambam Sefer Mishpatim, Hilkhot Tenin 14:2; Shulhan Arukh, Hoshen Mishpat 140:8 and Shach there).

Where they are holding the payment for the house – Testimony of renters is sufficient to establish the presumption of ownership on behalf of the one who rented the house to them. This is the halakha only if the rental money is still in their possession and they are prepared to pay whoever will be determined to own the house. If they had already paid the one on whose behalf they are testifying, they are biased in their testimony, since it is possible the latter will lose the case and they will have to pay a second time, this time to the other party. Consequently, their testimony is not accepted (Shulhan Arukh, Hoshen Mishpat 140:9).

We rented the house from him – Some commentators write that Rava disagrees with Abaye and holds that the testimony of the neighbors is insufficient, as they are unable to account for the entire period of daytime and nighttime, and therefore other testimony is required. Most commentators understand that Rava is teaching about an additional source of testimony, which will be relevant if there are no neighbors or if the neighbors are not Jewish (Ramah).

Are biased in their testimony – It is unclear why the two witnesses are considered to be biased in their testimony, since if it turns out that they paid rent to one who did not actually own the house, they can demand their money back. The Ramban answers that they would prefer not to have to litigate in court for the return of their money and would rather retain the status quo. The Rashba writes that there are instances where they will not be able to obtain their money in return.

Mar Zutra said – The commentators disagree with regard to the context of Mar Zutra’s statement. The Rashbam and the Rif Migash explain that he is teaching that generally the witnesses do not have to testify explicitly that the house was lived in day and night, but if the claimant demands that they do so, they must. The Rashbam adds that this is so only if the claimant states with certainty that no one was living there at night. Others explain that Mar Zutra is referring to a case where the witnesses are those who rented the house. He holds that even if they had not yet paid the rent, the claimant can demand that other witnesses testify to establish the presumption of ownership by testifying that these people had been living in the house as they claim.

Rabbeinu Hananel explains that the word leitu does not mean: Let come, but rather: There are not. Accordingly, Mar Zutra is stating that while people currently living in the house are not deemed credible to testify to establish the presumption of ownership, if the possessor can produce two other people who are not currently living in the house who testify that they themselves had lived in the house and paid rent to this man for three years, his claim is accepted. These witnesses are not biased in their testimony, as they could deny having lived in the house at all and thereby exempt themselves from payment to the claimant. According to this explanation, one would accept the variant text of the Gemara, which reads: Testify for me, as opposed to the standard version, which reads: Testify for him.

The Gemara quotes a related statement. Mar Zutra said: And if the claimant claims and says: Let two witnesses come to testify for the possessor that he lived in the house three years in the day and in the night, his claim is a legitimate claim.

We rented the house from him – Some commentators write that Rava disagrees with Abaye and holds that the testimony of the neighbors is insufficient, as they are unable to account for the entire period of daytime and nighttime, and therefore other testimony is required. Most commentators understand that Rava is teaching about an additional source of testimony, which will be relevant if there are no neighbors or if the neighbors are not Jewish (Ramah).

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And Mar Zutra concedes with regard to peddlers – דְּלָא אִית לֵיהּ. There are many interpretations of this statement, which in turn are dependent upon the different versions of the text as well as the explanation of Mar Zutra’s statement on the previous day. The standard text, that of the Rashbam, reads: And Mar Zutra concedes. There was an alternative text before the gemara and Rabbi Hananel that reads: And Rav Huna concedes, and others have yet another version that reads: And Rav Huna concedes (Rabbeinu Barukh; see Rashbam).

Some explain that the Gemara is stating that even according to Mar Zutra, if the claimant is a peddler the court lodges a claim on his behalf against the possessor, who must then prove that he resided in the house day and night, as there is a strong concern that he may have taken advantage of the peddler’s absence to live in his house (Rashbam; Rid; Rashba; Rosh). Others explain that it is the possessor who is the peddler, an opinion that has two variations. One is that if the possessor was a peddler the court does not require him to prove that he resided in the house for the entire three years without traveling, and it is sufficient that he can establish that he resided in the house in a manner that a peddler would (Rabbeinu Barukh). Alternatively, if the possessor was a peddler, the court recommends to the claimant that he demand proof that the possessor had resided in the house at all times (Rabbeinu Gershon Meor HaGola; Ri Migash).

According to the version of the text that reads: And Rav Huna concedes. The Rashbam explains that this refers to peddlers that they had rented the house from the possessor, in which case they do not have to testify that they resided there day and night (Tosafot, citing Rabbeinu Hananel; Rabbeinu Yona), while others explain that in that case the court recommends to the claimant to demand proof that they had resided in the house at all times (Ramah).

And Rav Huna concedes – אָנַן מִכְלָל אֵלָה. Since these stores were used only during the day and were not used to store inventory at night, use during the day is sufficient to establish the presumption of ownership. Some early commentators hold that the standard three years of use is enough, and the nights are not considered interruptions. It is therefore similar to use of an olive press (Rabbeinu Hananel; Ri Migash; Ran). The Rambam rules similarly, as does the Ra’avad, as cited by the Shita Mekubbetzet. Other early commentators hold that even though the nights are not considered an interruption, the store must be used for six years in order to establish the presumption of ownership (Tosafot; Rashba; Ra’avad; Rosh). The Mordkhai holds that if the structure had been a store before he possessed it, three years suffice, but if it had been a house when he took possession, and he converted it into a store, it has to be used for six years.

Generates publicity – דְּלִימָמָא עֲבִידָא. Some commentators explain that since there is a document detailing their arrangement, there is no need for them to make use of the maidservant for any duration to establish the presumption of ownership. Rather, it immediately becomes known that they are partners and are dividing the proceeds, which in turn are dependent upon the difference between day and night, forcing the possessor to produce witnesses that he had (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 12:5; Shi’ulhan Arukh, Hoshen Mishpat 140:14). Some hold that if the structure had been a store before the possessor entered it, three years are sufficient, whereas if he converted a house into a store, he must possess it for six years (Mordkhai), and the Rema rules this way (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 12:5; Shi’ulhan Arukh, Hoshen Mishpat 140:14).

Peddlers who travel through cities – רוּחַב עָבִידָא. If one in possession of a house is a travelling salesman who leaves his house and does not stay there continuously, the court recommends that the claimant demand proof that the possessor had resided in the house at all times. Although his travels do not negate his presumptive ownership, he must prove that he resided in the house at all times when he was home. Similarly, if the claimant was a peddler who cannot always know, due to his travels, when or how much time he resided in his house, the court lodges a claim on his behalf that the possessor did not live there during the nights, forcing the possessor to produce witnesses that he had (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 12:5; Shi’ulhan Arukh, Hoshen Mishpat 140:14, and in the comment of Rema and Netivot HalMishpat there).

With regard to a store of Mehoza – הָא רַבּוּ הוּנָא בְּחָנוּתָא דִּמְחוֹזָא. With regard to stores and the like that are used only during the day-time, the presumption of ownership is established if one uses it during the daytime for three years. The Rema writes that some authorities (Ra’avad; Rosh) hold that six years are required. Some hold that the structure had been a store before the possessor entered it, three years are sufficient, whereas if he converted a house into a store, he must possess it for six years (Mordkhai), and the Rema rules this way (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 12:5; Shi’ulhan Arukh, Hoshen Mishpat 140:14). Does not establish the presumption of ownership with regard to you – וַיְבַטֵּל הַמֵּצָא הָעָבִידָא. If two partners jointly own a field where one of them uses it in the first, third, and fifth years, and the other uses it in the second, fourth, and sixth years, neither establishes the presumption of ownership. But if they wrote a document detailing their arrangement, even if they do not have a bill of sale, the presumption of ownership is established after three years. Similarly, if they have a bill of sale stating that they purchased the field from one person, and another claim that he was in fact the true owner, the presumption of ownership is established after three years (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 12:5; Shi’ulhan Arukh, Hoshen Mishpat 140:14 and Shi’ulhan Arukh, Hoshen Mishpat 144:1 and Smarta).
The Gemara continues its discussion of the requirement for full use of land to establish the presumption of ownership. Rava says: If one worked and profited, for three years, from all of the land except for the area required for sowing a quarter-kav of seed [beit rova], which he did not use, he acquires all of the field based on presumptive ownership except for that of the land.

Rav Huna, son of Rav Yehoshua, says: And we said this ruling only where that beit rova is suitable for planting, but if it is not suitable for planting, he acquires it by means of the acquisition of the rest of the field.

Rav Beivai bar Abaye objects to this: If that is so, how could one acquire an area that is only rock* by establishing the presumption of ownership, as one does not plant rocky land? Rather, the presumption of ownership can be established by standing animals on it or spreading produce on it. Here too, he should be required to stand animals on the beit rova or to spread produce on it. If he did not profit from this small piece of land at all, he has not established the presumption of ownership with regard to it, and acquires only the rest of the field.

The Gemara relates that there was a certain person who said to another: What do you want, i.e., what are you doing, with this house of mine? The other said to him: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: I was among the distant settlements, and was unaware that you were residing in my house, which is why I did not lodge a protest.

The one residing in the house came before Rav Nahman for a judgment. Rav Nahman said to him: Go clarify your profiting, i.e., prove that you really resided there for three years, and then the case can be judged. Rava said to Rav Nahman: Is this the correct judgment? The halakha is that the burden of proof rests upon the claimant. Therefore, the one who is attempting to take the house from the possessor should have to prove that the other did not reside in the house.

And the Gemara raises a contradiction between this statement of Rava and another statement of Rava, and it raises a contradiction between this statement of Rav Nahman and another statement of Rav Nahman. As there was a certain person

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**Notes**

The early commentators write that this is stated with regard to establishing the presumption of ownership through use in the absence of a bill of sale. With regard to taking possession of land through use, if one used the rest of the land that was encompassed by a boundary, he acquires the unused beit rova as well (Ri Migash; Rabbeinu Yona; Ramah).

I was among the distant settlements – This refers to the name or nickname of a distant location. According to the Ramban and the Nimmukei Yosef, it means a southern settlement.

Some commentators explain that this refers to the name or nickname of a distant location. According to the Ramban and the Nimmukei Yosef, it means a southern settlement.

According to Rabbeinu Hananel and the Ramah, the claim was as follows: You say that you bought the field from me at a particular time, but I was in a distant location then and could not have sold it to you. The Ramban, citing Rif, and the Rashba explain that the claim is that he was away during the three years and was not made aware that one was residing in his house so that he could lodge a protest. According to the Ramban, Tosafot, and the first opinion of the Fid, this phrase does not refer to a distant location but rather means: In the inner rooms. Accordingly, they explain that he is justifying his lack of protest by claiming that he was living with the possessor, to whom he had granted the right to stay in the house, obviating the need to protest. According to this explanation, Tosafot say, it must be that the house had several entrances, such that the witnesses are unable to testify whether the claimant passed through the possessor’s area. See the Ramban and the Rashba, who have great difficulty with this interpretation.

Clarity of your profiting – According to the explanation that the claim was that the claimant had been in a distant location and could not have sold the land, Rav Nahman instructed the possessor to prove that the claimant had been back home at some point. According to the explanation that the claim was that he was unable to find out that someone was residing in his house, Rav Nahman instructed the possessor to prove that the claimant had been able to hear of it. According to the explanation that the claim was that the possessor had been living in the inner rooms, Rav Nahman instructed the possessor to prove at least that he, the possessor, had been residing there for three years.

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By means of land – One manner of acquiring movable items is by means of the acquisition of land. Instead of performing a separate act of acquisition for each movable item, one may perform a transaction to acquire a parcel of land and state that included in this transaction is the acquisition of certain movable items along with it. In this Gemara, the suggestion is that one should be able to acquire the beit rova in the same manner.

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**Background**

If one profited for three years from all of the land except for a beit rova – If for three years one worked and profited from all of the land except for a beit rova, he establishes the presumption of ownership for the whole field except for that area. This is the halakha even if that beit rova was composed of rock and was unsuitable for planting, if it was not used in some other manner, in accordance with the opinion of Rav Beivai bar Abaye (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 12:16; Shulhan Arukh, Hoshen Mishpat 141:14). How could one acquire rock – Ravina bar Abaye states: If one purchases from another a rocky patch of land or a field that includes a rocky area, he acquires it through using it for a suitable purpose, such as spreading produce on it to dry or having animals stand there. The Rema writes that others (Ravaved and Razi) hold that one does not acquire with this type of use (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 12:13 and Sefer Kinyan, Hilkhot Mekhira 15:5; Shulhan Arukh, Hoshen Mishpat 152:8, n 1 in the comment of the Rema, 141:12). Go clarify your profiting – Rav ben Abaye rules: If one is in possession of land, and the claimant states that he had been away for a single day during the time when he claims to have purchased it from him, the possessor must prove that the claimant had been present even for a single day during the time when he claims to have purchased it. Some authorities state that if the possessor does not state the day, or the month (Smtd), that he purchased the land, he needs to produce witnesses who testify only that he had profited from the land for three years (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 15:10; Shulhan Arukh, Hoshen Mishpat 146:11–12).
It is incumbent on him to reveal – רבי יהודה א"ה ל"ה,uyen. With regard to one who says to another that he is selling him all of so-and-so’s fields, and the seller later claims that a particular field that is generally known as so-and-so’s field was not actually his, and therefore was not included in the sale, the seller must prove that it had not belonged to so-and-so (Sms).

Otherwise, the buyer takes possession of the field, in accordance with the opinion of Rav Naḥman (Rambam Sefer Kinyan, Hilkhot Meḥkira 21:21; Shulḥan Arukh, Hoshen Mishpat 218:2).

I was in the outer marketplaces – רבי יהודה א"ה,uyen. If one worked and profited from land for three years, and the prior owner was elsewhere, and this was a crisis period, when travel between these two locations was restricted, and the possessor claims that the prior owner had been in the area for thirty days and did not protest, the possessor can claim that the reason he did not protest is that he was preoccupied in the marketplace (Rambam).

The Gemara continues: There is a difficulty from one statement of Rava to another statement of Rava, and there is also a difficulty from one statement of Rab Nahman to another statement of Rab Nahman, as in the first case, where the claimant states that he had been in a distant location, Rab Nahman ruled in favor of the claimant, and Rava ruled in favor of the possessor; while in the second case, that of the property of bar Sisin, their opinions were reversed.

The Gemara answers: The contradiction between one statement of Rava and another statement of Rab Nahman is not difficult, because there, in the case of the property of bar Sisin, the seller had been established as having the land in his property, which is why Rava rules in his favor. But here, in the case where the claimant states that he had been in a distant location, the buyer is established as having the house in his property.

The contradiction between one statement of Rab Nahman and the other statement of Rab Nahman is not difficult as well, because there, since the seller said to him: I am hereby selling you all of the property that I own of the house of bar Sisin, and this parcel of land is called: Of the house of bar Sisin, it is incumbent on him to reveal that the parcel under dispute is not of the house of bar Sisin. But here, in the case where the claimant states that he had been in a distant location, it should not be any different from a case where the possessor is holding a document as evidence that he purchased the house. Wouldn’t we then say to him: First ratify your document, and only then be established in the property? In this case as well, since his presumptive ownership is in place of a document, he needs to clarify the matter by means of witnesses.

There was a certain person who said to another: What do you want with this house of mine? The possessor said to him: I purchased it from you and I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: I was in the outer marketplaces, and was unaware that you were residing in my house, and therefore did not lodge a protest, so your profiting does not establish the presumption of ownership. The possessor said to him: But I have witnesses that every year you would come here for thirty days and had an opportunity to know that I was residing in your house and to lodge a protest. The claimant said to him: I was occupied with my business in the outer marketplaces for those thirty days. Rava said: A person is apt to be occupied with business in the marketplace for all of thirty days, and accepted his claim.

There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so, who told me that he purchased it from you. The claimant said to him: Don’t you concede...
that this land is formerly mine, and that you did not purchase it from me! Go away, I am not legally answerable to you. Rava said: The claimant stated the halakha to the possessor, as this is a legitimate claim, and Rava accepted his claim.

There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so and then I worked and profited from it for the years necessary for establishing the presumption of ownership. The claimant said to him: So-and-so is a robber who robbed me of the field, and he did not have the authority to sell it to you.

The possessor said to him: But I have witnesses that I came and consulted with you, and you said to me: Go purchase the land, indicating that you conceded that he had the authority to sell it. The claimant said to him: The reason that I advised you to purchase it was because the second person, i.e., you, the possessor, is amenable to me, while the first, i.e., the purported thief, is more difficult than he, i.e., I prefer to litigate with you rather than with him. Rava said: The claimant stated the halakha to the possessor, as this is a legitimate claim, and Rava accepted his claim.

The Gemara asks: In accordance with whose opinion is Rava’s statement? Is it in accordance with the opinion of Admon? As we learned in a mishna (Ketubot 109a): With regard to one who contests ownership of a field, claiming that a field possessed by someone else actually belongs to him, and the claimant himself is signed as a witness on the bill of sale of the field to that other person, Admon says: His signature does not disprove his claim of ownership of the property, as it is possible that the claimant said to himself: The second person is amenable to me to deal with, as I can reason with him, while the first owner, who sold the field to the current possessor, is more difficult to deal with than he. And the Rabbis say: He lost his right to contest, as he signed a bill of sale that states that the field belongs to the possessor. Rava’s ruling appears to be in accordance with the individual opinion of Admon, and not with the opinion of the Rabbis.

And that you did not purchase it from me – ראה מה הוא ממי舷א: Reuven has possessed a field for a number of years, and then Shimon, the prior owner, claims that he still owns it. Reuven says to him: I know (see Sina and Shakh) that this field was formerly yours, but I purchased it from Levi, who told me (Shakh) that he purchased it from you, and Shimon counters by claiming that Levi stole the field from him. In such a case the court awards the field and its produce to Shimon, despite the fact that there are no witnesses who attest to its having been his, since Reuven concedes that the field had previously belonged to Shimon (Rambam Sefer Mishpatim, Hilkhot Tovin VeNitan 14:14; Shulhan Arukh, Hoshen Mishpat 146:17, 147:5).

I came and consulted with you – איביד אשתיך: If Shimon contested the ownership of a field, claiming that Reuven, the possessor, purchased it from Levi, a thief, and witnesses confirm that Levi stole the field, or Reuven cannot prove that Levi had profited from the field, even for a day, and Reuven produces witnesses that he had consulted with Shimon, who had advised him to purchase the field, this is not considered to be an admission by Shimon that the field is not his, since he did not perform any action indicating that it is not his. Therefore, he is able to claim that his intention was to arrange for the field to be transferred to the possession of someone with whom it would be easier to litigate (Rambam Sefer Mishpatim, Hilkhot Tovin VeNitan 16:1; Shulhan Arukh, Hoshen Mishpat 146:17).

He lost his right – איביד אשתיך: If Reuven purchased a field from Levi, and Shimon signed as a witness on the bill of sale, and Shimon later claimed that the field had been stolen from him by Levi, his claim is disregarded. This is due to the fact that he indicated that he concesseds that Levi owned the field by performing the action of signing the bill of sale (Rambam Sefer Mishpatim, Hilkhot Tovin VeNitan 16:1; Shulhan Arukh, Hoshen Mishpat 147:1).
Shimon counters by claiming that Levi stole the field from him. In such a case Reuven concedes that the field had previously belonged to him, and there is testimony for the years required to establish the presumption of ownership, accompanied by the benefit of avoiding his litigation. When viewed together, this amounts to testimony for the years necessary for establishing the presumption of ownership.

The Gemara explains: You may even say that Rava’s ruling is in accordance with the opinion of the Rabbis. There, in the case of the mishna in tractate Ketubot, by signing the bill of sale the claimant performed an action indicating that the field was not his for the benefit of the possessor of the field, but here, in Rava’s case, there was no action, only speech, and a person is apt to casually say statements, and he does not lose his right by virtue of this.

There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so and then I worked and profited from it for the years necessary for establishing the presumption of ownership, the claimant said to him: So-and-so is a robber who robbed me of the field, and he did not have the authority to sell it to you. The possessor said to him: But I have witnesses that you came to me at night and you said to me: Sell it to me, indicating that it is not your land, as if it were yours, you would have demanded that I return it without your paying for it. The claimant said to him: I said to myself: Let me purchase the benefit of avoiding my litigation in order to reclaim my land. Rava said: A person is apt to pay money to purchase the benefit of avoiding his litigation.

There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from so-and-so and then I worked and profited from it for the years necessary for establishing the presumption of ownership, indicating that he possessed it for three years, as this is the minimum number of years required for establishing the presumption of ownership. The claimant said to him: But I am holding a document stating that I purchased it from that seller four years ago. Therefore, if it was sold to you three years ago, as you claim, he did not have the authority to sell it at that time.

The possessor said to him: Do you maintain that when I said: I profited from the land for the years necessary for establishing the presumption of ownership, that I was saying I worked and profited from the land for precisely three years? What I actually was saying was that I worked and profited from the land for many years and thereby established the presumption of ownership. Since my purchase predated yours, it was effective. Rava said: It is common for people to refer to many years as: Years necessary for establishing the presumption of ownership, and his claim is accepted.

The Gemara comments: And this matter applies only if he profited from the land for seven years, so that presumptive ownership of this possessor preceded the document of that claimant.
There was an incident where two people disputed the ownership of land. This one says: The land belonged to my ancestors and I inherited it from them, and that one says: The land belonged to my ancestors and I inherited it from them. This one brings witnesses that the land belonged to his ancestors, and that one brings witnesses that he currently possesses the land and that he worked and profited from the land for the years necessary for establishing the presumption of ownership.

Rabba said: The judgment is in favor of the possessor, due to the legal principle that if the judgment would have been decided in one’s favor had he advanced a certain claim, and he instead advanced a different claim that leads to the same ruling, he has credibility, as why would he lie and state this claim? If the possessor wanted to lie, he could have said to the claimant: I purchased the land from you and I worked and profited from it for the years necessary for establishing the presumption of ownership, in which case he would have been awarded the land. Abaye said to Rabba: We do not say the principle of: Why would I lie, in a case where there are witnesses contradicting his current claim, as they testify that the land belonged to the ancestors of the claimant. Therefore, he should not be awarded the land.

The possessor then said to the claimant: Yes, it is true that it had belonged to your ancestors, but I purchased it from you, and by stating that which I said to you: It belonged to my ancestors, I merely meant that I rely upon my ownership of it as if it belonged to my ancestors, as I purchased it and then profited from it for the years necessary for establishing the presumption of ownership.

The Gemara asks: Can he state a claim and return and state a modified version of his claim, or can he not state a claim and return and state a modified version of his claim? Ulla said: He can state a claim and return and state a modified version of his claim. The Sages of Neharde’a say: He cannot state a claim and return and state a modified version of his claim.
And did not belong to your ancestors – אָבּוֹתֵיכֶם

Reuven and Shimon were in a dispute with regard to the ownership of a certain parcel of land. Reuven said: The land belonged to my ancestors, and I inherited it from them, and Shimon said: The land belonged to my ancestors, and I inherited it from them. Reuven brought witnesses that the land belonged to his ancestors, and that he worked and profited from the land for the years necessary for establishing the presumption of ownership, and Shimon brought witnesses only that he worked and profited from the land for the years necessary for establishing the presumption of ownership. In this case the court confiscates the land from Shimon and gives it to Reuven. The Rama, citing the Tosafot, qualifies this in the following way. If it is possible to interpret Shimon’s claim to mean that his ancestors purchased the land, as opposed to meaning that it always belonged to his family, then the court does not confiscate the land. Some maintain that this is the halakha even if the possessor does not explicitly offer this interpretation (Smot; see Shulkhan Arukh). But if Shimon said that it always belonged to his ancestors, then the court does confiscate the land.

If Shimon conceded to Reuven, while they were still in court, that in fact the land had belonged to Reuven’s ancestors but that he had purchased it from them, and explained that his claim that it had belonged to his own ancestors was intended only figuratively, and what he had actually meant was that he is secure in his possession of the land as if it had been an ancestral possession, or alternatively, if he clarified that he meant that his ancestors purchased the land from Reuven’s ancestors, in either of these cases, his clarification is deemed credible. By contrast, if he had initially stated that it had belonged to his ancestors and not to Reuven’s ancestors, then he cannot revive his claim in this manner. This is in accordance with the conclusion of Ulla (Ram Pethah Isher; Shulkhan Arukh). The land therefore gives the land to Reuven. This is in accordance with the halakha.

The Gemara clarifies their respective opinions: And Ulla concedes that in a case where he had initially said to him: The land belonged to my ancestors and did not belong to your ancestors,7 that he cannot state a claim and return and state a modified version of his claim, as Ulla allows the litigant only to reinterpret his initial claim, not to replace it with a contradictory claim. And Ulla also concedes that in a case where he was standing in court and did not state a particular claim, and he later came in from outside and back into the court and he stated that claim, that he cannot return and state that claim. What is the reason for this? It is because it is apparent that these claims of his were taught to him by someone after he left the court.

The Sage of Neharde’a concedes that in a case where the litigant who changed his claim said to the other litigant that when he had initially claimed: The land belonged to my ancestors, he had actually meant: It belonged to my ancestors, who purchased it from your ancestors,8 that he can state a claim and return and state a modified version of his claim, as this serves only to clarify, and not negate, his initial claim. And the Sage of Neharde’a also concedes that in a case where he discussed the matter outside of the court and did not state a particular claim, and then he came in to the court and stated that claim, that he can return and state that claim. What is the reason for this? Because a person is apt not to reveal his claims except to the court.

Ameimar said: I am from Neharde’a, but I nevertheless hold that a litigant can state a claim and return and state a modified version of his claim. The Gemara concludes: And the halakha is that a litigant can state a claim and return and state a modified version of his claim.9

In an incident where two people dispute the ownership of land, this one says: The land belonged to my ancestors and I inherited it from them, and that one says: The land belonged to my ancestors and I inherited it from them. The first one brings witnesses that the land belonged to his ancestors, and that he worked and profited from the land for the years necessary for establishing the presumption of ownership. And the second one brings witnesses only that he worked and profited from the land for the years necessary for establishing the presumption of ownership.

Rav Naḥman said: Establish the testimony with regard to the profiting by the first litigant alongside the testimony with regard to the profiting10 by the second, and the two testimonies cancel each other out, leaving the testimony with regard to ownership by the ancestors of the first litigant. And therefore, establish the land in the presumptive ownership of the litigant who brought witnesses that it belonged to his ancestors. Rava objected and said to him: This testimony cannot be relied on, as it is contradicted by the other testimony. Rav Naḥman responded and said to him: Although it is so that the testimony was contradicted with regard to profiting from the land, 11

NOTES

It belonged to my ancestors who purchased it from your ancestors – אָבּוֹתֵיכֶם שֶׁל אֲבוֹתֶיךָ שֶׁלְּ ָחוּהָ מֵאֲבוֹתֶיךָ. The reason that his second claim is accepted is that he is not retracting what he initially claimed, but rather clarifies his claim (Rishonim).

Establish the profiting alongside the profiting – דֵּעֵה נְדוֹרֵה נְדוֹרֵה נְדוֹרֵה. In a case where Reuven and Shimon are in a dispute with regard to the ownership of a certain parcel of land, and Reuven brings witnesses that the land had belonged to his ancestors and that he worked and profited from the land for the years necessary for establishing the presumption of ownership, and Shimon brings witnesses only that he worked and profited from the land for the years necessary for establishing the presumption of ownership, the contradictory testimonies with regard to presumptive ownership nullify each other, and the case is decided based on the testimony with regard to ancestral ownership. The court therefore gives the land to Reuven. This is in accordance with the opinion of Rav Naḥman (Rambam Sefer Moshpatim, Hilkhah To’en VeNitan 15:5; Shulkhan Arukh; Hoshen Mishpat 146:23).
was the testimony contradicted with regard to ownership of the ancestors?

The Gemara asks: Shall we say that Rava and Rav Naĥman disagree in the dispute between Rav Huna and Rav Ĥisda?

As it was stated concerning two groups of witnesses that contradict each other, Rav Huna says: This one comes to court on its own and testifies, and that one comes to court on its own and testifies. Despite the fact that one group certainly testified falsely, which should serve to disqualify one of the groups, each group is able to testify in another case. And Rav Ĥisda says: Why do I need these lying witnesses?

In other words, they are all disqualified to testify in another case until it is clarified which of them had testified falsely. The Gemara asks: Shall we say that Rav Naĥman is the one who says his ruling in accordance with the opinion of Rav Huna, and Rava says his ruling in accordance with the opinion of Rav Ĥisda?

The Gemara explains: According to the opinion of Rav Ĥisda, who holds that the witnesses are disqualified, everyone agrees that the testimony concerning ancestral ownership is not accepted, as the witnesses were contradicted concerning their testimony of usage of the land, and Rav Naĥman’s ruling cannot accord with his opinion. When Rav Naĥman and Rava disagree it is according to the opinion of Rav Huna, who does not disqualify the witnesses. The ruling of Rav Naĥman is in accordance with the opinion of Rav Huna, and he therefore accepts the testimony with regard to ancestral ownership, and Rava would say: Rav Huna says that the witnesses are accepted only for another testimony, i.e., in a different case. But they are not accepted for the same testimony, as in this incident, where both testimonies concerned ownership of the same land.

The Gemara relates the continuation of the case above. The one who had brought witnesses only to his having profited from the land then brought witnesses that it had belonged to his ancestors, thereby balancing the evidence for the two litigants. Therefore, Rav Naĥman said: We previously brought down to the land the one who initially had evidence of ancestral ownership to take possession of it, and we now bring him up from it, removing him from the land. And we are not concerned about the possible contempt of court that might result from perceived indecisiveness.

**NOTES**

This one comes to court on its own — רַבָּא מָה נַא: Each group can testify separately in a different case, as there is no clear-cut evidence disqualifying either pair. Clear-cut evidence is needed to disqualify witnesses, as people are presumed to be fit to testify.

Why do I need these lying witnesses — אֲמַר רַבָּא מָה נַא: Since the fitness of each group with regard to testimony is in equal doubt, one cannot rely on their testimony to remove property from one in possession of it (Rav Hai Gaon; Rashbam).

We brought down — וְכֵן בִּפְקַדְתָּא: The commentaries differ as to the meaning of the terms: Brought down, and: Bring up. One possibility is that they refer to removing a litigant from property that the court had previously awarded to him, which is a common use in the Gemara. Another possibility is that it refers to the court’s restoring a person’s presumptive status after having removed it from him. This is how the terms are used subsequently in the Gemara (32a). There is a second, possibly independent, dispute as to the details of the case itself. Some understand that as a result of the new testimony, the land is being returned to the possession of the litigant that had possessed it at the start of the court proceedings, as he now has brought witnesses that it belonged to his ancestors (Rabbeinu Hananel; Rabbeinu Gershon Meor HaGola). Others explain that at the outset of the court proceedings no one was in possession of the field. If the field had initially been in the possession of one of the litigants before the court’s first ruling, they return it to his possession (Tur). The concern that this may generate contempt of court due to their reversing their decision is not taken into account (Rambam Sefer Mishpatim, Hilkhot Edut 15:5; Shulhan Arukh, Hoshen Mishpat 31:1 and Netivot Halakhah there).

Then brought witnesses — קִנְיָה וְדַרְשָׁעָא: In a case where the court granted ownership of a field to a litigant who produced testimony that it had belonged to his ancestors, and then the other litigant also produced testimony that it belonged to his ancestors, the testimonies are contradicted, and the court confiscates the property from the one to whom they had initially awarded it, and they rule that whoever is stronger prevails and takes possession of the field. If the field had initially been in the possession of one of the litigants before the court’s first ruling, they return it to his possession (Tur). The concern that this may generate contempt of court due to their reversing their decision is not taken into account (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 15:5; Shulhan Arukh; Hoshen Mishpat 31:1 and Netivot Halakhah there).
Another possibility is that it refers to the court’s restoring a person’s fitness of each group with regard to testimony is in equal doubt, one possibility is that this refers to a case where she married one of the witnesses who testified that it is permitted for her to leave her husband based on the uncertainty created by contradictory witnesses. The fact that she is not required to leave her marriage in light of the new testimony seems to indicate an unwillingness to reverse the court’s ruling that she may marry, contrary to the ruling of Rav Nahman.

HALAKHA

Two witnesses say this married man died – קִשְׁתֵּי שָׁמִיָּה קִשְׁתֵּי מֶשָּׁה

If two witnesses testified that a certain man died, and two others testified that he did not die, or two witnesses testified that a certain woman was divorces, and two others testified that she was not divorced; the wife may not remarry. If she did remarry she must leave her new husband, as there is significant doubt as to her status. But if witnesses testified that her husband died, and two others testified that he did not die, and then the wife married one of the witnesses while stating that she is certain that her husband is dead, then she does not have to leave her new husband, in accordance with the opinion of the Rabbis and the Gemara in Ketubot 23b (Rambam Sefer Nashim, Hilkhot Geirushin 12:6, 7, 19, 23; Shulhan Arukh, Even HaEzer 17:42, 152:3).

One is elevated to the priesthood – מַעֲלִין לַכְּהוּנָּה

If one witness testifies that a certain individual is a priest, his testimony is not effective to elevate him to the presumptive status of priesthood and to allow him to partake of teruma. But nowadays, when there is no teruma, the testimony of one witness, as the individual’s own father, is effective to elevate the person. He is then considered a priest with regard to all the laws of priesthood. This includes partaking of teruma, reading the first portion in the Torah, recting the Priestly Benediction, and all of the priestly prohibitions (Rambam Sefer Kedusha, Hilkhot Issurei Bia 20a, 13; Shulhan Arukh, Even HaEzer 31a–b).

Rava, and some say it is Rabbi Zeira, raises an objection from a Baraita. If there was a married man whose fate was unknown, and two witnesses say: This married man died, and two witnesses say: He did not die; or if two witnesses say: This woman was divorced, and two witnesses say: She was not divorced, this woman may not marry; as there is not unequivocal testimony that she is no longer married, but if she marries, the marriage is valid and she need not leave her husband. Rabbi Menahem, son of Rabbi Yosei, says: She must leave her husband.

Rabbi Menahem, son of Rabbi Yosei, said: When do I say that she must leave her husband? She must leave him in a case where witnesses came to testify that she is still married and she then married despite their testimony. But if she married and the witnesses then came to testify that she is still married, this woman is not required to leave her husband based on the uncertainty created by contradictory witnesses. The fact that she is not required to leave her marriage in light of the new testimony seems to indicate an unwillingness to reverse the court’s ruling that she may marry, contrary to the ruling of Rav Nahman.

The Gemara relates that Rav Nahman then went out and performed an action, taking away the land from the litigant in whose favor he had previously ruled. One who saw what he did thought that he made a mistake, but that is not so. Rather, he performed an action despite the objections that had been raised because the matter depends on great authorities [ashlei ravrevei]. Since, as the Gemara will demonstrate, this issue is subject to dispute between great authorities, he relied on those that supported his opinion.

As we learned in a mishna (Ketubot 23b): Rabbi Yehuda says: One is not elevated to the presumptive status of priesthood on the basis of the testimony of one witness. Two witnesses are required for that purpose. Rabbi Elazar says: When is the halakha? In a case where there are challengers to his claim that he is a priest. But in a case where there are no challengers, one is elevated to the presumptive status of priesthood on the basis of the testimony of one witness. Rabban Shimon Ben Gamliel says in the name of Rabbi Shimon, son of the deputy High Priest: One is elevated to the presumptive status of priesthood on the basis of the testimony of one witness.

The Gemara asks: The opinion of Rabban Shimon Ben Gamliel is identical to the opinion of Rabbi Elazar, as they agree that one is elevated to the presumptive status of priesthood on the basis of one witness when there are no challengers. What is their dispute? And if you would say that there is a practical difference between them in a case where there is a challenge posed by one person, as Rabbi Elazar holds: A challenge posed by one person is sufficient to undermine one’s presumptive status of priesthood, and two witnesses are required to overcome that challenge;

NOTES

The commentaries differ as to the meaning of the terms: Brought down, and Bring up. One possibility is [flashedam].
The Gemara explains the dispute: And here it is with regard to concern about contempt of court⁸ that they disagree. Rabbi Elazar holds: Once we downgraded him from the presumptive status of priesthood based on the testimony of two witnesses, we do not then elevate him, as we are concerned about contempt of court, as a reversal in the court's decision creates the impression that the court operates indecisively. And Rabban Shimon Ben Gamliel holds: We downgraded him from the presumptive status of priesthood and we then elevate him,⁹ and we are not concerned about contempt of court. The primary concern is that the matter should be determined based on the relevant testimonies.

There is no challenge with fewer than two witnesses – רבי יוחנן בראק: In order for the court to investigate allegations contesting the fitness of the lineage of one who has the presumptive status of having fit lineage, the uncertainty with regard to his lineage must be raised by two witnesses (Rambam Sefer Redeha; Hilkhot Issurei Bia 19:16; Shulhan Arukh, Even HaEzer 2:3).

We presume with regard to the father – פורסן על חלוצה. If there is one whose father had the presumptive status of a priest, and a rumor circulated that the son is a fit priest, the court downgrades his status as a priest. If one witness then testifies that he is fit for the priesthood, he is reinstated. If two witnesses then testify that he is disqualified, he is downgraded once again. If then another witness testifies that he is fit for the priesthood, his testimony is combined with that of the prior witness, and he is reinstated to the priesthood, in accordance with the opinion of Rabban Shimon Ben Gamliel. There is a dispute among the halakhic authorities as to whether it is permitted for him to partake even of produce that is teruma by Torah law, or perhaps only of produce that is teruma by rabbinic law (Rambam Sefer Redeha, Hilkhot Issurei Bia 20:16 and Maggid Mishne there; Shulhan Arukh, Even HaEzer 3:7 and Beit Shmu'el there).

And we downgraded him – והכינו מאם לימהו. The majority of the early commentators understand this downgrading as a temporary suspension of his priestly status while the rumor is investigated, rather than a definitive ruling that he is disqualified (Rashbam). Due to the uncertainty with regard to his status, he is not given teruma and other gifts of the priesthood. But he is not actually disqualified, as there is only a rumor and no actual evidence (Rabbeinu Yonah; Rashba). Some commentators suggest that the court itself did not downgrade his status, or else it would cause contempt of court were they later to reverse their decision. Rather, the priest himself abstains from priestly functions and privileges pending clarification of his status (Toafot).

Some commentaries have an alternative version of the text that does not state that he was downgraded as a result of the rumor (Rashba).

About contempt of court – הירא מאם לימהו; The Rashbam notes that this is ostensibly difficult, as in any case the court has already reversed itself, since the judges downgraded his status due to the rumor and then reinstated him based on the testimony of the first witness. He explains that the initial downgrading was not a ruling but merely a temporary suspension pending clarification of his status. When he was reinstated based on the testimony, this was the first definitive ruling that the court issued.

And we elevate him – ובראק על חלוצה. The commentators struggle to understand why he is elevated to the priesthood, given the fact that there are different sets of witnesses providing conflicting testimony as to his status. The Rashbam explains that the court elevates him because of the presumptive status of priesthood that was established when the court initially elevated him based on the first witness. Rabbeinu Yitzchak of Dampierre does not accept this, as that presumptive status has already been undermined by the two witnesses who testified that he is unfit. Rather, the court elevates him based on his father’s presumptive status as a priest. In the absence of decisive proof to the contrary, the assumption is that the son is also a fit priest.
In a case where they witnessed one after the other – אָרְעָא? אֲמַר לֵיהּ אֲנַן מַסְּ ִינַן לֵיהּ: In cases of monetary law, testimony of witnesses combines to form one testimony even though they witnessed different events that render the litigant liable, such as borrowing or admitting to a loan, that occurred on different days. Their testimony certainly combines when they witnessed the same event from different observation points. By contrast, in order to be considered a set of witnesses in cases of capital law, it is required that they witness the event together (Rambam Sefer Shoftim, Hilkhot Edut 4:2; Shulhan Arukh, Hoshen Mishpat 30:6).

Hears the statement of this witness – וַאֲנַן מַסְּ ִינַן לֵיהּ: In cases of monetary law, the witnesses are not required to testify at the same time. The court can accept the testimony of one witness one day, and that of another witness on another day, and then combine the two. This is true in cases of determining the status of one’s lineage, and of a notification issued by a husband that he is invalidating a bill of divorce. This is in accordance with the opinion of Rabbi Natan (Rambam Sefer Shoftim, Hilkhot Edut 4:4 and Sefer Edut, Hilkhot Issurei Bia Bia 2016; Shulhan Arukh, Hoshen Mishpat 30:9; Even HaEzer 37, 1341, in the comment of Rema).

As it is taught in a baraita (Tosefta, Sanhedrin 5:5): The testimony of individual witnesses never combines unless it is so that the two of them see the incident transpire together as one. Rabbi Yehoshua ben Korha says: Their testimony combines even in a case where they witnessed the event one after the other, but their testimony is established in court only if it is so that the two of them testify together as one. Rabbi Natan says: They are not required to testify together. Their testimony is combined even if the court hears the statement of this witness today and when the other witness arrives tomorrow the court hears his statement. Rabbi Elazar and Rabban Shimon ben Gamliel disagree in the dispute between Rabbi Natan and the Rabbis, whether the separate testimonies can be combined.

The Gemara relates an incident where two people disputed the ownership of land. There was a certain person who said to another: What do you want with this land of mine? The possessor said to him: I purchased it from you, and this is the bill of sale.

The first said to him in response: It is a forged bill of sale. The possessor leaned over and whispered to Rabba: Yes, it is a forged bill. But I had a proper bill of sale and it was lost, and I said to myself: I will hold this bill of sale in my possession, such as it is.

Halakha

Rav Ashi objects to the analysis that they disagree with regard to concern about contempt of court: If so, why specifically is it necessary to establish the dispute in a case where first one witness testified as to his invalidation, and then another testified later? The same would hold true even in a case where two witnesses testified together that he is unfit for the priesthood and the court downgraded him, and two witnesses testified together that he is fit for the priesthood and the court elevated him. The tanna'im would also disagree, as the same concern applies. Rather, Rav Ashi said: Everyone agrees that we are not concerned about contempt of court. And here, it is with regard to whether the court is able to combine the testimony of two single witnesses that they disagree, and it is with regard to the issue that is the subject of the following dispute between these tanna'im.

It is a forged bill of sale – אֵין עֵדוּתָן מִצְטָ הֲוָה לְעֹלָם אֵין עֵדוּתָן מִצְטָ הֲוָה לְעֹלָם: The majority of commentaries understand that this does not refer to a bill of sale that was actually forged. Rather, it refers to a document of trust, which is a document written in advance of the actual transaction, with the one writing it trusting the other not to use it before the transaction is actually performed. While it is not technically forged, it still cannot be used to enforce the transaction (Rav Hai Gaon; Rabbeinu Hananel; Rabbeinu Yemen; MeiRi). The Ramah writes that one must understand it this way, as Rabba said that the litigant has the claim of: Why would I lie, and this would not be said with regard to one who has demonstrated his duplicity by forging a document. Nevertheless, there are those who interpret it as referring to an expert forgery that is convincing enough to be ratified by the court, or a document that was ratified based on the testimony of false witnesses (see Rashbam).
Rabba said: Why would he lie and state this claim? If he wants to lie, he can say to him that it is a proper bill of sale, and he would have been deemed credible and awarded the field. Rav Yosef said to Rabba: In the final analysis, on what are you relying to award him the land? On this bill of sale? This admittedly forged bill is merely a worthless shard, and cannot be used in court as evidence.

The Gemara relates a similar incident: There was a certain person who said to another: Give me one hundred dinars that I am attempting to collect from you, and this is the promissory note that attests to the debt. The latter said to him in response: It is a forged promissory note. The first person leaned over and whispered to Rava: Yes, it is a forged promissory note. But I had a proper promissory note and it was lost, and I said to myself: I will hold this promissory note in my possession, such as it is.

Rabba said: Why would he lie and state this claim? If he wants to lie, he can say to him that it is a proper promissory note, and he will be deemed credible and awarded the money. Rav Yosef said to Rabba: In the final analysis, on what are you relying to award him the money? On this promissory note? This document is merely a shard, and cannot be used in court as evidence.

The Gemara notes the final ruling in these two cases. Rav Ida bar Avin said: The halakha is in accordance with the opinion of Rabba, with regard to land, and the possessor is awarded the land, and the halakha is in accordance with the opinion of Rav Yosef with regard to money, and the one demanding payment is not awarded the money. He explains: The halakha is in accordance with the opinion of Rabba with regard to land, as the court rules that the land should remain where it is, i.e., with the possessor. And the halakha is in accordance with the opinion of Rav Yosef with regard to money, as the court rules that the money should remain where it is, i.e., in the possession of the purported debtor.

The Gemara relates: There was a certain guarantor who said to a debtor: Give me one hundred dinars for the money that I repay the creditor on your behalf, and this is the document that I received from him when I repaid your debt. The debtor said to the guarantor: Is it not so that I repaid you? The guarantor said to the debtor: Yes, you did, but is it not so that you later took the money from me again?

Rav Ida bar Avin sent the following question before Abaye: What is the halakha in a case like this? Abaye sent him the following response: What does he, i.e., Rav Ida bar Avin, ask? Isn’t he the one who said: The halakha is in accordance with the opinion of Rabba with regard to land, and the halakha is in accordance with the opinion of Rav Yosef with regard to money, as the court rules that the money should remain where it is? Based on his own ruling, the money should remain with the debtor.

Why would he lie? Shimon challenged the ownership of a field that Reuven possessed, bringing witnesses that it had belonged to him, and Reuven produced a bill of sale stating that he had purchased the field from Shimon, who then claimed that the bill was forged or a document of trust. Therefore, Reuven conceded that it was forged, but that he previously had an authentic bill of sale but lost it. In this case, since Reuven would have been deemed credible had he claimed that this bill of sale was authentic, his current claim is accepted. Therefore, he retains possession of the field, even if he had not profited from it for the years necessary for establishing the presumption of ownership (Shinah, Shakh, citing Tur). According to the Rambam, this is the halakha only if the bill of sale had been ratified in court, while the Tur holds that it is sufficient that the forgery was of the quality that it could have been ratified. This is in accordance with the opinion of Rabba. Nevertheless, he is required to take an oath of inducement, i.e., an oath instituted by the Sages in a case where a defendant completely denies a claim (Rambam, Sefer Mishpatim, Hilkhot Tolen Velkan 15:9; Shulhan Arukh, Hoshen Mishpat 146:25).

The money should remain where it is – Shimon asked Abaye. If one produces a ratified promissory note, and the purported debtor claims that it is forged or a document of trust, and the creditor concedes that this is the case but that he previously had an authentic promissory note but lost it, the purported debtor is not required to pay but merely has to take an oath of inducement, in accordance with the opinion of Rav Yosef. The Ramban explains that if the bill of sale had not yet been ratified, Rav Yosef therefore states that since the one in possession of it concedes that it is not valid, it cannot be ratified, and therefore is tantamount to a worthless shard.

The halakha is in accordance with the opinion of Rabba. The Rambam explains that Rav Ida bar Avin was uncertain as to the correct ruling. He therefore rules that the property should remain where it is in each case. The Rashash concurs with this opinion. Another explanation is that a miggo claim is effective only to maintain possession for the one using it (Tosafot; R. Migash).

And this is the document – Shimon asked. The creditor gave the promissory note to the guarantor for the purpose of collecting from the debtor (Rashash). Some early commentaries understand that the creditor wrote in the promissory note: I received payment, and I transfer to Abaye: What is the halakha in a case like this? Abaye sent him the following response: What does he, i.e., Rav Ida bar Avin, ask? Isn’t he the one who said: The halakha is in accordance with the opinion of Rabba with regard to land, and the halakha is in accordance with the opinion of Rav Yosef with regard to money, as the court rules that the money should remain where it is? Based on his own ruling, the money should remain with the debtor.

NOTES

Merely a shard – Shimon asked. The early commentators ask why the possessor is not deemed credible, based on the fact that he could have made a more advantageous claim (miggoh), i.e., that the bill of sale was in fact authentic. The Rashi explains that the bill of sale is invalid, is equivalent to the testimony of witnesses. Therefore, just as one cannot make use of a miggo claim if his claim is counter to the testimony of witnesses, one cannot make use of a miggo claim if his claim is counter to his own admittance. Others explain that a miggo claim is effective only to maintain possession for the one using it; not to enable one to remove property from the possession of others, so the miggo claim would not be effective to remove the property from the previous owner (R. Migash; Rashash; Rivam, cited by Tosafot). The Rashba (Responsa of the Rashba II:395) notes that the issue of whether or not a miggo claim is effective to enable one to remove property from the possession of others is the subject of a dispute among the commentators. The Ramban explains that the bill of sale had not yet been ratified. Rav Yosef therefore states that since the one in possession of it concedes that it is not valid, it cannot be ratified, and therefore is tantamount to a worthless shard.

Hilkhot To’en VeNitan, Hilkhot VeNitan, Sefer Mishpatim 5:25 (146:25). The Rashbam explains that the halakha is in accordance with the opinion of Rabba. It is a proper bill of sale but lost it. In this case, since Reuven would have been deemed credible had he claimed that this bill of sale was authentic, his current claim is accepted. Therefore, he retains possession of the field, even if he had not profited from it for the years necessary for establishing the presumption of ownership (Shinah, Shakh, citing Tur). According to the Rambam, this is the halakha only if the bill of sale had been ratified in court, while the Tur holds that it is sufficient that the forgery was of the quality that it could have been ratified. This is in accordance with the opinion of Rabba. Nevertheless, he is required to take an oath of inducement, i.e., an oath instituted by the Sages in a case where a defendant completely denies a claim (Rambam, Sefer Mishpatim, Hilkhot Tolen Velkan 15:9; Shulhan Arukh, Hoshen Mishpat 146:25).

The money should remain where it is – Shimon asked Abaye. If one produces a ratified promissory note, and the purported debtor claims that it is forged or a document of trust, and the creditor concedes that this is the case but that he previously had an authentic promissory note but lost it, the purported debtor is not required to pay but merely has to take an oath of inducement, in accordance with the opinion of Rav Yosef. The Ramban explains that if the bill of sale had not yet been ratified, Rav Yosef therefore states that since the one in possession of it concedes that it is not valid, it cannot be ratified, and therefore is tantamount to a worthless shard.
HALAKHA

You later borrowed the money – אַלּוֹ הַבָּא לִי. The Ramah writes that one must understand it this way, for Reuven issued a promissory note stating that Shimon borrowed money from him, and Shimon claims that he repaid the loan, and Reuven concedes that it had been repaid but claims that he granted the debtor a second loan, since Reuven concedes that the debt in the promissory note had been repaid, he may not use it to collect the second debt. By contrast, if Reuven claims that he returned the money given as repayment because the currency was somehow unusable, then the promissory note is still in effect, and it may be used for collection (Rambam Sefer Mishpatim, Hilkhot Malve Ve’Loveh 14:18; Shulhan Arukh, Hoshen Mishpat 572).

NOTES

The land as collateral – אִסֶּרְנָא מְסַמְּךָ. This refers to a mortgage according to the custom in Sura, a city in Babylonia. This was an arrangement whereby the creditor held the debtor’s land and consumed its produce for a period of time as gradual repayment of the loan. When the produce consumed equaled the amount of the debt, the creditor would return the land to the debtor (Rashbam).

HALAKHA

One who comes to collect from the property of orphans – בָּא לִי אֶשְׁבָּע. One may not collect a debt from heirs, regardless of whether they are minors or adults, unless he takes an oath in the manner of a Torah-mandated oath. If he collected without taking an oath, he is ostracized by the court until he takes the oath. This is the halakha only if there is uncertainty as to whether the debt might have been paid by the deceased. But if the debtor had died before the loan was due, or if he admitted at the time of his death to still owing the money, or if the court had ostracized him in an attempt to force repayment and he died in a state of ostracism, one may collect from the heirs without taking an oath (Rambam Sefer Mishpatim, Hilkhot Malve Ve’Loveh 14:1; Shulhan Arukh, Hoshen Mishpat 108:1, 17).

I will suppress the document of the collateral – אָכֵיל אַרְעָא דְּיַתְמֵי, אֲמַר לֵיהּ אַבַּיֵי. If one had an orphan’s property in his possession for many years and claims that it was collateral for a debt owed him by the orphan’s father, he is deemed credible, since if he desired, he could have claimed that the property was his. He can collect the debt from the enhancement of the property, and afterward return the property itself. Some limit this to the enhancement that accrued until the court case (Sim), but if there had been a rumor that the property belonged to the orphan, his claim is not accepted. According to the Shakh, this is the halakha even if the rumor was generated after he had possessed the property for three years. In that case, he must return to the orphans the property and any produce that he consumed, and he can litigate with them when they reach adulthood, in accordance with the opinion of Abaye (Rambam Sefer Mishpatim, Hilkhot Tzin Ve’Evan 14:18; Shulhan Arukh, Hoshen Mishpat 149:21).

NOTES

Other money with him – אַלּוֹ הַבָּא לִי הָדְרַתִּינְהוּ נִיהֲלָךְ. The majority of the commentaries understand that Rava bar Sharshom had a document attesting to the debt owed to him by the orphans’ father (Rashbam). Some have a variant text of the Gemara that states this explicitly (Ri Migash). Other commentators understand that he did not have a document (Rid).

And I profited from the land for the years of collateral – וְהָא שְׁטָרָא אַרְעָא בְּמַשְׁכּוֹנְתָּא כְּוָותֵיהּ דְּרַבָּה. There are several opinions as to when and for how long he profited from the land. The Ramah presents three possibilities: One is that he profited from the land for three years during the father’s lifetime. This is also the opinion of the Rashbam and Rabbeinu Yona. The second is that he profited from the land for three years after the father’s death, and there were no witnesses as to ownership by the father or the orphans (see Ri Migash and Rambam). The third is that he did not profit from the land for enough time to establish the presumption of ownership, but the orphans did not have presumptive ownership either. The Ramah maintains that this third opinion is the most compelling reading of the Gemara, although all three are correct in terms of the halakha.

One who comes to collect – בָּא לִי אֶשְׁבָּע. While it is clear from the continuation of the Gemara that he would not have been able to collect from the orphans so long as they were minors even if he were to take an oath, Rava bar Sharshom would not have acted as he did just to avoid a delay in receiving payment, but only to avoid having to take an oath (Tosafot).

I will suppress the document of the collateral – אָכֵיל אַרְעָא דְּיַתְמֵי. He decided to suppress the document, because if it were known that he had occupied the field as collateral, he would no longer be able to claim that he purchased it (Tosafot).
Abaye said to Rava bar Sharshom: Your reasoning is incorrect. You would not have been able to say— It is purchased, and that is why it is in my possession, as there is publicity concerning it that it is land of orphans. Therefore, you are unable to collect your debt based on the fact that you could have made a more advantageous claim [migdal]. Rather, return the land to the orphans now, and when the orphans become adults, then litigate with them, as you have no other option.

The Gemara relates: A relative of Rav Idi bar Avin died and left a date tree as an inheritance. Another relative took possession of the tree, claiming to be a closer relative than Rav Idi bar Avin. Rav Idi bar Avin said: I am closer in relation to the deceased than he, and that man said: I am closer in relation to the deceased than Rav Idi bar Avin. Ultimately, the other man admitted to Rav Idi bar Avin that, in fact, Rav Idi was closer in relation to the deceased. Rav Hisda established the date tree in the possession of Rav Idi bar Avin.

Rav Idi bar Avin said to Rav Hisda: The value of the produce that he consumed unlawfully from when he took possession of the tree until now should be returned to me. Rav Hisda said: Is this how people say: He is a great man? On whom is the Master basing his claim to receive the value of the produce? On this other relative. But he was saying until this point: I am closer in relation to the deceased than he. Therefore, you have ownership of the tree only from the time of his admission, and not from when he took possession of the tree. The Gemara comments: Abaye and Rava do not hold in accordance with this opinion of Rav Hisda.

NOTES
You would not have been able to say—There are two primary ways to explain this claim. The first is that Rava bar Sharshom would have been deemed credible had he said that he purchased the field, as he did profit from the land for the requisite number of years for establishing the presumption of ownership without any protest being lodged. But he would not have been deemed credible had he said that he purchased the field, as a challenge may later arise. Although there was no explicit protest lodged in this case, the rumor that it belonged to the orphans serves the same purpose, and under such circumstances, he cannot claim ownership without a document (Rabbeinu Hananel, cited by Ramban; see Rav Hai Gaon).

And that man said—Since neither has any proof of ownership, the applicable ruling is: Whoever is stronger prevails. Consequently, the other person took possession of the date tree (Rashbam).

Ultimately the other man admitted—The Rashbam explains that the other relative admitted that Rav Idi bar Avin was the closer relative, in accordance with the standard version of the text of the Gemara. This explanation is also adopted by Rabbeinu Tam in his Sefer Ha’Ashaar. There is a variant text cited in Tosafot that records that he conceded his rights to the tree in deference to Rav Idi bar Avin without admitting that Rav Idi bar Avin was a closer relative.

According to the version of the text before Rabbeinu Hananel, cited in Tosafot, Rav Idi bar Avin brought witnesses that he was a relative, while the other person produced no evidence of his status. Rav Hisda therefore awarded the tree to Rav Idi bar Avin. Many early commentaries accept this version (Rabbeinu Yona).

But he was saying, I am closer—It is true that he now admits that the tree belongs to Rav Idi bar Avin, since the court is relying only on his word to give the tree to Rav Idi bar Avin, the judges cannot say definitively that he owes payment for the produce he consumed (Rabbeinu Gershom Meor HaGola). Some explain that by volunteering this admission, it is as if he is giving the tree to Rav Idi bar Avin as a gift only from this moment on (Rashbam). Others explain that as the tree was awarded to Rav Idi bar Avin based solely on the other person’s admission, and there is also no evidence that he consumed the produce other than his own admission, he has a migdal claim with regard to the produce, as he could have claimed that he did not consume the produce at all. Others explain Rav Hisda’s ruling differently: He did not exempt the other person from payment. Rather, he deemed him credible with regard to the amount that he consumed (Ri Migash; see Rabbeinu Tam).

PERSONALITIES
Rav Idi bar Avin—Rav Idi bar Avin was a third- and fourth-generation Babylonian amora. It is related that Rav Idi’s father, Rav Avin the carpenter, was especially punctilious to observe the mitzva of lighting the Sabbath candles, a practice that led Rav Huna to predict that his sons would become eminent scholars (Shabbat 23b). Indeed, his sons were Rav Hyya bar Avin and Rav Idi bar Avin.

HALAKHA
I am closer—If one took possession of a field based on the presumption that he was the rightful heir, and he consumed its produce, and then another brought witnesses that he was fit to inherit the deceased and the first one did not have witnesses as to his status (see Rabbeinu Hananel), or if it became clear that the other was more closely related to the deceased, the court removes the field from the one in possession of it and awards it to the other. In addition, the erstwhile possessor must reimburse the other for all produce that he had consumed. This is the halakha even if the court’s knowledge of his consumption is based solely on his admittance. It is also the halakha even in a case where he had possessed the field for the years necessary to establish the presumption of ownership (Shabbat 23b). See Shach). This is in accordance with the opinions of Abaye and Rava (Rambam, Sefer Mishpatim, Hilkhot Tumah VeNishum 15:3; Shulhan Arukh, Hoshen Mishpat 139:4).
as they hold that once it is so that the other relative admitted that
he is not a closer relative, he admitted that he never had any right
to the produce of the tree. Therefore, by his own admission, he is
liable to reimburse Rav Idi bar Avin.

§ There was an incident where two people dispute the ownership
of land. This one says: The land belonged to my ancestors and
I inherited it from them, and that one says: The land belonged
to my ancestors and I inherited it from them. This one brings
witnesses that the land belonged to his ancestors, and that one
brings witnesses that he worked and profited from the land for
the years necessary for establishing the presumption of
ownership.

Rav Hisda said: The one who is in possession of the land is deemed
credible due to the legal principle that if one would have been
deemed credible had he stated one claim but instead stated another
claim that accomplishes the same result, he has credibility, because
why would he lie and state this claim? If he wants to lie, he could
have said to him: I purchased it from you and I worked and profited
from it for the years necessary for establishing the presumption
of ownership. Abaye and Rava do not hold in accordance with
this opinion of Rav Hisda, because they hold that we do not
say that the principle of: Why would I lie, applies in a case where
there are witnesses contradicting the claim he is stating, and in
this case, witnesses testify that it belonged to the ancestors of the
other claimant.

There was a certain person who said to another: What do you
want with this land of mine? The possessor said to him in response:
I purchased it from you and I worked and profited from it for the
years necessary for establishing the presumption of ownership. He
then went and brought witnesses that he had profited from the
land for two years, but he was unable to bring witnesses to testify
about a third year. Rav Nahman said: The land reverts back to the
prior owner, and payment for the produce consumed during those
two years reverts to the prior owner. Since the possessor was
unable to substantiate his claim to the land, the assumption is that
he consumed the produce unlawfully.

### NOTES

Once it is so that he admitted, he admitted. קבש יִרְחוּ אֶל
Since he admitted that the tree had been in his possession
unlawfully all along, he is required to pay for the produce that
he consumed (Rashbam). According to Rabbenu Hananel's
version of the text, since he admitted to consuming the produce,
and there is now testimony that Rav Idi bar Avin is the closer
relative, he is liable to pay for the produce. This is due to the fact
that Abaye and Rava hold that when there is testimony to the
contrary, one cannot apply the principle of: Why would I lie.

Why would he lie. קבש יִרְחוּ אֶל: If he were to claim that he
bought the field, he would have presumptive ownership.
Therefore, when he claims that it belonged to his ancestors, he
is also deemed credible (Rashbam).

### HALAKHA

The land reverts and payment for the produce reverts. קבש יִרְחוּ אֶל:
If one claimed to have profited from land for
the three years necessary for establishing the presumption
of ownership but was able to produce witnesses for only two of
the years, he must return the land and reimburse the owner for
the produce consumed during the two years for which there
are witnesses. Despite the fact that he admits to consuming the
produce of the third year, he is not liable to reimburse the owner
for it. The reason for this is that if the court accepts his statement
that he profited from the land for that year as well, they would
need to award him the land and not require reimbursement for
any produce (Rambam Sefer Mishpatim, Hilkhot Tolen VeNitan 16:6;
Shulhan Arukh, Hoshen Mishpat 145:3).
I entered to consume its produce – מִשְׂפָּל חֲצִיב אִינִישׁ: If one gathered the produce of another’s field and brought it into his own property (Sina; see Netzivot HaMishpat), and claims that he purchased the produce, whereas the owner of the field claims that the gatherer stole the produce, even if there are witnesses to the gathering of the produce, the gatherer is deemed credible that he purchased the produce. He must take an oath of inducement (Rambam Sefer Mishpatim, Hilkhot Tolen VeNihan 9:6; Shulhan Arukh, Hoshen Mishpat 137:1).

A person is not so brazen – שְׁמֶשׁ שְׁמֶשׁוּ: If one says: I am going to gather the produce of so-and-so’s tree, which he sold to me, the court does not prevent him from gathering the produce, unless the owner challenges his claim. According to the Ramah, this is the halakha only where he stated this publicly, whereas according to Rabbenu Hilkia it refers to where he says it privately as well (Tur). But if one says: I am going to cut down so-and-so’s tree, the court prevents him from doing so. This is not in accordance with the Rambam’s interpretation of the Gemara (Rambam Sefer Mishpatim, Hilkhot Tolen VeNihan 9:6, and RavAvid and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 137:2–3).

The piece of cast metal adjudicated by Rabbi Abba – מַגָּלָא וְתוֹבְלַיָא: If one witness observed someone snatching a piece of silver from another, and the one who snatched it admitted that he did so but claimed that it was actually his, he is subject to the halakha of one who is liable to take an oath but is unable to do so, and he is liable to pay, in accordance with the opinion of Rabbi Abba on 34a (Rambam Sefer Nazikin, Hilkhot Gezeila VaAveda 4:14 and Sefer Mishpatim, Hilkhot Tolen VeNihan 4:18; Shulhan Arukh, Hoshen Mishpat 75:13, 3643–4).

**NOTES**

I entered to consume its produce – מִשְׂפָּל חֲצִיב אִינִישׁ: This ruling by Rav Zevid does not refer to the case of Rabbai Nissim, where the one occupying the land had already stated a different claim. It teaches that one is deemed credible if he initially claimed that he entered the land in order to consume its produce (Rashbam; Ramban, citing Rabbenu Hananel). Similarly, the Ri Migash writes that if one initially claimed that he purchased the field and later claimed that he entered the land in order to consume its produce, he is not deemed credible, as he is contradicting his earlier claim.

Sickle and rope (טֶוֶלְיוֹת) – נַסְכָּא: Rabbenu Hananel cited in Shita MeKubetzet, explains that tevelaya refers to a rope used to enable one to climb a date tree. Others understand it to mean a basket that is used to collect the dates being picked at the top of the tree (Rabbenu Gershon Meor HaGola). A third interpretation is that it refers to a cloth placed on the ground to catch the dates as they are picked. All three interpretations are cited in the Arukh.

Cull (יגדרי) – נַסְכָּא: The Rif and other early commentaries have the reading igdrei, meaning to cut down the tree. Other commentaries have our text, igdrei, meaning to cull. They claim that if it is said that he was going to cut down the tree, he would not be deemed credible, as people do not sell date trees to be cut down (see Tosafot and Riva).

The land as well – מִשְׂפָּל חֲצִיב: There are those who interpret this question in accordance with its straightforward meaning: if it is true that one would not be so brazen as to consume produce to which he has no right, the fact that one profited from land should serve as proof that the land is his (Rashbam; see Rambam). Other commentaries reject this interpretation, as this logic relates only to produce that one would not enable one to consume more in the future, and giving him the field is tantamount to giving him the future produce. Therefore, they interpret the question in the following manner: In a case where he claims ownership of the field, why isn’t he deemed credible with respect to the produce that he already consumed?

Is the same as the piece of cast metal adjudicated by Rabbi Abba – מַגָּלָא יְדִיד שְׁמֶשׁוּ: The Rashbam offers two explanations for this statement of the Gemara. One is that there is really no innate comparison between these two halakhot. They are compared only due to their superficial similarity, i.e., that in both cases the testimony of a lone witness causes someone to pay. His other explanation suggests that the comparison relates to the produce that was consumed rather than to the ownership of the field itself, as the situation of the produce is similar to that of the piece of metal, as the possessor pays for the produce because of the testimony of the lone witness. According to Tosafot, the comparison must be referring to the produce, and the point of the comparison is that in both cases the person is liable to pay because his potential migo claim is contradicted by a lone witness.
How should judges judge? The Rashbam explains that if there were two witnesses to his snatching the piece of metal, he would have to pay as a robber. If there were no witnesses, he would be able to claim that it was his, and he would be deemed credible based on his own testimony. Had he not admitted to snatching it and one witness testified that he snatched it, he could have refuted the witness by taking an oath. In this case, none of these options were available.

To take an oath didn’t he say? According to the standard text of the Gemara, the Gemara adds that if the one who snatches the piece of metal is like a robber, the majority of the commentaries point out that this concluding phrase is essentially a variant reading of the text that omits this phrase. The Rashbam explains that if there were two witnesses to his snatching the piece of metal, he would have to pay as a robber, and the court does not force payment based on the testimony of one witness. If they were to accept his claim and exempt him entirely, that would not be the correct ruling, because there is one witness who testified against him. If they were to order him to take an oath, which is the usual response to counter the testimony of one witness, he didn’t say that he did in fact snatch it, and since he said that he snatched it and there is no proof that it is his, he is like a robber, and the court does not allow a robber to take an oath.

Rabbi Abba said to them: He is one who is liable to take an oath who is unable to take an oath, and anyone who is liable to take an oath who is unable to take an oath is liable to pay. The Rabbis who were studying before Abaye thought that the case of the witness to the years of profiting and Rabbi Abba’s case are similar, in that since the possessor is unable to take an oath to refute the witness, as he concedes that he profited from the land for those years, he should have to pay for his consumption of the produce.

Abaye said to these Rabbis: Are these two cases comparable? There, in Rabbi Abba’s case, the witness is coming to undermine the position of the one who snatched the metal. This can be seen from the fact that when it would be the case that another witness comes to court and testifies with the first witness, we would take away the piece of metal from the one who snatched it. By contrast, here, in the case of the individual who brought one witness to attest to his profiting from the land, the witness is coming to support the position of the possessor. This can be seen from the fact that when another witness would come to court and testify with the first witness, we would establish the land in his possession. Therefore, the testimony of the one witness does not render the one who profited from the land liable to take an oath.

Rather, if this case of Rabbi Abba is comparable to a case such as this, it is comparable to a case where there is one witness and he testifies to someone’s profiting from land for two years, and the comparison is in terms of payment for the produce that he consumed. In terms of the consumption of the produce, two witnesses would have rendered the possessor liable to pay, as consumption of the produce for only two years does not establish the presumption of ownership. Therefore, one witness renders him liable to take an oath. Since he himself claimed that he profited from the land as the witness testified, he cannot take an oath to contest the testimony. Therefore, he would have to pay for the produce.

HALAKHA

Here he is coming to support – המonta פי הני קא אנא דיבר אָכֵל: If Reuven profited from a field, consuming its produce, and Shimon claimed that he did not owe Shimon anything for the produce, and he is exempt from payment (Rambam Sefer Mishpatim, Hilkhot Tokef HAninot 16:5; Shulhan Arukh, Hoshen Miktzat 145:3).
The Gemara relates: There was a certain boat that two people were quarreling about with regard to its ownership. This one said: It is mine, and that one also said: It is mine. One of them came to court and said: Seize it until I am able to bring witnesses that it is mine. The Gemara asks: In such a case, do we seize it or do we not seize it? Rav Huna said: We seize it. Rav Yehuda said: We do not seize it, as there is no cause for the court to intervene.

The court seized the boat. The one who requested of the court to seize it went to seek witnesses, but did not find witnesses. He then said to the court: Release the boat, and whoever is stronger prevails,6 as this is the ruling in a case where there is neither evidence nor presumptive ownership for either litigant. The Gemara asks: In such a case, do we release it or do we not release it? Rav Yehuda said: We do not release it. Rav Pappa said: We release it. The Gemara concludes: And the halakha is that we do not seize property in a case where ownership is uncertain, and where it was seized, we do not release it.7

There was an incident where two people dispute the ownership of property. This one says: It belonged to my ancestors and I inherited it from them, and that one says: It belonged to my ancestors and I inherited it from them. There was neither evidence nor presumptive ownership for either litigant. Rav Nahman said: Whoever is stronger prevails.8 The Gemara asks: And in what way is this case different from the case where two people produce two deeds of sale or gift for the same field that are issued on one day, they have no right to relinquish it without being certain that the one acquiring it is the rightful owner (Rashbam).

### HALAKHA

A certain boat that two people were quarreling about its ownership – In such a case (Ritva): If people claim exclusive ownership of a certain property and neither has possession of it, and one of them requests of the court that they seize it, the request is not accepted. If the court did seize the property, either due to error on their part, or due to mutual consent of the parties, the court does not release it unless one litigant proves his claim, or both parties consent to its release (Rambam Sefer Mishpatim, Hilkhot Tolan VeTolan 10:6, Shulhan Arukh, Hoshen Mishpat 139:3).

Whoever is stronger prevails – In such a case (Rambam): If two people both claimed ownership of a certain field, each stating that it had belonged to his ancestors, and neither or both of them had evidence to substantiate their claims, whoever is stronger prevails, and he takes possession of the field. If a third person takes the field from them without proof or claim to the field (Shita Mekubbetzet), the court removes him from the field (Rambam Sefer Mishpatim, Hilkhot Tolan VeTolan 15:4; Shulhan Arukh, Hoshen Mishpat 139:1, 146:22).

### NOTES

Were quarreling – This refers to a case where the property is not in the possession of either litigant. It might be in the public domain or in the possession of a third party (Rashbam). Were it to have been in the possession of one of them, the burden of proof would rest upon the claimant (Rambam).

Seize it – The court seized the boat because he was concerned that the other litigant might seize it and sell it. The Rashbam writes that he was concerned that the boat might be lost, but not that the other litigant would seize it, as seizing the boat after the dispute had reached the court would be to no effect.

And the halakha is that we do not seize – Some commentators explain that this means that the court does not seize property based on the request of one litigant, but if both request it, they do (Ritva). The Ramah explains that even if they both request it, the court does not seize it ab initio. If so, they did seize it, whether based on the request of one or both of the litigants, they do not release it. The Rashbam rules this way as well. The Ran cites an opinion, possibly building on the opinion of the Ritva, that if the court seized it without the consent of both litigants, they do release it, as this seizure is treated like a clearly mistaken ruling that is null and void. The Ran rejects this opinion.

We do not release it – Once property that may belong to a particular person is in the jurisdiction of the court, they have no right to relinquish it without being certain that the one acquiring it is the rightful owner (Rashbam).

Belonged to my ancestors – There are those who hold that this is a universal halakha, applying to all cases where property is disputed and neither litigant has presumptive possession or evidence (Rashbam). Others hold that this applies only to land (Rabbeinu Barukh).

Whoever is stronger prevails – Strength can be demonstrated either by providing proof of some sort, or by physically seizing the property (Rashbam). The Rosh writes that there was a rabbinic ordinance that the first to prevail shall be the owner, and the other cannot then seize the property from him. This was instituted to prevent endless strife over it. There is also reason to assume that this ruling will likely yield a just outcome, as the rightful owner would probably go to greater lengths to possess his property. The Ramah explains that the ordinance is meant to avoid the need for the court to trouble itself endlessly. He also holds that the losing party may demand an oath of inducement from the victor. Other early commentaries hold that the principle: Whoever is stronger prevails, is not a ruling at all. Rather, the court removes itself from the dispute and the two litigants fight among themselves. Since there is no ruling by the court, the loser may seize the property from the initial victor, and this process may repeat itself indefinitely (Shita Mekubbezer; see Rashbam on 35a).
Since both deeds were signed on the same date, both transactions, Rav said, in that case they should divide—the property between them, and Shmuel said: It is decided based on the discretion [shudda] of the judges. Why in the seemingly equivalent case of a dispute where there is no evidence for either litigant did Rav Nahman rule that whoever is stronger prevails? The Gemara answers: There, in the case of the two deeds, it will not be possible for the court to clarify the matter in the future, and therefore, the court issues a ruling according to the information they currently have. Here, in the case of Rav Nahman, it may be possible for the court to clarify the matter in the future, if one of the litigants was to bring witnesses supporting his claim.

The Gemara asks: And in what way is this case different from that which we learned in a mishna (Bava Metzia 100a): With regard to one who exchanges a cow for a donkey and the cow calved, and similarly one who sells his Canaanite maidservant and she gave birth, and this one, i.e., the seller, says: She gave birth before I sold either the cow or maidservant, and the offspring belongs to me; and that one, i.e., the buyer, says: She gave birth after I purchased her and the offspring belongs to me, the ruling is that they should divide the value of the newborn. In that case, the court is not able to clarify the matter, so they should rule that whoever is stronger prevails.

The Gemara answers: There, in the case of the exchange, for this one, i.e., the buyer, as Rav said: In that case, they should divide the property between them, and Shmuel said: It is decided based on the discretion [shudda] of the judges. The Rashbam and the other early commentators disagree as to whether there is a possibility of witnesses clarifying the uncertainty in the case of two deeds dated identically. The Rashbam holds that the matter cannot be clarified, as it is immaterial at which point of the day the deed was written. The other commentaries hold that the earlier deed is considered to be the effective one; therefore, witnesses could potentially clarify the matter. According to the Rashbam, the Gemara’s statement that the court is not able to clarify the matter is understood. To explain the approach of the other commentaries, Rabbienu Yona suggests that the essential distinction is that in the case of the deeds, the court knew who the relevant witnesses were and yet were unable to clarify the matter. Therefore, it is unlikely that the matter will be clarified later. In the case of Rav Nahman, it is entirely feasible that witnesses will clarify who is in the right (Meiri). The underlying principle of the Gemara is that the court does not act if it later may become clear that their ruling was unjust, but rather holds off from rendering judgment until the matter is clarified.

One who exchanges a cow for a donkey etc. – דְּרַב אֲמַר: The primary discussion of this dispute appears in tractate Ketubot (19a–b). There is an opinion there that explains that Rav holds in accordance with the opinion of Rabbi Meir, that signatory witnesses effect a transaction. Since both deeds were signed on the same date, both transactions take effect concurrently, at the close of that day. Therefore, the two litigants have equal claims and divide the property. Shmuel holds in accordance with the opinion of Rabbi Elazar, that witnesses to the transmission effect the transaction. Therefore, it is possible that one of the transactions took effect prior to the other, and only one of them is the rightful owner. There is an additional opinion in the Gemara there, that Rav also holds in accordance with the opinion of Rabbi Elazar. According to this opinion, the dispute between Rav and Shmuel stems from a basic question: In the case of uncertainty, is it preferable to divide the property between the litigants, which, though equitable, is certainly not the accurate decision, or to somehow resolve the matter in favor of one litigant, which will be either fully accurate or fully inaccurate? This is connected with the dispute as to whether a ruling or a compromise is superior (see Sanhedrin 5b).

The party with the strongest claim is utilized only with regard to real estate (Rabbeinu Hananel). Tosafot and others hold that it is utilized also with regard to movable property, provided that neither litigant has possession of the item (Rambam Sefer Kinyan, Hilkhot Zikhtru Umattana 5:6; Shulhan Arukh, Hoshen Mishpat 240:3).

One who exchanges a cow for a donkey, etc. – דְּרַב אֲמַר: If one exchanged a cow for a donkey, and the cow gave birth, or alternatively, if one sold his Canaanite maidservant and she gave birth, and the buyer claims that the birth took place after the transaction had occurred, and he therefore owns the offspring, while the seller claims that the birth took place, or at least may have taken place, before the transaction had occurred, and he therefore owns the offspring, the buyer must prove his claim in order to take possession of the offspring. If the buyer does not produce proof, and the seller states a definite claim that it is rightfully his, then the seller takes an oath and is awarded the offspring. But if the seller states an uncertain claim to the offspring, they divide the value of the offspring (Maggid Mishne; see Sm). There is a distinction between the cases in terms of the oath taken by the seller when he states a certain claim. In the case of the calf, the oath is by Torah law and he must hold a Torah scroll. In the case of the maidservant, the oath is by rabbinic law, as there are no oaths by Torah law concerning slaves or maidservants (Rambam Sefer Kinyan, Hilkhot Mezchat 20:10; Shulhan Arukh, Hoshen Mishpat 223:1).
If one from the marketplace came and took possession – דב לה: If two people were disputing the ownership of a certain property, and the court ruled that whoever is stronger prevails, then a third party who has no claim to the property has no right to take it. If he does so, the court removes it from his possession. He cannot achieve atonement unless he repays each of the litigants. The Shakh, based on Tosafot and Ramban, holds that once the court confiscates the property, the third party is not required to do any more to achieve atonement. These rulings are in accordance with the conclusion of the Gemara, which rules in accordance with the opinion of Rav Ashi (Rambam Sefer Mishpatim, Hilkhut Tolan VeNitan 15:4, Shulhan Arukh, Hoshen Mishpat 1392:1, 146:22).

If the prior owner himself lifted a basket of fruit for the possessor – דב לה: Under normal circumstances, possession of a field for a duration of three years establishes the presumption of ownership. But testimony that the prior owner placed a basket of fruit from that field for the possessor; that immediately is sufficient to establish the presumption of ownership, and the prior owner can no longer lodge a protest. Rav Zevid says: But if the prior owner stated a claim and said: I brought him down into my field solely to consume the produce, e.g., as a sharecropper, he is deemed credible. And that halakha, that the prior owner is deemed credible were he to state such a claim, applies only if he stated it within three years of when the other took possession, but after three years he is not deemed credible.

Rav Ashi said to Rav Kahana: In fact he did bring him down into the field solely to consume the produce, what was there for him to do to prevent the possessor from establishing the presumption of ownership? Rav Kahana said to him: He should have protested during the first three years and publicized that he had granted the possessor rights to the produce alone.

Involvement [derara]: The commentaries dispute the meaning of this legal term. Linguistically, some hold that it is similar to a term in Syriac meaning the subject of a dispute or a disputed matter.

**NOTES**

**Financial involvement** – דב לה: There are several ways to understand this term. One way is to say that both litigants clearly have a claim to possession of the cow or the maidservant, and by extension the offspring, one before the transaction and one after (Rashbam; Rabbeinu Gershon Meor HaGola; Rabbeinu Barukh). This aligns with the understanding of many early commentators, who explain the term to mean that both litigants have a substantive basis for their claim (Rabbeinu Hananel; Rambam; Rashba; Ritva). Another way to explain the term is to say that it refers to a case where the uncertainty arises from the known facts of the case, independent of the claims of the litigants (Tosafot). Rashiv explains elsewhere (Bava Metzia 2b) that it refers to monetary loss, meaning that each litigant stands to suffer a monetary loss if he does not receive what is rightfully his. This is in contrast to the case of Rav Nahman, where one of the litigants is clearly deceitful and has nothing to lose.

Does not remove it from his possession – דב לה: This one from the marketplace has no claim to the land, but claims that as the first two contradict each other, both of their claims may be false, and the land may be ownerless (Rashbam).

That it is not subject to being returned – דב לה: Some explain that according to Rav Ashi the case in the baraita is where one steals disputed property. Since he does not know to which litigant the property belongs, he is unable to return it. It is therefore comparable to one who cheats the public or steals public property; such a person is unable to repay what he stole (Rashbam; Ramah; Rabbeinu Yona). Others state that in such a case it would in fact be possible to return it, as he can return the property to the two disputants and have them resolve the matter themselves. Rather, the baraita is actually referring to one who cheated the public by employing false weights and measures in his store over the course of time. Such a thief is unable to atone for his sin, as he does not know whom he must repay (Ramban; Rashba; Ritva).

If the prior owner himself lifted, etc. – דב לה: The prior owner assisted the possessor in taking a basket of fruit from the field (Rashbam; Rabbeinu Barukh). Since he performed a physical action and did not merely give advice, it is a compelling indication of the prior owner’s acknowledgment of the possessor’s ownership (Ramah). Rabbeinu Hananel explains that the possessor brought a basket of produce to the prior owner as a gift. The prior owner’s acceptance of the gift is tantamount to an admission that the possessor owns the field. Others suggest that the prior owner purchased a basket of produce from the possessor, thereby acknowledging the latter’s ownership.

I brought him down – דב לה: For instance, if an owner entered into an agreement with someone allowing him to consume the produce of the field for ten or twenty years (Rashbam).

But if he stated a claim and said, I brought him down to consume the produce – דב לה: That is to say, the prior owner claimed that he made an arrangement with the possessor entitling him to consume the produce. Therefore, the fact that the prior owner assisted him is no longer tantamount to an admission that the possessor owns the field (Rashbam; Rabbeinu Gershon Meor HaGola).
The assumption that lodging a protest would be effective must be correct, since if you do not say so, then in the case of this mortgage according to the custom in Sura, a city in Babylonia, in which is written: At the completion of these years this land will be released to its prior owner without any need for the prior owner to give money, if the creditor were to hide the mortgage document in his possession and say: This land is purchased and that is why it is in my possession, here is it also the case that he would be deemed credible? That cannot be, as is it reasonable that the Sages would institute a matter, such as this type of arrangement, that people can be led by it to suffer a loss? Rather, in the case of the mortgage the debtor should have protested, and by not protesting, he causes his own loss. Here, too, in the case of the field, the owner should have protested.

Rav Yehuda says that Rav says: With regard to a Jew who comes to claim land due to having received it from a gentile, he is like a gentile in terms of which legal claims are available to him. Therefore, just as a gentile has the ability to establish the presumption of ownership only by means of a document, so too, a Jew who comes to claim land due to having received it from a gentile has the ability to establish the presumption of ownership only by means of a document. Rava said: And if the Jew said to a prior owner, who claims to still own the land:

Since you if you do not say so then in the case of the field, the owner did not protest because he was intimidated. The Sages disagree as to the meaning of the phrase: Since if you do not say so. The Rashbam explains that this phrase means: If you do not say that it is known that the land was previously belonged to a Jew. It was subsequently in the possession of a gentile for the years necessary for a Jew to establish the presumption of ownership. Afterwards, another Jew purchased it from the gentile and profited from the land for the years necessary for establishing the presumption of ownership, and we see that his profits does not establish the presumption of ownership, as it derives its legitimacy from the gentile's possession, which cannot establish the presumption of ownership. Normally, profiting serves as a proof of ownership because of possession. In this case the gentile possess, so concern is that the owner did not protest because he was intimidated by the gentile (Rashbam; Ramaḥ; Rabbeinu Tona; Rashba). But if the gentile has a document attesting to his ownership it is considered valid, and there is no assumption that perhaps he forced the Jew to sell him the land under duress (Rashba).

A Jew who comes to claim land due to a gentile – This refers to a case where it is known that the land had previously belonged to a Jew. It was subsequently in the possession of a gentile for the years necessary for a Jew to establish the presumption of ownership. Afterwards, another Jew purchased it from the gentile and profited from the land for the years necessary for establishing the presumption of ownership, and we see that his profits does not establish the presumption of ownership, as it derives its legitimacy from the gentile's possession, which cannot establish the presumption of ownership. Normally, profiting serves as a proof of ownership because of possession. In this case the gentile possess, so concern is that the owner did not protest because he was intimidated by the gentile (Rashbam; Ramaḥ; Rabbeinu Tona; Rashba). But if the gentile has a document attesting to his ownership it is considered valid, and there is no assumption that perhaps he forced the Jew to sell him the land under duress (Rashba).

A gentile who has the ability to establish the presumption of ownership only by means of a document – A gentile cannot acquire a field by means of taking possession, i.e., in acting in the field as an owner does, nor can he establish the presumption of ownership through being in possession of it for three years. In order to prove his ownership of a field that is known to have belonged to a Jew, he must produce a deed. Similarly, a Jew who comes to claim land due to having received it from a gentile is subject to the same terms as a gentile with regard to proving his ownership. The Rema, based on the Mordkehai, who cites the Ra'aya, writes that in a locality where the gentile courts will remove a gentile from a field which he took possession of unlawfully, the fact that a gentile is in possession of a field can be seen as proof that it is his. Therefore, a Jew who purchases a field from a gentile may establish the presumption of ownership. So too, if the owner lodged a protest against the possession by the gentile once, he has demonstrated that he is not intimidated by the gentile, and if he then was silent for three years, the gentile would establish the presumption of ownership. (Rambam Sefer Mishpatim, Hilkhos Tolen VeNitan 14:5 and Sefer Kryan, Hilkhos Mekhila 17; Shulhan Arukh, Hoshen Mishpat 149:14–15, 194:1).
The fence – גּוּדָא: The commentaries explain that this is referring to fields that are located adjacent to the wilderness, from where wild beasts, e.g., wild donkeys, arrive to consume the produce. In order to limit the extent of the damage, the practice was to erect a fence near the periphery of the field and to leave a strip of farmland around the fence. The animals would eat the produce found in this strip. Were the owners to enclose the entire field, the animals would break into the field, causing far greater damage.

Wild donkeys – אֲכָלָה: The Asotic wild donkey, or Equus hemionus, is an untamed animal that lives in the desert. Nowadays it survives mostly in the Asian deserts, and it is often mentioned in the Bible as a symbol of freedom and lack of inhibition.

A gentle purchased a field from you in my presence – Orla: If one profited from land that he acquired from a gentle for the years necessary for establishing the presumption of ownership, and he claimed that the gentle had purchased the land from a Jew in his presence, his claim is accepted, since he could have claimed that he purchased it directly from the prior owner. He must take one oath of inducement, and he retains the land. The Maggid Mishne holds that he is not required to take an oath (Rambam Shemita 14:16; Shulhan Arukh, Hoshen Mishpat 14:16).

One who possesses a field from the fence of the wild donkeys – אֲכָלָה: If one profited from land that was outside of the field’s protective fence or otherwise unprotected from animals and trespassers, he does not establish the presumption of ownership (Rambam Shemita 14:16; Shulhan Arukh, Hoshen 14:13).

One who profited from orla – אֲכָלָה: Consumption of produce that is prohibited, such as orla, produce of diverse kinds, or produce that was planted during the Sabbatical Year (5ma) establishes the presumption of ownership. This is in accordance with a variant text of the Gemara found in many early commentaries (see Tosafot). Others hold that consumption of such produce does not establish the presumption of ownership, unless he made use of the branches and the like (see Sma), which are permitted (Tur, citing Rash). This is in accordance with the standard text of the Gemara (Rambam Shemita 14:12; Shulhan Arukh, Hoshen Mishpat 14:11).

The Gentle told me that he purchased a field from you, this claim is deemed credible. The Gemara asks: Is there any case where if a gentle says it he is not deemed credible, but if a Jew said it in the gentle’s name he would be deemed credible? Rather, Rava said: If a Jew said to the prior owner: A gentle purchased a field from you in my presence, and then he sold it to me, this claim is deemed credible, since he sold the field.

The Gemara records a series of halakhot pertaining to presumptive ownership. And Rav Yehuda says: This one who is holding a sickle and rope says: I will go call the dates from the date tree of so-and-so, from whom I purchased it, is deemed credible. The reason for this is that a person is not so brazen that he would call the dates from a date tree that is not his.

And Rav Yehuda says: With regard to this one, who possesses a field only from the fence,5 and outward toward the public property, this conduct is not sufficient to establish the presumption of ownership. What is the reason? The owner says to himself: Everything that he sows, the wild donkeys will eat as well, and cannot establish the presumption of ownership for him, as he is not profiting from the land as an owner would.

And Rav Yehuda says: With regard to one who profited from the land by consuming produce from the first three years after it was planted [usra],6 during which time one is prohibited from deriving benefit from the produce, this conduct is not sufficient to establish the presumption of ownership. This is also taught in a baraita: With regard to one who profited from the land by consuming orla, produce, or profited from the land by consuming produce of the Sabbatical Year,6,7 or consumed produce that was prohibited as it was of diverse kinds,8 this conduct is not sufficient to establish the presumption of ownership.
Kor – כור: This is the largest measurement of volume mentioned in talmudic sources. It contains thirty se‘a, which in modern measurements is 240–480 ℓ. That significant variation is due to a fundamental dispute concerning halakhic measurements.

Rav Yosef says: With regard to one who profited from the land by consuming fodder, i.e., produce that has grown stalks but is not yet ripe, this conduct is not sufficient to establish the presumption of ownership. Rava said: But if the land was located in the neck of Meroza, a valley where it was common to harvest unripe produce to feed animals, this conduct is sufficient to establish the presumption of ownership.

Rav Nahman says: Consumption of produce of land that is fissured is not sufficient to establish the presumption of ownership. This is due to the fact that produce does not grow well there, and therefore, owners do not bother to protest if a trespasser uses the land. Therefore, their silence should not be understood as an admission that it belongs to the possessor. Similarly, consumption of produce of land where one expends a kor of seed to sow and retrieves a kor of produce when harvesting it, is not sufficient to establish the presumption of ownership. Here, too, the owners do not bother to protest, as the land is of inferior quality.

Rav Nahman continues: And these members of the household of the Exilarch do not establish the presumption of ownership in our land, as people are afraid to lodge a protest against them, and we do not establish the presumption of ownership in their land, as, due to their wealth, they might not lodge a protest against one who trespasses on their land.

One who profited by consuming fodder – תחית הלכה: If one sowed a crop and then harvested it before it ripened, he does not establish the presumption of ownership. But in a place where produce is commonly grown for this purpose, he does establish the presumption of ownership (Rambam Sefer Mishpatim, Hilkhot Toen VeNetan 12:11; Shulhan Arukh, Hoshen Mishpat 141:10).

Fissured – דבוי הנספח: If one dug irrigation ditches or sowed without plowing, he does not establish the presumption of ownership (Hilkhot Toen VeNetan 12:9; Shulhan Arukh, Hoshen Mishpat 141:5, 8 in the comment of Rema).

Expend a kor and retrieves a kor – איב yol kor אין קור: One establishes the presumption of ownership of a field only when the quantity of produce harvested exceeds the quantity used to sow the field, regardless of the number of years the possessor sowed and harvested. This refers to the quantity of seed used and produce harvested, and does not relate to financial profit or loss, which takes into account additional expenses such as taxes (Rambam Sefer Mishpatim, Hilkhot Toen VeNetan 12:10; Shulhan Arukh, Hoshen Mishpat 141:16, and in the comment of Rema).

And these members of the household of the Exilarch do not establish the presumption of ownership in our land, as people are afraid to lodge a protest against them, and we do not establish the presumption of ownership in their land, as, due to their wealth, they might not lodge a protest against one who trespasses on their land.

One who profited by consuming fodder – תחית הלכה: If the possessor harvested the produce as fodder rather than waiting for it to ripen, he does not establish the presumption of ownership. This is because his actions indicate that he is not the true owner, as the true owner would harvest the field in the normal fashion (Rashbam). Rabbeinu Hananel explains that he does not establish the presumption of ownership because harvesting for fodder is not profitable and resembles the following case in the Gemara where the field does not produce any more grain than was sowed. Rabbeinu Barukh explains that since the possessor harvested the grain very early, the prior owner can claim that it escaped his notice.

Fissured – דבי הנספח: The Rashbam understands this to refer to land that is full of cracks and is therefore unsuitable for growing crops. Rabbeinu Hananel explains that the possessor did not plow the field, but merely sowed in its crevices. Since this is not how an owner sows his field, he does not establish the presumption of ownership (Ittava). The Ra’avad explains that he plowed once superficially and immediately sowed the field. When sown this way, the crop does not grow properly. The Rashbam, in accordance with the explanation of Rav Hai Gaon, interprets the term as referring to irrigating the field.

According to this understanding, the reason that he does not establish the presumption of ownership is that although he has worked the field, he has not derived any benefit from it. Rabbeinu Hananel, citing one of the ge’onim, interprets it to mean that he pruned palm branches.

Of the household of the Exilarch – נתי הנספח יד הלא: When a member of the household of the Exilarch takes possession of someone else’s property, the owner of the property is not intimidated by him due to his power and might not lodge a protest. He also might be silent out of respect for the Exilarch. In the reverse scenario, members of the household of the Exilarch won’t necessarily protest other people possessing their lands, due to their great wealth, and may prefer to allow their fields to be farmed by others so as to prevent them from falling into a state of disrepair. Additionally, as the Rashbam and others explain, they may not feel a need to lodge a protest, as they have the power to easily reclaim their land whenever they wish. Rabbeinu Hananel, cited by the Rashbam, explains that since they are very generous, they sometimes allow people to use their property for a period of time. Another possibility is that since they are preoccupied with public affairs, they do not have time to check what is happening to their own property.
Livestock – תוריס: Possessing adult slaves or animals that tend to move around without supervision is not regarded as proof of ownership. If another has proof of prior ownership, he can collect by means of taking an oath of inducement (see Shakh). If he does not have proof of prior ownership, the one who has possession takes an oath of inducement and retains the slave or animal. If there is testimony that one had a slave or animal in his possession for three years of normal use, the presumption of ownership is established (Rambam Sefer Mishpatim, Hilkhot Toren VeNetanot 10:1; Shulhan Arukh, Hoshen Mishpat 72:21, 153:1).

If the slave was a small child placed in a cradle – וְהָעֲבָדִים אוֹםֵר. One can immediately establish proof of ownership through possession of an infant Canaanite slave who is incapable of going from place to place unaided, as with any movable item. The burden of proof is, therefore, on one who challenges the ownership of the possessor. This is the halakha even if the infant’s mother frequented the home of the one currently in possession of the child (Rambam Sefer Mishpatim, Hilkhot Toren VeNetanot 10:4; Shulhan Arukh, Hoshen Mishpat 153:2).

He is able to claim up to – וְהָעֲבָדִים. If an animal of the sort that does not normally move around unsupervised, with regard to which possession is regarded as proof of ownership, was in the possession of a shepherd, who claimed that he seized it because the owner owed him money, his claim concerning the debt is accepted up to the value of the animal. The shepherd takes an oath while holding a sacred object and collects the debt (Rambam Sefer Mishpatim, Hilkhot Toren VeNetanot 10:3; Shulhan Arukh, Hoshen Mishpat 72:21, 153:1).

Goats are different – וְהָעֲבָדִים. In a locality where the practice is to transfer animals to a shepherd directly and not allow them to go on their own, possession of them is regarded as proof of ownership, just as with other movable items. In such a case, if one has an animal in his possession and another makes a claim against him, the former takes an oath of inducement and keeps the animal (Rambam Sefer Mishpatim, Hilkhot Toren VeNetanot 10:2; Shulhan Arukh, Hoshen Mishpat 72:21, 153:1).

Language — הַגּוֹדְרוֹת: Probably from the Hebrew term geder, meaning a fence. The word refers to animals that are normally fenced in, such as sheep and the like.

Peeled barley (ḥushela) — הַשָּׁלֵהַ. This word appears to be related to the verb ḥaal, meaning to hit or crush. Here it refers to grain, particularly barley, whose peel has been removed by means of threshing.

Arabs (ṭayyaret) — אֲרָבוֹא. From the Arabic ṭaba'a, pl. ṭayyaret. This term refers to members of various Arabian tribes who dwelled between Arabia and Babylonia and who would reach Babylonia as a result of their travels for the purpose of commerce.

Notes — מִדְבָּרָה. Immediately. After three years, they are subject to presumptive ownership, as the owners would not leave them in another’s possession for so long (Ramban). The Rashba distinguishes between slaves and animals. He maintains that while with regard to slaves, the presumption of ownership is established after only three years, it is established with regard to animals as soon as enough time has elapsed for the owner to notice that they are missing (Rashba on the mishna on 28a). The Ramah holds that one cannot establish the presumption of ownership with regard to livestock, as they are not sold with a bill of sale.
Plowing is not sufficient to establish the presumption of ownership. The basis for the establishment of a presumption of ownership is z correctness, not plowing. If the possessor plowed it for two years and then sowed it for one year, it means three years to the day. Other early commentators hold that this is not sufficient to establish the presumption of ownership. According to Rav Naĥman, this is sufficient to establish the presumption of ownership, which indicates that he holds that plowing establishes the presumption of ownership.

Rav Ashi said: I asked all of the great men of the generation about this, and they said to me: With regard to plowing, this is sufficient to establish the presumption of ownership. Rav Beivai said to Rav Naĥman: What is the reason of the one who says that plowing is sufficient to establish the presumption of ownership? Rav Naĥman answered: A person is not apt to have his land plowed by someone else and remain silent. Rav Beivai asked: And what is the reason of the one who says that plowing is not sufficient to establish the presumption of ownership? Rav Naĥman answered: The owner says to himself: Let each and every clump [shibba] of earth enter the plow. That is to say, the owner is amenable to having someone else plow the land for him, and then he will sow and harvest.

The residents of Pum Nahara sent a question to Rav Naĥman bar Rav Hida. Our teacher, instruct us: Is plowing sufficient to establish the presumption of ownership, or is it not sufficient to establish the presumption of ownership? Rav Naĥman bar Rav Hida said to them: Rabbi Aha and all of the great men of the generation say: With regard to plowing, this is sufficient to establish the presumption of ownership.

Rav Naĥman bar Yitzĥak said: Is it a novelty to enumerate great men who maintain an opinion without taking into account that of others? But what of Rav and Shmuel in Babylonia, and Rabbi Yishmael and Rabbi Akiva in Eretz Yisrael, who say: Plowing is not sufficient to establish the presumption of ownership?

The Gemara presents the sources for ascribing to these Sages the opinion that plowing does not establish the presumption of ownership. The basis for ascribing it to Rabbi Yishmael and Rabbi Akiva is the mishna, as the Gemara explained above. What is the basis for ascribing this opinion to Rav? As Rav Yehuda says that Rav says: This ruling that either a month or three months is sufficient use for the first and third years is the statement of Rabbi Yishmael and Rabbi Akiva, but the Rabbis, whose opinion is accepted, say: With regard to a field, its presumption of ownership is established by three years, from day to day. The phrase: From day to day, serves to exclude what. Does it not serve to exclude plowing, which does not establish the presumption of ownership?
A young tree refers to a young tree that bears fruit three times in less than three years from day to day have passed. Others, along the lines of the standard text of the Gemara, interpret that it produces a crop twice a year. Such trees can produce three crops in one year. The Rashbam explains that this is a tree whose fruits would fall to the ground without being gathered, and one would not establish the presumption of ownership on this basis. According to Rav, profiting from this tree for three years is equivalent to establishing the presumption of ownership, either because the amount of time one is required to establish the presumption of ownership in a field is three years, or because the trees are planted at minimally four cubits from each other. Otherwise, they will have to be uprooted, and one would not establish the presumption of ownership.

From the opinion of Rabbi Yishmael, the Rambam concludes that the presumption of ownership can be established by means of harvesting different types of produce, as long as the trees are planted at minimally four cubits from each other. Otherwise, they will have to be uprooted, and one would not establish the presumption of ownership.

Planted ten trees – נַסְעָה עֶשֶׂר. If the orchard would be planted ten trees further apart than ten trees per se’a, the possessor could establish the presumption of ownership in a field.

Until he harvests three date crops,– הָיוּ לוֹ שְׁלֹשִׁים אִילָנוֹת. One can establish the presumption of ownership in fields that produce crops once a year, such as orchards, if one harvests the entire field for three years, or if one harvests three crops in a field. Therefore, if one harvested three crops of dates or grapes or any other type of produce in a field, he established the presumption of ownership even if there was no cultivation of rainwater. This is in accordance with the opinion of Rabbi Shmuel as explained by the Rashbam. The Rema cites an opinion (Tur, citing Roth and Rabbienu Yona) that the same in these cases three years are required. The Rema is inclined to rule this way, in accordance with the interpretation of Rabbi Hananel (Rambam Sefer Mohara- 121; Shulhan Arukh; Hoshen Mishpat 141:15).

One had thirty trees – לִמְצֹה שֶׁלֶשֶׁנָּה דָּלָה. If there was a field with thirty trees that were spread throughout the area, which produce a crop three times in one year, establishes the presumption of ownership.
HALAKHA

Where the trees did not produce – דב 가지: One can establish presumptive ownership with regard to an orchard by consuming the produce of some of its trees only if the other trees did not produce fruit that year. If the other trees did produce fruit, he does not establish presumptive ownership at all, but he does acquire the produce that he consumed (Sma). This halakha refers to a case where the produce of the other trees was consumed by other people. If the produce that he did not consume was left untouched on the trees, then he establishes the presumption of ownership of the entire orchard. This is in accordance with the Rambam’s interpretation of the Gemara (Rambam Sefer MiShpatim, Hilchot Tolan VeNetan 12:19, 20; Shulhan Arukh, Hoshen MiShpat 14:17).

This one acquired the trees and half of the land – דב 가지 עה: If two people worked and profited from a field, with one of them sowing and harvesting the land itself and the other consuming the produce of the trees, and each claims ownership of the entire field, the one who consumed the produce of the trees establishes the presumption of ownership of the trees, as well as the surrounding land that is necessary to harvest the produce of those trees. Others hold that in addition to the trees he acquires only the right to replace the trees if they wither (Sma). The other person establishes the presumption of ownership of the rest of the field (Rambam Sefer MiShpatim, Hilchot Tolan VeNetan 12:17; Shulhan Arukh, Hoshen MiShpat 14:11, 12; in the comment of Rema).

LANGUAGE

Scattered [bazei] – בazăי: The dispute among commentators as to the meaning of this point in the Gemara has its roots in the linguistic ambiguity of this term. It is unclear whether the word derives from basei, meaning cut or divided, or whether it derives from bazaa, meaning that which is taken or plundered.

NOTES

That they are scattered [devazei bazei] – דב 가지: The trees whose produce he consumed were scattered throughout the field, not concentrated in one area. Therefore, he demonstrated ownership of the entire orchard by consuming the produce of those trees (Rashbam). Similarly, Rabbeinu Hananel explains that he consumed the produce of several trees in each row of the orchard.

The Rambam understands the Gemara differently, based on a different translation of the word bazei. He explains that if the trees whose produce he did not consume were abandoned, and other people consumed their produce, he does not establish the presumption of ownership of the orchard. But if all of the trees were under his control, he establishes the presumption of ownership of the entire orchard even if he did not consume the produce of all of its trees. The RaAvad has a completely different explanation. He holds that even with regard to the trees of which he consumed the produce, he establishes the presumption of ownership only if they were located in a particular section of the orchard. If, however, they were scattered randomly throughout the orchard, he does not establish the presumption of ownership (see the Rashba).

This person took possession – נשא את הרים: The majority of early commentators understand the Gemara along the lines of the Rashbam, who explains that this discussion is addressing acquisition and the act of taking possession, not establishing the presumption of ownership through extended use. The case is one in which two people purchased property from a field, with one of them purchasing the land and the other one purchased the trees (Rav Se’ada Gaon; Rabbeinu Hananel). Rav Zevid and Rav Pappa discuss what each of them owns. The Ri Migash notes that the same principles would apply in a case where two individuals acquired ownerless property by means of taking possession. The Ritva suggests that it is in order to include that case that the Gemara discusses the act of acquisition of taking possession as opposed to another act of acquisition.

There are those who maintain that the Gemara is referring to establishing the presumption of ownership, and claim that the case is one in which one person works and profits from the land, while the other works and profits from the trees (Tosafot; Ramah). This interpretation is supported by the context of the discussion, as effecting acquisition through possession is discussed in a later chapter (Tosafot). There are those who note that the two interpretations are actually complementary, since whatever action is effective for taking possession also is effective for establishing the presumption of ownership as long as there is an accompanying valid claim as to how he became the owner (Ritva; Meiri).

Uproot your trees – ענקי את גנים: Some understand this to mean that when these trees wither, their owner has no right to replant them (Rashbam; Rabbeinu Gershom Meor Hayala). Others reject this, asserting that this very point is made by Rav Zevid. Rather, they understand it to mean that the landowner can demand that he uproot the trees immediately so that they do not pull nutrients from his land (Rid; Rabbeinu Yona; Ritva; Ran; and see Tosafot).

Trees and half of the land – ענקי את גנים: According to many commentators, this means that they divide the land in some fashion, but not actually in half. Rather, the owner of the trees receives only the land that is necessary to sustain the trees (Rashbam; Ri Migash). Similarly, the RaSha understands the tree owner’s half to merely mean rights to the land. These rights entitle him to replace his trees. Others explain Rav Pappa’s statement to be referring only to the part of the land that sustains the trees. This land is equally divided, as it is uncertain which of them is the owner of that land (Rashba; Ritva). It appears that the Rambam understands the Gemara literally and holds that the owner of the trees owns half of the field.
The Gemara notes: It is obvious that if one sold a section of land and left the ownership of the trees in that land for himself, he has ownership of the land surrounding the trees. And this is the halakha even according to the opinion of Rabbi Akiva, who says: One who sells, sells generously, and he is presumed to have included in the sale even items that were not explicitly specified, because that statement applies only concerning a case such as when one sold land and retained ownership of a pit or a cistern. In that case, Rabbi Akiva ruled that he does not retain any land, not even a path to access the pit or cistern, as he sold generously, including all of the land in the sale.

The Gemara explains the difference between the cases: That ruling applies there, as the pit or cistern causes no harm to the land surrounding them, and since the seller does not foresee a conflict arising from his pit and cistern being located adjacent to the buyer’s property, he therefore transfers the entire land. But in the case of his retaining the trees, since they are causing harm to the land, the seller does leave the land that is surrounding the trees for himself, as if he did not leave it, let the buyer say to him: Uproot your trees and go.

The Gemara discusses the reverse case: If one sold the trees and left the ownership of the land for himself, the halakha depends on the outcome of the dispute of Rabbi Akiva and the Rabbis. According to Rabbi Akiva, who says: One who sells, sells generously, the buyer has ownership of the land surrounding the trees, as the presumption is that the seller did include it in the sale. According to the Rabbis, who say: One who sells, sells sparingly, the buyer does not have ownership of the land surrounding the trees, as the presumption is that the seller did not include it in the sale.

The Gemara stated previously that according to the opinion of Rabbi Akiva, the buyer has ownership of the land surrounding the trees. The Gemara clarifies this opinion: And even according to Rav Zevid, who said (37a) that in a case where one took possession of the land and another took possession of the trees, the one who took possession of the trees has no share in the land, that matter applies only concerning the case of two buyers. As in that case, the one who acquired the land can say to the other: Just as it is so that I have no share in the trees, you also have no share in the land; but here, where one sold the trees and left the land for himself, one who sells, sells generously. Therefore, it is reasonable to assume that the sale included the land surrounding the trees.

The Gemara stated earlier that according to the opinion of the Rabbis, the buyer does not have ownership of the land surrounding the trees. The Gemara clarifies this opinion: And even according to Rav Pappa, who says above that in a case where one took possession of the land and another took possession of the trees that the one who took possession of the trees has ownership of half of the land as well, that matter applies only concerning the case of two buyers. As in that case, the one who acquired the trees can say to the other: Just as it is so that the seller sold to you generously, as you have both the land and the right to consume its produce, he also sold to me generously, including the land surrounding the trees; but here, where one sold the trees and left the land for himself, one who sells, sells sparingly, retaining for himself whatever he did not explicitly include in the sale.
The Sages of Neharde’a say: If one consumed the produce of an overcrowded orchard, he does not thereby have presumptive ownership of the orchard. Rava objects to this: If that is so, how does one ever acquire this alfalfa field, which is planted without spacing? Rather, Rava said: If one sold an overcrowded orchard, the buyer does not have ownership of the land surrounding the trees. Generally, if one purchases three or more trees, he acquires the surrounding land, as the trees are considered an orchard. If the trees are overcrowded, they will soon have to be uprooted, and that is why the buyer does not acquire the land surrounding the trees.

Rabbi Zeira said: This is like a dispute between tanna’am (Kilayim 5:2): With regard to a vineyard that is planted on an area where there is less than four cubits of open space between the vines, Rabbi Shimon says: It is not considered to be a vineyard with regard to the prohibition of diverse kinds and other halakhot, as it is overcrowded. And the Rabbis say: This is considered to be a vineyard, and the reason for this is that the middle vines are viewed as if they are not there, and the outer vines meet the requirements for a vineyard. It follows that according to the opinion of the Rabbis, if one sold an overcrowded orchard, the middle trees would be viewed as if they were not there. Therefore, it would be considered an orchard and the buyer would acquire the land surrounding the trees.

The Sages of Neharde’a say: This one who sells a date tree to another, the buyer acquires the land from its bottom until the depths.”

If one consumed the produce of an overcrowded orchard – he does not have presumptive ownership – אֵין לוֹ הַאי מַאן דְּזַבֵּין דִּמְכָּר אִילָנוֹת וְשִׁיֵּיר ַרְ ַע. The Rashbam offers two explanations for this halakha. The first, following the interpretation of Rabbeinu Gershom Meor HaGola, is that since it is not common to plant trees in this manner, he does not establish the presumption of ownership. Second, he suggests that these trees are there only temporarily, as they will need to be moved in order to flourish. The Ri Migash explains that the owner can claim that he saw no need to lodge a protest as he realized that the trees would soon wither in any case.

Rabbi Zeira holds that the one who purchased the trees has the right to prevent the buyer from consuming their produce, and therefore typical tree usage should suffice to establish the presumption of ownership even though the trees are planted in an unusual manner.

If one consumed the produce of an overcrowded orchard, he does not thereby have presumptive ownership – אֵין לוֹ הַאי מַאן דְּזַבֵּין דִּמְכָּר אִילָנוֹת וְשִׁיֵּיר ַרְ ַע. The Rashbam explains that it is not considered a vineyard with regard to the prohibition of planting diverse kinds and other halakhot, as it is overcrowded. If three rows are planted with less than the required space between them, the middle row is viewed as if it were not there, and the remaining vines are deemed a vineyard in all respects (Rambam Sefer Zera’im, Hilkhot Klayim 7:2; Shulhan Arukh, Yoreh De’ah 296:3).

A vineyard that is planted on an area where there is less, etc. – Rows of grape vines need to be planted with four cubits between them in order not to be overcrowded. If three rows are planted with less than the required space between them, the middle row is viewed as if it were not there, and the remaining vines are deemed a vineyard for the purpose of receiving an exemption from military service (see Sota 43).

From its bottom – חֲלְפָּה אֵין לוֹ מַאן דְּזַבֵּין דִּמְכָּר אִילָנוֹת וְשִׁיֵּיר ַרְ ַע: This is referring to the base of the vineyard (Rashbam). Rabbeinu Gershom Meor HaGola explains that it is defined by the area where the roots take hold in the earth. This is a narrower area than that of the branches, but broader than that of the trunk.

Until the depths – חֲלְפָּה אֵין לוֹ מַאן דְּזַבֵּין דִּמְכָּר אִילָנוֹת וְשִׁיֵּיר ַרְ ַע: Some commentaries understand this to mean that if the tree died, its owner has the right to replace it (Ravbeinu Hananel; Rashbam). The majority of the early commentaries reject this interpretation, as it contradicts the ruling of a mishna (see Sota). Therefore, they understand it to mean that the landowner cannot force the owner of the tree to uproot it (Ri Migash). Another explanation is that it means that the owner of the tree has the right to prevent the landowner from digging beneath the tree (Rabbeinu Yitzchak of Dampierre, cited in Tosafot 38a). The Rashbam explains it to mean that while the owner of the tree may not replace it if it dies, he has the right to make use of the place where the tree had been in other ways.

HALAKHA

If one sold an overcrowded orchard – אֵין לוֹ מַאן דְּזַבֵּין דִּמְכָּר אִילָנוֹת וְשִׁיֵּיר ַרְ ַע. One can establish the presumption of ownership of an orchard even if the trees are within four cubits of each other, leading to the certainty that the overcrowded placement of the trees will cause them to eventually wither. This is in accordance with the opinion of Rava (Rambam Sefer Mishpatim, Hilkhot Toren Velish 12:1; Shulhan Arukh, Hoshen Mishpat 14:11, see Rema and Beur HaGra, 14:117).

If one sold three trees that were planted excessively close to each other, the buyer does not acquire the land since these trees will eventually wither (Rambam Sefer Kinyan, Hilkhot Mekhirah 24:8; Shulhan Arukh, Hoshen Mishpat 216:7).

NOTES

Alfalfa – קָלָקְשַׁר: Rava’s question is based on the fact that alfalfa is planted very densely. The Rashbam questions the comparison of trees to alfalfa, as it is common to plant alfalfa densely, which is not the case with regard to trees. He suggests that it was also the practice to uproot alfalfa and replant it elsewhere. The Ri Migash explains that the case of alfalfa illustrates the principle that one can establish the presumption of ownership even through a short-lived use, and the same should apply in the case of trees that will be uprooted. The Rashbam explains that since in the case of alfalfa, the presumption of ownership is established through its typical use, so too with regard to trees, even those densely planted, the typical way to benefit from them is to consume their produce, and therefore typical tree usage should suffice to establish the presumption of ownership even though the trees are planted in an unusual manner.

It is not a vineyard – חֲלְפָּה אֵין: The Rashbam explains that it is not considered a vineyard with regard to the prohibition of planting diverse kinds in this area. Tosafot explain that while one would be prohibited from planting grain there, one would need to distance the grain only three handbreadths away, as is the case when planting in proximity to individual vines, and not four cubits away, as is the case when planting in proximity to a vineyard. Also, it is not deemed a vineyard for the purpose of receiving an exemption from military service (see Sota 43).

Most of the early commentaries reject this interpretation, as it contradicts the ruling of a mishna (see Sota). Therefore, they understand it to mean that the landowner cannot force the owner of the tree to uproot it (Ri Migash). Another explanation is that it means that the owner of the tree has the right to prevent the landowner from digging beneath the tree (Rabbeinu Yitzchak of Dampierre, cited in Tosafot 38a). The Rashbam explains it to mean that while the owner of the tree may not replace it if it dies, he has the right to make use of the place where the tree had been in other ways.
Rava objects to this ruling that the buyer of the tree acquires the land beneath it: And let the seller say to him: I sold you only the saffron crocus,84 a small plant normally uprooted by the buyer and taken with him. Therefore, uproot the saffron crocus and go. Rather, Rava said: This ruling is stated with regard to one who comes to court with a specific claim84 that the seller had stipulated that he would acquire the land. Without this specific claim he does not acquire the land beneath the tree.

Mar Khashish, the son of Rava Hisdai, said to Rava Ashi: And if, in fact, the seller sold him the saffron crocus, what was there for the seller to do to prevent the buyer from claiming the land beneath the tree, as the buyer could claim that there had been an explicit stipulation that he receive it? Rava Ashi answered: He should have protested during the first three years and publicized that the land was not included in the sale.

The assumption that lodging a protest would be effective must be correct, since if you do not say so, then in the case of these mortgages according to the custom in Sura, a city in Babylonia, the debtor will not have a way to prevent the creditor from keeping his land. As in mortgages of that type it is written like this: At the completion of these years this land will be released to its prior owner without any need for the prior owner to give money. If the creditor were to hide the mortgage document in his possession and say: This land is purchased and that is why it is in my possession, here is it also the case that he would be deemed credible? That cannot be, as is it reasonable that the Sages would institute a matter, such as this type of arrangement, that people can be led by it to suffer a loss? Rather, in the case of the mortgage the debtor should have protested, and by not protesting, he causes his own loss. Here too, in the case of the tree, the owner should have protested.

HALAKHA
I sold you a saffron crocus – only. If one purchased fewer than three trees in another’s field, he is not entitled to any land. Therefore, if the trees die or are cut down, the buyer is left with nothing. The Rema, citing the Tur, rules that nevertheless, the buyer does have rights to use the area immediately surrounding the trees for the purpose of harvesting their produce. Similarly, he has the right to prevent the buyer from planting in the ground beneath the tree, as the buyer could claim that there had been an explicit stipulation that he receive it.

With regard to one who comes to court with a specific claim – only. If one establishes the presumption of ownership of a tree by consuming its produce for three years, and he claimed that he purchased the tree together with its surrounding land, he is the owner of the land until the depths. Therefore, one who sold a lone tree to another without selling the land surrounding the tree must lodge a protest before the close of three years in order to prevent the buyer from establishing the presumption of ownership over the land (Rambam Hilkhot Mispatim 12:18; Shulhan Arukh, Hoshen Mishpat 14:120).

NOTES
With regard to one who comes to court with a specific claim – only. The commentaries disagree as to the meaning of the phrase. Since if you do not say so. The Rashbam explains that this phrase means: If you do not say that it is considered a protest even were the claimant to state that the possessor is there lawfully but is not the owner, not only when the claimant states that the possessor is profiting from the land unlawfully. Others explain that it means: If you do not say that the owner must lodge a protest despite the fact that the possessor is consuming the produce lawfully (Rabbeinu Gershom Meor HaGola; Ramah, Ramban).
There are three independent lands in Eretz Yisrael with regard to establishing presumptive ownership: Judea, and Transjordan, and the Galilee. If the prior owner of the field was in Judea and another took possession of his field in the Galilee, or if he was in the Galilee and another took possession of his field in Judea, the possessor does not establish presumptive ownership until the one possessing the field will be with the prior owner in one province. Rabbi Yehuda says: The Sages said that establishing presumptive ownership requires three years only in order that if the owner will be in Spain [Aspamya], and another possesses his field for a year, people will go and inform the owner by the end of the next year, and the owner will come back in the following year and take the possessor to court.

Rabbi Abba bar Memel says that Rav says: Actually, the tanna holds that a protest lodged not in his presence is a valid protest, and the Sages taught our mishna with regard to a period of crisis, when travel is perilous and information cannot be transmitted between Judea and the Galilee. Therefore, although no word of a protest was received, the possessor does not establish presumptive ownership of the field. The Gemara asks: But if it is due only to the exigent circumstances that word of the protest does not reach the one possessing the field, what is different about Judea and the Galilee that the tanna cited? Ostensibly, even within one of the three lands, if travel and communications are restricted the same halakha would apply.

The Gemara answers: The tanna, by citing specifically a case where each is located in a different land, teaches us this:

**NOTES**

Rabbi Yehuda disagrees with the first tanna, as it states there that he holds that one year is sufficient. The Rashbam explains further that according to Rabbi Yehuda the reasoning behind the establishment of the presumptive ownership is not based on the idea that people preserve their documents for three years. Rather, it is based on the principle that if the prior owner saw someone else possess his land and did not protest, it constitutes proof of the possessor’s ownership. In principle this is so immediately, and the period of the three years was established in case the prior owner and the field were not in the same location.

Spain – Aspamya: The early commentaries explain that the Sages established a standard based on the furthest distance that people commonly traveled, even though it is possible that people would occasionally travel further.

**HALAKHA**

A protest lodged not in his presence is a valid protest, if the owner protested in the presence of witnesses, it is a valid protest even if it is not in the presence of the possessor, as long as it is possible for the possessor to hear of the protest. (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 11:5, Shulhan Arukh, Hoshen Mishpat 146:1.)

With regard to a period of crisis, the possession and use of property during a time of war or a time when travel is disrupted does not establish the presumptive ownership (Rambam Sefer Mishpatim, Hilkhot Toen VeNitan 11:5; Shulhan Arukh, Hoshen Mishpat 143:1).
That an ordinary situation with regard to travel between Judea and the Galilee is tantamount to a period of crisis.\(^6\) Rav Yehuda says that Rav says: One cannot establish the presumption of ownership with regard to the property of one who is fleeing, as he is unable to lodge a protest. Rav Yehuda reports: When I said this ruling before Shmuel, he disagreed and said to me: But does the owner actually have to protest in the presence of the possessor? Since that is not the case, and he can lodge a protest wherever he is, one can establish the presumption of ownership with regard to the property of one who is fleeing.

The Gemara asks: And Rav, who ruled that one cannot establish the presumption of ownership with regard to the property of one who is fleeing, what is he teaching us, that a protest that is lodged not in his presence is not a valid protest? But doesn’t Rav say: A protest that is lodged not in his presence is a valid protest? The Gemara answers: Rav was explaining the reason of the tanna of our mishna, but he himself does not hold accordingly. Rav holds, in accordance with the opinion of Rabbi Yehuda, that the protest is valid.

And there are those who say a different version of the previous discussion: Rav Yehuda says that Rav says: One can establish the presumption of ownership with regard to the property of one who is fleeing.\(^6\) Rav Yehuda reports: When I said this ruling before Shmuel,\(^6\) he said to me: Isn’t that obvious? But does the owner actually have to protest in the presence of the possessor?

The Gemara asks: And Rav, who ruled that one can establish the presumption of ownership with regard to the property of one who is fleeing, what is he teaching us, that a protest that is lodged not in his presence is a valid protest? But Rav already said this halakha one time, and he would not need to repeat it. Rather, Rav teaches us this: That even if the owner protested\(^6\) in the presence of two witnesses who are personally unable to tell\(^6\) the possessor about the protest, it is nevertheless a valid protest.

NOTES

That an ordinary situation with regard to travel between Judea and the Galilee is tantamount to a period of crisis.\(^6\) Even when there is no war, travel between them is difficult and constrained (Rashbam). In the Jerusalem Talmud, Rabbi Elazar teaches that once the Sages established this principle, there is no presumptive ownership even in a case where there is contact between the two locations.

Is tantamount to a period of crisis – The early commentators ask how this can be reconciled with the Gemara (Gittin 81b) that states that witnesses are available to ratify a bill of divorce throughout Eretz Yisrael, which indicates that there is free travel throughout Eretz Yisrael, including between Judea and the Galilee. They answer that with regard to a bill of divorce, the wife actively seeks out witnesses and will be able to find a few individuals who have traveled from one province to the other. With regard to a protest, the matter depends on the word spreading naturally. This will happen only if there is free travel between the localities (Tohorot; Rashba).

One can establish presumption of ownership with regard to the property of one who is fleeing – Since the owner is fleeing, he is unable to protest. While the same halakha would apply whenever the owner is in a situation preventing him from lodging a protest, the Gemara chose this particular example because it is the most likely scenario in which someone would seize his property unlawfully, as he would not be concerned that the owner will return (Rashbam).

The Jerusalem Talmud offers proof for the opinion that one can establish the presumption of ownership from the biblical narrative concerning the Shunammite woman (I Kings 1:1–3). Her land was occupied during the time she was fleeing in the Philistine lands, and she required the intercession of the king to recover it.

When I said this ruling before Shmuel – The Rashbam explains this Gemara based on the fact that Rav Yehuda was initially a disciple of Shmuel. After Shmuel’s death, Rav Yehuda became a preeminent disciple of Shmuel.

One can establish presumption of ownership with regard to the property of one who is fleeing – Since the owner is fleeing, he is unable to protest. While the same halakha would apply whenever the owner is in a situation preventing him from lodging a protest, the Gemara chose this particular example because it is the most likely scenario in which someone would seize his property unlawfully, as he would not be concerned that the owner will return (Rashbam).

The Rashbam explains this Gemara based on the fact that Rav Yehuda was initially a disciple of Shmuel. After Shmuel’s death, Rav Yehuda became a preeminent disciple of Shmuel.

Rav therefore taught us this: That even if the owner protested in the presence of two witnesses who are personally unable to tell the possessor about the protest, it is nevertheless a valid protest.
Talmud, Rabbi Elazar teaches that once the Sages established this, one can establish presumptive ownership with regard to the property of one who is fleeing. This is tantamount to a crisis period – that an ordinary situation with regard to travel between Judea and the Galilee – be lodged in the presence of witnesses who will report it directly to the owner is afraid of being discovered by his victim’s blood redeemer. The Rashba explains that the blood redeemer would pursue the killer to any place he might possibly be found, while a creditor would not go to such lengths. Others understand the term to refer to one who committed treason (Rabbeinu Gershon Meor HaGola). The Rashbam understands that the reason for his not protesting is his fear of being discovered. It would seem that the Rambam understands that he is too preoccupied with his survival to protest about mere monetary matters.

The Gemara explains: As Rav Anan said: This was explained to me personally by Shmuel himself: If the owner protested in the presence of two people who are able to personally tell the possessor, it is a valid protest, but if the owner protested in the presence of two people who are unable to personally tell the possessor, it is not a valid protest. And why does Rav hold that it is a valid protest? Because your friend who heard the protest has a friend to whom he tells about the protest, and your friend’s friend has a friend to whom he tells about the protest, and so forth. Therefore, word of the protest will reach the possessor.

Rava says: The halakha is that one cannot establish the presumption of ownership with regard to the property of one who is fleeing, and a protest that is lodged not in a possessor’s presence is a valid protest. The Gemara asks: How can he say these two statements that contradict each other? The Gemara answers: This is not difficult. Here, the second statement, is referring to a case where he is fleeing due to monetary difficulties. In such a case, he is able to ensure that the protest reaches the possessor, while there, the first statement, is referring to a case where he is fleeing due to a charge of killing [meradin].

In such a case, he is unable to publicize his protest out of fear of revealing his whereabouts.

The Gemara presents a series of disputes with regard to what is considered a valid protest. What manner of statement constitutes a protest? Rav Zevid said: If the owner says in general terms: So-and-so is a robber, it is not a valid protest, but if he says: So-and-so is a robber as he is holding my land through robbery,

### NOTES

Killing (meradin) – מרדין. Apparently this word comes from the Middle Iranian term murd, meaning death. The Iranian term is distantly related to the English word mortality.

### LANGUAGE

What manner of statement constitutes a protest – איבד יום קדוש. Merely saying: So-and-so is a robber, is not a valid protest. It is necessary to say: So-and-so, who is in possession of my property, is a robber and I intend to bring him to court. The Rema, citing the Rosh and others, writes that it is not necessary to say: And I intend to bring him to court (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 11:7; Shulhan Arukh, Hoshen Mishpat 146:4).

Two – мнין. This expression has two usages. The first usage is as a critique of an apparent redundancy. The second is to point out an apparent contradiction between two statements of a Sage. Here it is used in the latter sense.

Killing – מרדין. The Rashbam and others explain that this term refers to killing. Even if he killed another unwittingly, the owner is afraid of being discovered by his victim’s blood redeemer. The Rashba explains that the blood redeemer would pursue the killer to any place he might possibly be found, while a creditor would not go to such lengths. Others understand the term to refer to one who committed treason (Rabbeinu Gershon Meor HaGola). The Rashbam understands that the reason for his not protesting is his fear of being discovered. It would seem that the Rambam understands that he is too preoccupied with his survival to protest about mere monetary matters.

So-and-so is a robber – גמרא. This is not a valid protest because the specific content of the protest is not clear to the possessor (Rashbam). Rabbeinu Yona adds that if the owner did not state that the possessor is a robber, the protest is still valid as long as he said: He is possessing my land through robbery. The Ritva holds that it is necessary to include the phrase: So-and-so is a robber. Without this clause, the possessor might interpret the protest to merely mean that he purchased the land but had not paid the entire sum agreed upon for it, and not as an accusation that he is possessing the land through robbery.

Shulhan Arukh, Hoshen Mishpat 146:4.

The early commentary Rav Yehuda, states that this is tantamount to a crisis period. This is not a valid protest. It is necessary to say: So-and-so, who is in possession of my property, is a robber and I intend to bring him to court. The Rema, citing the Rosh and others, writes that it is not necessary to say: And I intend to bring him to court (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 11:7; Shulhan Arukh, Hoshen Mishpat 146:4).
If the one lodging a protest also said: Do not tell the possessor of the protest, what is the halakha? Rav Zevid said: It is not a valid protest, because isn’t the saying: Do not tell him? Therefore, word of the protest will not reach the possessor and it is meaningless. Rav Pappa disagreed and said that the owner merely meant: Do not tell him personally, but they, i.e. the witnesses, should tell others. In that case, word of the protest will reach the possessor, since your friend has a friend whom he tells about the protest; therefore, it is a valid protest.

If the witnesses before whom the owner lodged the protest said to him: We are not going to tell you about your protest? What is the halakha? Rav Zevid said: It is not a valid protest, and he has to lodge a protest before other witnesses, as are they not saying to him: We are not going to tell you about your protest? Rav Pappa disagreed and said that they merely meant: We are not going to tell him personally, but we are going to tell others. In that case, word of the protest will reach the possessor, since your friend’s friend has a friend whom he tells about the protest; therefore, it is a valid protest.

The Gemara answers: There, Rabbi Yehuda wishes to teach us good advice, that he should come and collect the land and its produce.

And tomorrow I will bring a claim against him in court, it is a valid protest.

If the one lodging a protest also said: Do not tell the possessor of the protest, what is the halakha? Rav Zevid said: It is not a valid protest, because isn’t the saying: Do not tell him? Therefore, word of the protest will not reach the possessor and it is meaningless. Rav Pappa disagreed and said that the owner merely meant: Do not tell him personally, but they, i.e. the witnesses, should tell others. In that case, word of the protest will reach the possessor, since your friend’s friend has a friend whom he tells about the protest; therefore, it is a valid protest.

If the one lodging the protest also said to them: A word should not emerge from you about this, what is the halakha? Rav Zevid said: It is not a valid protest, as isn’t the saying to them: A word should not emerge from you? Similarly, if the people before whom he protested said to him: We will not have a word emerge from us, Rav Pappa said: It is not a valid protest, as aren’t they saying to him: We will not have a word emerge from us? Rav Pappa said: It is not a valid protest, because with regard to any matter that is not actually incumbent on a person to keep secret, it is likely that he will say it to others unwares, and therefore the presumption is that word will reach the possessor.

Rava says that Rav Nahman says: A protest that is lodged not in the presence of the possessor is a valid protest. Rava raised an objection to what Rav Nahman said from the mishna: Rabbi Yehuda says: The Sages said that establishing the presumption of ownership requires three years only in order that if the owner will be in Spain and another possesses his field for a year, people will go and inform the owner by the end of the next year, and the owner will come back in the following year and take the possessor to court. And if it enters your mind that a protest that is lodged not in his presence is a valid protest, why do I need the owner to come? Let him remain there in his place and protest. The Gemara answers: There, Rabbi Yehuda wishes to teach us good advice, that he should come and collect the land and its produce.

The Gemara asks: From the fact that Rava raised an objection to Rav Nahman, it may be inferred that he does not hold that a protest that is lodged not in his presence is a valid protest. But doesn’t Rava say: A protest that is lodged not in his presence is a valid protest? The Gemara answers: He held that conclusion only after he heard this halakha from Rav Nahman.

NOTES

Do not tell the possessor of the protest — אִית לֵיהּ בָּנָי אָמַר רַבּוּ. If the owner protested in the presence of two witnesses, the protest is valid even if he instructed them not to tell the possessor, or if the witnesses themselves said that they would not tell him, due to the fact that word of the protest will inevitably reach the possessor, in accordance with the opinion of Rav Pappa (Rambam Sefer Mishpatim, Hilḥok Tov Veniitan 116; Shulhan Arukh, Hoshen Mishpat 146:3). A word should not emerge from you — אַמְדוּנַן שׁוּתָא. If the owner protested in the presence of two witnesses, but he also instructed them not to breathe a word of it, the protest is not valid. This is the halakha even if the witnesses then went and told the possessor about the protest, assuming they also mentioned the owner’s admonition (Shahit). If the witnesses volunteered not to say a word, then the protest is valid, in accordance with the opinion of Rav Huna, son of Rav Yehoshua (Rambam Sefer Mishpatim, Hilḥok Tov Veniitan 116; Shulhan Arukh, Hoshen Mishpat 146:3). Any matter that is not incumbent — שׁוּתָא. If one was accused of incurring a financial obligation in a certain place, and he responded that he had never been there, if witnesses then testified that he had been in that place, although they have no knowledge with regard to the financial obligation, their testimony does not undermine his credibility as it is reasonable to forget a fact such as this one, as it was not incumbent upon him to recall it. The same principle applies to a case where two people happened to observe a matter and were later questioned about it. If their account contradicts the claim of one of the litigants, it does not undermine his credibility. The assumption is that these witnesses may be mistaken, as it was not incumbent upon them to recall the events accurately (Rambam Sefer Mishpatim, Hilḥok Tov Veniitan 6:4; Shulhan Arukh, Hoshen Mishpat 79:1).

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LANGUAGE

Word [shuta] — שׁוּתָא: This is a truncated form of shuṭa or shuṭa, omitting the guttural letter, as was common in Babylonia. It derives from the root shin, ayin, heh, referring to speech, or conversation.
A protest must be lodged in the presence of two people – הלאקה.

A protest must be lodged in the presence of two people, but it can be lodged before each of them separately (Shuca, citing Nim-mukei Yosef and Rahai). The witnesses may write a document attesting to the protest without explicitly being instructed to do so. The Rema writes that the witnesses should write: So-and-so appointed us as witnesses to record that he lodged a protest (see Smo).

This is in accordance with the opinion of Rav Hyya bar Abba in the name of Rabbi Yoĥanan (Ramnim Sefer Mishpatim, Hilkhos Tolen Velitan 11:8; Shulhan Arukh, (Kessen Midpar 146:5).

The Gemara relates: Rabbi Yosei, son of Rabbi Hanina, encountered the students of Rabbi Yoĥanan and said to them: Did Rabbi Yoĥanan say in the presence of how many people a protest must be lodged? Rabbi Hyya bar Abba says that Rabbi Yoĥanan says: A protest must be lodged in the presence of two people.33 Rabbi Abba says that Rabbi Yoĥanan says: A protest must be lodged in the presence of three people.

The Gemara suggests: Shall we say that they disagree with regard to the halakha of Rabba bar Rav Huna? As Rabba bar Rav Huna says: Any matter that is said in the presence of three people is not subject to the prohibition of malicious speech,34 as it is already public knowledge. The Gemara elaborates on the suggestion that the dispute hinges upon this point: The one who says that a protest can be lodged in the presence of two people holds that a protest that is not made in the presence of the possessor is not a valid protest. Therefore, two witnesses suffice, as they are needed to attest only to the fact that the owner protested. And the one who says that a protest must be lodged in the presence of three people holds that a protest that is not in his presence is a valid protest. Since the protest can be lodged not in the possessor’s presence, three people are needed to ensure that word of the protest will reach him.

If you wish, say instead that everyone holds that a protest that is not in his presence is a valid protest, and here they disagree with regard to this: The one who says that a protest can be lodged in the presence of only two people holds that a protest is not in his presence that is not a valid protest. Therefore, two witnesses suffice, as they are needed to attest only to the fact that the owner protested. And the one who says that a protest must be lodged in the presence of three people holds that we require that the matter of the protest be revealed, and for that purpose three people are needed.

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The Gemara suggests: Shall we say that they disagree with regard to the halakha of Rabba bar Rav Huna? As Rabba bar Rav Huna says: Any matter that is said in the presence of three people is not subject to the prohibition of malicious speech,34 as it is already public knowledge. The Gemara elaborates on the suggestion that the dispute hinges upon this point: The one who says that a protest can be lodged in the presence of two people holds that a protest that is not made in the presence of the possessor is not a valid protest. Therefore, two witnesses suffice, as they are needed to attest only to the fact that the owner protested. And the one who says that a protest must be lodged in the presence of three people holds that a protest that is not in his presence is a valid protest. Since the protest can be lodged not in the possessor’s presence, three people are needed to ensure that word of the protest will reach him.

If you wish, say instead that everyone holds that a protest that is not in his presence is a valid protest, and here they disagree with regard to this: The one who says that a protest can be lodged in the presence of only two people holds that a protest is not in his presence that is not a valid protest. Therefore, two witnesses suffice, as they are needed to attest only to the fact that the owner protested. And the one who says that a protest must be lodged in the presence of three people holds that we require that the matter of the protest be revealed, and for that purpose three people are needed.
The Gemara relates: Giddel bar Minymi had a protest to lodge with regard to his property. He found Rav Huna and Hiyya bar Rav and Rav Hilkia bar Tuvi, who were sitting, and he protested before them. After a year, he came to them again to protest. They said to him: You do not need to do so; this is what Rav says: Once the owner protested in the first year, he no longer needs to protest. Reish Lakish says in the name of bar Kappara: And he needs to protest at the end of each and every period of three years, so that the possessor will not hold his property for three consecutive years uncontested. Rabbi Yoĥanan expressed surprise at this ruling of Reish Lakish and said: But does a robber have the ability to establish the presumption of ownership? But once the owner lodged one protest, he demonstrated that the possessor occupied his land unlawfully. Therefore, the possessor should never be able to establish the presumption of ownership. The Gemara clarifies: Does it enter your mind that the possessor is actually a robber? There is no evidence that he robbed, there is only a protest by the prior owner. Rather, emend his question as follows: Does one who is akin to a robber have the ability to establish the presumption of ownership?

Rava says that the halakha is: The owner needs to protest at the end of each and every period of three years. Bar Kappara teaches: If the owner protested, returned and protested, and then returned and protested, if, when he protested the latter times, his protest was based on the same claim as the initial claim, the possessor has no presumptive ownership. But if the later protests were not based on the same claim as the initial protest, the possessor has presumptive ownership since each time the owner advanced a new claim, he thereby nullified his earlier claims.

And he needs to protest at the end of each and every period of three – Why? Some commentators explain that it is necessary to protest every three years because otherwise the possessor can claim that he purchased the land from the prior owner subsequent to the first protest (Rabbeinu Gershon Meor HaGola; Raza; and see Nimmulot Yofer). The Rashi explains that the reason that it is necessary for him to protest every three years is that if he does not repeat the protest, the possessor could claim that he assumed that the owner retracted his claim, and therefore he no longer preserved his bill of sale (Tosafor; Ramah; Rambam).

Does a robber have presumption of ownership? In other words, since the possessor stands accused of being a robber, he no longer has the ability to establish the presumption of ownership, and he has no alternative but to preserve his bill of sale. The Gemara clarifies that the correct formulation is, noting that there is no conclusive proof that he is a robber; rather, there is uncertainty with regard to his ownership of the land. The Gemara clarifies that the correct formulation is, that since the prior owner claims that the possessor is a robber, the possessor has to preserve his bill of sale (Rashbam).

Protested, returned and protested – Why? Rava: That is to say, the prior owner protested at the end of three years, and then protested again three years later (Rashbam). There are different versions of the text of this Gemara. There are those who have the reading: Protested, returned and protested, leaving out the third protest (Rabbeinu Hananel; Rashbam). The reasoning for this halakha is that changing his claim is tantamount to an admission that his first protest was false. The possessor has, therefore, established the presumption of ownership by possessing the land for three years without a valid protest by the prior owner. Some say that this would be the halakha if he protested based on one claim at the end of the first year, and then protested the next year based on a different claim (Rabbeinu Gershon Meor HaGola). According to this explanation, the reason is that the prior owner has lost credibility as a result of his first, false, protest, and he is not deemed credible with regard to the second protest as well. Therefore, it is as if no protest has been lodged. By contrast, the Meirı holds that changing the claim from year to year within the three years does not undermine his protest, as he was required to protest only once.

Early commentators cite that the R illicit reading of the Gemara is: Protested, returned and protested, and then returned and protested. This is also the standard text of the Gemara and is the reading of the Ri Migash. According to this version, this halakha is referring specifically to a case where he advanced a different claim at each of the three protests. Since he changed his claim twice, he has lost all credibility in this matter, and the possessor does not need to pay heed to the protests or preserve his documentation of the sale. According to this opinion, the possessor establishes the presumption of ownership at the end of nine years, as it is established three years after the second protest (see Ramah).
Rava says that Rav Nahman says: A protest can be lodged in the presence of two witnesses.

In the presence of two witnesses: Many commentaries hold that one should not understand from the words of the Gemara that witnesses are needed for the protest to take effect. The witnesses are needed to establish that the protest took place, but if the possessor concedes that it took place, or even if the claimant lodged the protest before two witnesses separately, it is still a valid protest. The same is true of the cases discussed on 40a, those of preemptive declaration, admission, and acquisition. The reason that he states that a protest can be lodged in the presence of two is only to teach that there is no need for three, as opposed to the case of the ratification of documents, as will be discussed (see Rabbeinu Yona). Others question whether lodging a protest in the presence of one witness is effective, as in such a case the possessor could claim that he did not take the protest seriously, since he could have denied its occurrence (Ramban). By contrast, the Ra'avad holds that in all of these cases the witnesses are an integral feature of the protest, and the protest does not take effect if it did not take place in the presence of two witnesses.

Notes

An admission needs to be stated in the presence of two witnesses: Some early commentaries hold that even a person's admission before one witness takes effect, provided that he intended for the listener to serve as a witness to his admission (Rambam, based on the Jerusalem Talmud). This is similar to the ruling stated in tractate Sanhedrin (90b) that two admissions, each made in the presence of a different witness, can be combined to render one liable to pay per his admissions. The testimony of two witnesses who heard an admission individually render the debtor liable to pay, while the testimony of one of them can render him liable to take an oath. The reason the Gemara specifies two witnesses is to indicate that there is no need for three, as opposed to a case of ratifying documents (Gersoni; Rambam). Others hold that two witnesses are needed in order for the admission to have any legal standing (Ra'avad; Raza).

And he needs to say, write: – The debtor has to authorize the writing of the document, as the document is detrimental to him in several ways. First, it prevents him from claiming that he repaid the debt (Rashbam). Second, documentation of his loan subjects him to a lien on his property (Ri Migash; Rabbeinu Yona). Third, if the document is written without the debtor's instruction, it is possible that he will not know of its existence. In that case, he may repay the loan but leave the document in the hands of the creditor. The creditor would then be able to use the document to collect a second time (Ri Migash). The Rashba presents all three issues.

Acquisition in the presence of two witnesses: This is referring to a legal act using a cloth to formalize the transfer of ownership of an item or to create an obligation. Nearly all of the early commentaries hold that it is effective regardless of whether witnesses are present (Rabbeinu Hananel; Tosafot; R; Rambam). Witnesses are mentioned here only because of the continuation, that they do not need authorization to write a document detailing the acquisition (Rashbam). By contrast, one of the Geonim, cited by the Ra'avad, holds that acquisition requires two witnesses to be effective. The Ra'avad's own opinion is more moderate. He holds that those modes of acquisition that are explicitly mentioned in the Torah do not require witnesses to be effective, while those that are not mentioned explicitly in the Torah do require two witnesses.

And they do not need to say, write: – Nevertheless, the one giving his property can later instruct the witnesses not to write a document even though the acquisition already took effect (Tosafot).

The Gemara continues with the statement of Rava: An admission of a monetary obligation needs to be stated in the presence of two witnesses, and in this case, the one stating the admission needs to say: Write a document detailing the admission, as this document is to his detriment; they may not write one absent a directive. Acquisition by means of a symbolic act utilizing a cloth needs to be done in the presence of two witnesses, and the parties do not need to say to the witnesses: Write a document detailing the acquisition; they can write one even absent a directive. And ratification of legal documents needs to be done by means of three people.

Halaqha

A declaration: One may state a preemptive declaration in the presence of two witnesses to the effect that he will be participating in a future transaction under duress. By doing so, he is able to nullify the transaction, even if it will occur many years later (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 11:1; Shulhan Arukh, Hoshen Mishpat 46:3). A declaration: One may state a preemptive declaration in the presence of two witnesses to the effect that he will be participating in a future transaction under duress. By doing so, he is able to nullify the transaction, even if it will occur many years later (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 11:1; Shulhan Arukh, Hoshen Mishpat 46:3). An admission: An admission of a monetary obligation needs to be stated in the presence of witnesses, it is liable to pay. This is the halakha only when he appoints them as witnesses to the admission, and not if he merely mentions a monetary obligation in front of them in passing. The witnesses may not write a document concerning the monetary obligation without the explicit authorization of the debtor.

And ratification of legal documents by three: The ratification of documents is a legal procedure that takes place only in the presence of a court. For this reason, it requires three men to serve as a court. The three men may be common people. If the ratification was done by fewer than three men, it is not valid (Rema, citing Mordekhai and Nimmuke Yosef; see Shu and Shakh). The Rema cites an opinion (Terumat HaDeshen) that one may rely on the custom that an important rabbi can ratify a document on his own (Rambam Sefer Shulevim, Hilkhot Edat 6:1; Shulhan Arukh, Hoshen Mishpat 46:3–4).

Notes

Acquisition in the presence of two witnesses: This is referring to a legal act using a cloth to formalize the transfer of ownership of an item or to create an obligation. Nearly all of the early commentaries hold that it is effective regardless of whether witnesses are present (Rabbeinu Hananel; Tosafot; R; Rambam). Witnesses are mentioned here only because of the continuation, that they do not need authorization to write a document detailing the acquisition (Rashbam). By contrast, one of the Geonim, cited by the Ra'avad, holds that acquisition requires two witnesses to be effective. The Ra'avad's own opinion is more moderate. He holds that those modes of acquisition that are explicitly mentioned in the Torah do not require witnesses to be effective, while those that are not mentioned explicitly in the Torah do require two witnesses.

And they do not need to say, write: – Nevertheless, the one giving his property can later instruct the witnesses not to write a document even though the acquisition already took effect (Tosafot).
The Gemara presents a mnemonic for the cases discussed above: Mem, protest [me’ahav]; mem, declaration [moda’ah]; heh, admission [hoda’ah]; kuf, acquisition [kinyan].

Rava now discusses the statement of Rav Nahman that he quoted. Rava said: If any part of this statement is difficult to me, this is what is difficult to me. This acquisition, what is it like? If it is like an act of the court, it should require three witnesses for it to take effect, as a court must consist of at least three men. If it is not like an act of the court, why does he not have to say to the witnesses that they should write the document detailing the acquisition? Isn’t transferring an item to another tantamount to admitting a monetary obligation?

After Rava raised the dilemma, he then resolves it. Actually, it is not considered like an act of the court. And here, what is the reason that he does not have to say to the witnesses that they should write it? It is due to the fact that a record of an unspecified acquisition is ready to be written. A symbolic act of acquisition indicates one’s intention to do everything possible to finalize the transaction as soon as possible without waiting for the actual transfer of the item. Therefore, it is assumed that the parties would desire that a document be written, and no explicit authorization is necessary.

The Gemara discusses the halakhot of a preemptive declaration. Rabba and Rav Yosef both say: We write a preemptive declaration only concerning one who does not generally listen to and implement the judgment of the court. In such a case, there is no recourse other than to write a preemptive declaration on behalf of the seller nullifying the transaction. If the buyer would be willing to listen to the court, the seller is expected to deal with the matter in court, rather than participating in the sale and writing a preemptive declaration. Abaye and Rava both say: A preemptive declaration may be written even concerning someone who is law abiding, such as for me and for you, as not every issue can be settled through the courts. The Sages of Neharde’a say: Any preemptive declaration.

We are aware of so-and-so’s duress, i.e., we are aware of the nature of the coercion that forced him to enter this arrangement against his will, is not a valid preemptive declaration.

For what type of transaction is the preemptive declaration being stated? If one were to say that it is a preemptive declaration for a bill of divorce or for a gift, the preemptive declaration is merely revealing the matter. Since these actions can’t take place unless he desires it, it is sufficient that he stated that he does not desire them, and he need not specify a particular reason for nullifying them. And if it is for a sale, but doesn’t Rava say: We do not write a preemptive declaration for a sale?

Mnemonic – מֶּמֶּמֶּה: As the Talmud was studied orally for many generations, mnemonic devices were devised to help remember a series of rulings and the order in which they were taught.

NOTES

If it is like an act of the court – בֵּית דִּין דָּמֵי: The reasoning is that an act of acquisition resembles an act of the court in the sense that there is a transfer of property from one person to another. In addition, it is, in some ways, detrimental to the one who is selling his property (Rashbam). The Ritva formulates the comparison slightly differently. He explains that it is as if he is passing judgment on himself, and accepting these witnesses as his judges in this matter.

An unspecified acquisition is ready to be written – הִיא לָאו מוֹדָעָא הִי לְעוֹלָם לָאו: The fact that the seller is willing to effect the transaction by means of acquisition and does not demand that the buyer perform an act of pulling, or the like, indicates his wholehearted commitment to this transaction. It is therefore clear that he has no intention of renegeing on the transaction (Rashbam). Alternatively, one could explain this halakha based on the notion that the entire purpose of the symbolic act of acquisition is to expedite the transaction, unlike pulling and the like (Rabbeinu Yona).

For me and for you – לָא לָא מַגְּדָי חִלּוּ עָלַי וְעָלֶיךָ לָא לָא מַגְּדָי חִלּוּ: As to why a preemptive declaration can be written even when it is known that the other party would obey the ruling of the court, some explain that at times there is no court available, and consequently one will not be able to reclaim his property through the court (Rashbam). Others explain that Abaye and Rava meant that the issue of cooperating with the court is not an innate quality of a person; rather, it is a decision that one makes. Therefore, even one who has the reputation of being honest may in a particular circumstance choose not to obey the ruling of the court (Rambam). The Meir suggests that not every type of duress can be dealt with effectively by the court, even in the case of one who abides by the court’s rulings.

We are aware of so-and-so’s duress – ידָעָא אָנוּ בֵּיהּ בְּאוּנְסָא: Witnesses signing a preemptive declaration must know that the transaction in question was performed under duress. Similarly, the declaration is not valid unless it contains the statement: We are aware of so-and-so’s duress, i.e., we are aware of the nature of the coercion that forced him to enter this arrangement against his will, is not a valid preemptive declaration.

For a bill of divorce or for a gift – אוֹרִיהוּ שְׁלֹשָׁה יוֹמֵי שְׁטָרוֹת: If one stated a preemptive declaration before giving a gift, forgiving a debt, or giving a bill of divorce, the declaration is effective and his later action is null and void. In these cases it is not necessary for the witnesses to know of the specific nature of the duress. This is due to the fact that these acts are ineffective unless he fully desires them. Additionally, they are null and void even if he does not state explicitly that he is nullifying the action, as long as the witnesses are aware that there was duress (see Michne LaMelekh). The Sma notes that this is the halakha even if the degree of duress was minor (Rambam Sefer Kinyan, Hilkhot Mehira 10:2, and Hilkhot Zekhiya UMattana 5:4, and Sefer Nashim, Hilkhot Gerushin 6:19). We are aware of so-and-so’s duress as the Talmud was studied orally for many generations, mnemonic devices were devised to help remember a series of rulings and the order in which they were taught. Therefore, this sale is essentially no less valid than any other.
Rava concedes where one was compelled to act – דמס. A preemptive declaration is written for one who is compelled to sell his property. The nature of the duress may be the use of physical force against the seller or intimidation involving a credible physical threat. There are those who hold that mere intimidation is not considered duress (Rema, citing Maharik). The duress may also be monetary, for example, in a case where one had a tenant farmer but did not have proof of the arrangement, and after three years of use the tenant farmer threatened to claim ownership unless the owner sold the land to him. In this case, he is able to write a preemptive declaration enabling him to sell the land while retaining ownership (Rambam Sefer Kinyan Hilkhot Mekhira 242:3–5, Shulhan Arukh, Hoshen Mishpat 205:3).

Concealed gift – מַתַּנְתָּא טְמִירְתָּא: If one gives a concealed gift, it is invalid, as it is possible that he intended to deceive the recipient and give it to another. This is in accordance with the opinion of Rav Yehuda. It makes no difference whether it is a gift of one on his deathbed or that of a well with the opinion of Rav Yehuda. It makes no difference if one wrote two documents giving the same field to two people, the second gift is null and void.

As with the incident of the orchard – דמס. A concealed gift to one person, and then he gave this item as a concealed gift to someone else, the second gift is null and void. The witnesses may, therefore, write a preemptive declaration.

Rava said: But in a time and place where Shulhan Arukh 242:3–5, 8). The Gemara answers: Actually, it is referring to a preemptive declaration for a sale, as Rava concedes in a case where one was compelled to act due to a threat of monetary loss, as with the incident of the orchard, as there was a certain man who mortgaged his orchard to another for three years. After he worked and profited from it for the three years necessary for establishing the presumption of ownership, he said: If you sell the orchard to me, it is well. And if not, then I will hide the mortgage document and I will say that this land is purchased and that is why it is in my possession, and you will receive no payment for the orchard. In a case like this, we write a preemptive declaration. The declaration states that he does not actually desire to sell his property but was forced to do so.

Rav Yehuda says: With regard to this document detailing a concealed gift, we do not collect with it. The Gemara clarifies: What are the circumstances of a concealed gift? Rav Yosef said: It is referring to a case in which the giver said to witnesses: Go and hide and write a document for the recipient of this gift. And there are those who say that Rav Yosef said: It is referring to a case in which the giver did not say to witnesses: Sit outdoors in the marketplace and write it for him. The Gemara asks: What is the difference between the two versions of Rav Yosef’s statement? The Gemara answers: The difference between the two versions is in a case where his instructions were without specification, i.e., he did not tell them to write the document in private or in public.

The Rid writes that in that case, where he does not instruct the witnesses to be secretive, he did tell them not to do it in an overly public way.

Rava said: But a concealed gift is effective as a preemptive declaration for another gift. In other words, if he first gave an item as a concealed gift to one person, and then he gave this item as a gift to someone else, the second gift is null and void. Rav Pappa said: This ruling of Rava was not stated explicitly; rather, it was stated by inference, and he did not, in fact, hold accordingly.

As with the incident of the orchard – דמס. A case in which one will suffer a great loss if he refuses to sell is certainly a case of coercion (Rashbam). The Rambam holds that in this case the witnesses can write a document even without the seller having stated a preemptive declaration, as the circumstances alone demonstrate the duress. Rabbeinu Yona interprets the Gemara’s answer as follows: Rava concedes that when there is duress and, in addition, the seller declares that he was coerced, the sale is null and void. The witnesses may, therefore, write a preemptive declaration.

Concealed gift – מַתַּנְתָּא טְמִירְתָּא: The reason for this is the concern that perhaps the giver already gave this item to another, or he merely meant this as a preemptive declaration with regard to another gift, as explained in the continuation of the Gemara (Rashbam). The Rambam suggests that another reason concealed gifts are invalidated is to prevent collusion. After giving the gift, the giver will then sell the property to another, and the recipient of the concealed gift will repossess the property from the buyer, as he has a prior claim. Then, the giver and recipient will divide the profits. The Ramah also suggests that by giving the gift secretly, the giver indicates that he wishes to afford himself the option to reconsider, which means that the gift was not given with full resolve to effect the transaction. The Ri Migash cites Rav Hai Gaon as ruling that such a gift is invalid only if it is to take effect later, but if it is effective immediately, it is not considered a hidden gift.
Rav Pappa explains the inference: As there was a certain man who went to betroth a woman. She said to him: If you write a document signing over all of your property to me, then I will be your wife, and if not, I will not be your wife. He went and wrote a document signing over all of his property to her. His eldest son came and said to him: And that man, i.e., me, what will become of him if you give all of your property to this woman? The father said to two witnesses: Go hide in Avar Yemina and write a document for the son, giving him the father's property as a gift. Later, the witnesses came before Rava. He said to them: This Master, i.e., the son, did not acquire the property and that Master, i.e., the wife, did not acquire it either. The son did not acquire the property because it was a concealed gift.

The Gemara explains why the wife does not acquire it as well. One who observed this incident assumed that Rava invalidated the wife's acquisition because the concealed gift to his son was a preemptive declaration to the other gift, but that is not so. There, in the case of the woman and the son, the matter is self-evident that he wrote a document signing over his property to her because of duress, as she had told him that she would not marry him otherwise; but here, in a typical case of giving one person a concealed gift and then giving a public gift to another, that is not the case. It is possible that it is simply amenable to him that this Master, i.e., the one to whom he gave it publicly, should acquire the gift, and it is not amenable to him that this Master, i.e., the one to whom he gave it privately, should acquire the gift. Consequently, an incorrect inference was drawn concerning Rava's opinion.

A dilemma was raised before the Sages:

A giver's actions, e.g., first giving the gift to another clandestinely, can serve as an indication of his intent to nullify a gift given later in certain circumstances. In the case of the Gemara, his clandestine gift to his son served as an indication that he gave his property to his wife under duress. In this case, there was some duress, which is why the gift to his son was effective in nullifying the one to his wife. It was not a case of actual coercion, as he could have decided not to marry her (Tur). This is why the gift was not automatically nullified (Rambam Sefer Kinuyan, Hilkhot Zekhiya UMattana 5:4–5; Shulhan Arukh, Hoshen Mishpat 242:9–10).

And the halakha is that we are concerned – הלאכות: If a document detailing a gift does not specify that the giver instructed the witnesses to publicize its writing, there is a concern that it was a concealed gift. Therefore, the recipient does not acquire the gift. This is in accordance with the opinion of Rav Ashi. In the present it is effective after the fact (Sim; see Pinheli Teshuva). The Rema writes that even if the recipient seized the gift, the court reposeesses it (Rambam Sefer Kinuyan, Hilkhot Zekhiya UMattana 5:5; Shulhan Arukh, Hoshen Mishpat 242:3).

Without specification – תמיכה: The Rashbam and other early commentators explain that this refers back to the issue of the two versions of the statement of Rav Yosef (40b), concerning the definition of a concealed gift, and the question is in accordance with which version is the halakha. The Riz notes that this interpretation is difficult, as the Gemara typically notes when it is returning to address an earlier dispute after having discussed another matter. He therefore suggests that the Gemara is raising a different question: What is the status of a deed of gift written without specification when the court is unable to clarify whether the witnesses had been instructed to write it publicly or privately?

We are concerned – פרסוק: The Rashbam understands that practically speaking, this formulation of: We are concerned, means that the status of this gift is uncertain. Although the recipient is not awarded the item, the court does not confiscate it from him if he seized it. Rabbeinu Hananel is cited as holding that due to the concern that the gift is invalid, the court confiscates it from him, even if the recipient had seized it. The Ramah and other commentaries agree with this opinion. The Ri Migash explains, based on the gelonim, that it means that the court investigates the facts surrounding the particular case. If they discover that there was no deficiency in this gift and it just happened not to have been publicized, it is valid.
Possession that is not accompanied by a claim – איכא קpañא איה

Possession that is not accompanied by a claim does not establish the presumption of ownership. If one is in possession of a field that is known to have belonged to another, and the possessor says that he took possession because no one objected to his doing so, the court removes him from the field and orders him to reimburse the owner for the produce that he consumed. Use of a field establishes the presumption of ownership only if the possessor advances a legitimate claim to the land, e.g., a claim that he purchased it, received it as a gift, or inherited it (Rambam Sefer Mishpatim, Hilkhot To'en VeNitan 14:12; Shulhan Arukh, Hoshen Mishpat 14:6).

Land based on inheritance – איכא דדש נומש איכא

If one is in possession of a field and claims that it he inherited it, he does not need to demonstrate his ancestors’ right to the field. He does not need to establish that they actually possessed the field, even if for only one day. Similarly, one can establish the presumption of ownership by producing proof that his ancestors were in possession of the field for the requisite three years, even if he himself did not possess it at all (Rema, citing Beit Yosef).

Open your mouth for the mute – אמר ליתי: If it appears to the court that a litigant’s case is just and he is unable to properly formulate his claim, the court should assist him. This is based on the principle of: “Open your mouth for the mute.” They must exercise great caution so as not to act as the litigant’s attorney (Rambam Sefer Shoftim, Hilkhot Sanhedrin 14:13; Shulhan Arukh, Hoshen Mishpat 14:10).

The Gemara answers: It is necessary for the mishna to state this, because you gave it to me as a gift, or: Because your father sold it to me, or: Because your father gave it to me as a gift, these are valid claims to ownership. In these cases, his possession is sufficient to establish the presumption of ownership. And one who comes to claim the land based on inheritance does not need a claim explaining why his ancestors had a right to the land.

The Gemara asks: Why does the mishna need to say this? Isn’t it obvious that one cannot establish the presumption of ownership absent a claim of ownership?

The Gemara answers: It is necessary for the mishna to state this, lest you say: That man had actually purchased this land that he possessed, and he had a bill of sale, but it was lost. And the reason that he said that he is in possession of the land because no person ever said anything to him, is that he thought: If I say that the prior owner sold me this land, the court will say to me: Show us your bill of sale. Therefore, being that this may be the case, let us say to him: Perhaps you had a bill of sale and it was lost. In a case such as this, one would think that it is a situation where the court should apply the verse: “Open your mouth for the mute” (Proverbs 31:8), meaning the court should advise a litigant of his possible claims, because perhaps he does not state them out of ignorance. Therefore, the mishna teaches us that the court does not advance this claim on his behalf, and if he does not make the claim of his own violation, he does not establish the presumption of ownership.

§ The Gemara presents a mnemonic for the discussion that follows: Ayin, nun, bet.

The Gemara tells of a related incident: A torrent [bideka] of water swept through Rav Anan’s land, removing the wall which marked the boundary between his land and that of his neighbor. Rav Anan went back and rebuilt the wall, inadvertently placing it in his neighbor’s land. Rav Anan came before Rav Nahman to ask him what he should do about it. Rav Nahman said to him: Go return the boundary to its prior position.

Rav Anan replied: Why should I return the boundary? But didn’t I already establish the presumption of ownership of this land? Rav Nahman said to him: In accordance with whose opinion are you claiming a right to the land? Is it in accordance with the opinion of Rabbi Yehuda and Rabbi Yishmael, who say: Any taking of possession that is done in the presence of the prior owner is sufficient to establish the presumption of ownership immediately? If so, your claim is not accepted since the halakha is not in accordance with their opinion.

For your mouth – איכא קpañא איה

The mishna needed to teach that it is not reasonable to assume that the possessor had a valid claim that he did not present to the court. Therefore, if the court had advanced the claim on his behalf, it would have constituted unwarranted assistance on behalf of one of the litigants. The court would thereby be in violation of the admonition the Sages made to judges, recorded in tractate Avot (1:8): “Do not act as an attorney.”

A mnemonic, ayin, nun, bet: Apparently the correct version of the text is: Ayin, nun, bet, beh. This alludes to the names of the Sages mentioned in the continuation of the Gemara: Anan, Nahman, Kahana, and Yehuda.

Is it in accordance with the opinion of Rabbi Yehuda and Rabbi Yishmael – הנדיק זירא ובדכסי. Rabbi Yehuda’s opinion is cited in the previous mishna (38a). His statement indicates there that when the owner is nearby, the presumption of ownership is established immediately. Rabbi Yishmael’s opinion is cited later on (39b). The Gemara is referring to Rabbi Yishmael, son of Rabbi Yosei. Rabbi Yehuda is therefore mentioned first, as he lived in the previous generation.
The Gemara relates a similar incident: A torrent of water swept through Rav Kahana's field, removing the wall that marked the boundary between his land and that of his neighbor. Rav Kahana went back and rebuilt the wall, inadvertently placing it in land that was not his.

Rav Anan said to Rav Nahman: But didn’t the neighbor waive his ownership of this land, as he came and assisted in the building of the wall with me? Rav Nahman said to Rav Anan: It is an erroneous waiving, since you yourself would not have placed the wall there if you had known that it was the wrong location for it. Just as you did not know that you were building it in the wrong location, so too, he did not know. Therefore, it is reasonable to assume that he did not knowingly waive his ownership of his property.

It is an erroneous waiving – whether it is whether he knows or not. If a wall dividing two fields fell and the owner of one of the fields rebuilt it on his neighbor’s property, even if the neighbor assisted him in rebuilding the wall, if the neighbor was not aware that the wall was being rebuilt on his property, he has not waived his claim to the land. If he was aware that it was being rebuilt on his property, he has waived his claim to land now beyond the wall. In such a case, the owner that rebuilds the wall acquires the extra strip of land immediately, even if he did not realize that he was building the wall on his neighbor’s property (Shulhan Arukh, Hoshen Mishpat 142:2).

HALAKHA

Rav Kahana came before Rav Yehuda. Rav Kahana’s neighbor went and brought two witnesses. One said: Rav Kahana entered two rows into his neighbor’s land, and one said: Rav Kahana entered three rows into his neighbor’s land. Rav Yehuda said to Rav Kahana: Go and pay two out of the three that your neighbor is claiming by moving the wall two rows into your property.

Rav Kahana said to Rav Yehuda: In accordance with whose opinion are you ruling that the testimony of witnesses who contradict each other is valid? Is it in accordance with the opinion of Rabbi Shimon ben Elazar? As it is taught in a baraita that Rabbi Shimon ben Elazar said: Beit Shammai and Beit Hillel did not disagree with regard to two sets of witnesses, where one set says that a litigant owes one hundred dinars and one set says that he owes two hundred. In such a case, everyone agrees that two hundred includes one hundred, and he is liable to pay one hundred.

With regard to what did Beit Shammai and Beit Hillel disagree? They disagree with regard to one set of witnesses, where one witness says that a litigant owes one hundred dinars and one witness says that he owes two hundred; as in such a case, Beit Shammai say that their testimony is divided, and they do not combine to form a set of witnesses, and Beit Hillel say that two hundred includes one hundred, and they combine to form a set of witnesses. Rav Kahana assumed that Rav Yehuda based his ruling on Rabbi Shimon ben Elazar’s interpretation of the opinion of Beit Hillel.

HALAKHA

That two hundred includes one hundred – יֲשָׁמֵעֲנֵיכֶם לֹא שָׁמָא כְּדִקְּדִיקָא: If a creditor claims he is owed two hundred dinars (Nefivos HaMishpat, based on Remei), and one witness testifies to a loan of one hundred dinars and another testifies to a loan of two hundred, the debtor is liable to pay one hundred dinars, as two hundred includes one hundred. This is in accordance with the opinion of Beit Hillel, as formulated by Rabbi Shimon ben Elazar (Rambash Sefer Shofetim, Hilkhos Eduot 3:3; Shulhan Arukh, Hoshen Mishpat 30:2).

NOTES

But didn’t he waive – מַעַלְּתָן. The neighbor’s actions in assisting in rebuilding the wall demonstrate an acceptance of the boundary’s location. This expresses his waiving of any claim to the strip of land now found on the other side. The early commentators are bothered by the question of how this is effective, since merely waiving a claim is not sufficient to effect the transfer of land. They explain that his actions serve as a statement to Rav Anan that he should go and perform an act of acquisition, thereby giving validity to Rav Anan’s act of acquisition through possession (Rashbash). The Rambash defines the neighbor’s actions as an admission that the land belongs to Rav Anan, which is sufficient to effect the transfer of land. Even though Rav Anan did not intend to acquire the land, it is sufficient because the property is being transferred to him by another. The Ramban offers an entirely different explanation, that there is no acquisition of any land at all in this case. Rather, the issue is the waiving of the obligation to rebuild the wall, which had previously been incumbent on both of them.
When you will bring – זָרִית: Early commentaries derive a basic principle from this discussion. If an authoritative court or judge issues a ruling, and a litigant thinks that the ruling is in error, he must nevertheless abide by the ruling. The litigant can later appeal and present new evidence, and the court can reverse its decision (Ritva; Rabbeinu Yehudah, citing Rambam).

I purchased it from so-and-so, who purchased it from you – רָבָא. The possessor is not claiming with certainty that the one from whom he purchased it, in fact, purchased it from the claimant. Rather, he is stating that he purchased it from so-and-so with the assumption that the seller had purchased it from the prior owner (Rashbam). Alternatively, the seller told him that he had purchased it from the prior owner (Ritva).

Halakhah

You have witnesses, etc. – וְרָאוֹן אוֹתָךְ בְּלַוְַיָּא: If one resided in a house for the years necessary for establishing the presumption of ownership, and acknowledges that the house had previously belonged to the claimant, but claims that he purchased the house from someone else, he retains the property if it is plausible that the one who sold it to him purchased it from the prior owner (Shakh). According to some, the possessor has to bring witnesses attesting to the fact that the one who sold it to him had resided there for at least one day (Tur). Others hold that it is sufficient for the possessor himself to state this claim (Yassur; see also Shakh). The Rema, citing Tur, maintains that it is sufficient if the one who sold it to him had resided there for one hour. It is also sufficient if the possessor claims that the seller purchased it from the prior owner in the possessor’s presence. This is in accordance with the opinion of Rabbi Hiyya (Rambam Sefer Mishpatim; Hilkhot Toton Veha’el 14:14; Shulhan Arukh, Hoshen Mishpat 146:14). But he does need proof – יוֹעֵשׁ אֶלָּא: In the case of a possessor who claims that he inherited property he possesses, and someone else proves that he had been the owner of that property in the past and claims to still be the owner, the possessor has to prove that his ancestor worked and profited from the property, if only for a day. Otherwise, ownership of the property reverts to the prior owner, and the possessor is liable to pay for the producer that he consumed. Testimony to the effect that his ancestor was seen in that field is insufficient, as it is common for people to survey property and ultimately not purchase it. This is in accordance with the opinion of Rava, whose opinion is almost always accepted in his disputes with Abaye (Rambam Sefer Mishpatim; Hilkhot Toton Veha’el 14:14; Shulhan Arukh, Hoshen Mishpat 146:10).

Rav said: I was sitting before my uncle [dehavivi], Rabbi Hiyya, and I said to him: But isn’t it common for a person to purchase a house and sell it immediately during the same night? It is possible that the seller purchased and sold the house without witnesses who saw him residing in it. And I saw that Rabbi Hiyya’s opinion was that if the possessor claimed to the claimant: The one who sold it to me purchased it from you in my presence, this claim is deemed credible, since if the possessor wanted to, he could have said to the prior owner of the house: I purchased it from you.

The Gemara rejects the inference from the mishna: But perhaps he does not need proof and does not need a claim. The only reason that the mishna mentions that he does not need a claim is to clarify that this does not fall into the category of a possession that is not accompanied by a claim. Therefore, one cannot infer from the ruling of that mishna what the halakha should be in this case. And if you wish, say instead that although the inference from the mishna is correct, it is not relevant to this case, as the case of a buyer is different, since he would not throw money away for nothing. The fact that he purchased the house indicates that he must have ascertained that the seller had a right to it.

A dilemma was raised before the Sages: If the seller was seen in the house, what is the halakha? Is this sufficient proof that he had purchased the house? Abaye said: It is identical to testimony that he had resided there. Rava said: This does not constitute proof, as a person is apt to survey [desayyar] land and ultimately not purchase it.

Background

Letter from the West – סַיָּאר מְשַׁמְעָה: In that era, the great academies were in Eretz Yisrael and Rabbi Yohanan was alive. Therefore, the halakhic decisions that emanated from Eretz Yisrael carried great weight and were binding in Babylonia, as well.

Kasha – כֶּסֶף: There are those who understand this to be the name of a place. If it is a place in Babylonia, then it must be close to Kafrei, the city where Rabbi Hiyya and his family lived before they ascended to Eretz Yisrael. However, it is also possible that it refers to a place in Eretz Yisrael, near Tiberias.

Notes

When you will bring – זָרִית: Early commentaries derive a basic principle from this discussion. If an authoritative court or judge issues a ruling, and a litigant thinks that the ruling is in error, he must nevertheless abide by the ruling. The litigant can later appeal and present new evidence, and the court can reverse its decision (Ritva; Rabbeinu Yehudah, citing Rambam).

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Language

Uncle [havivi] – חוחו: This word means uncle, one’s father’s brother. Some understand it as a truncated form of ahvov, meaning my father’s brother. It seems that it is connected with the other meaning of haviv, which means precious. This connection echoes the dual meaning of dawd in Hebrew, which means both uncle and beloved. Rabbi Hiyya was both Rav’s paternal uncle and his maternal uncle (see Sanhedrin 7a), and Rav was also his preeminent disciple. It would appear that it was for this reason that Rav referred to him in this way, as it has the dual connotation of familial closeness and affection.

Survey [sayyar] – סָאָר: From the Aramaic word sa’ar, spelled samekh, ayin, resh. Guttural letters were often dropped by Babylonians, and therefore this word was pronounced sar. It means to inspect or examine. One who surveys land does not merely stroll through it, but examines it carefully.

The halakha is not in accordance with the opinion of Rabbi Shimon ben Elazar, and that in fact Bejt Hillel also disqualify two witnesses in such a case. Rav Yehuda said to Rav Kahana: I will accept that ruling when you will bring such a letter. Until then, I stand by my ruling.

§ The Gemara relates: There was a certain man who resided in a loft in Kashta for four years. At the end of that period, the prior owner of the house came and found him there. The prior owner said to him: What do you want with this house of mine? The possessor said to him: I purchased it from so-and-so, who purchased it from you. The possessor came before Rabbi Hiyya, who said to him: If you have witnesses who will testify that he, from whom you purchased the house, resided in it, even if there is testimony that he resided in it for only one day, I will establish it in your possession, but if there is no testimony to his having resided there then I will not establish it in your possession, and it will revert back to its prior owner.
The Gemara issues a ruling concerning the establishment of the presumption of ownership. Three buyers combine to establish the presumption of ownership. If one purchased a field and sold it to another, who then sold it to a third party, and in total, the three of them worked and profited from the field for three years, the third one has established the presumption of ownership. Rav says: And this is the halakha only if they all purchased the land with a bill of sale. As a result of the bill of sale, the prior owner will know that it is not the case that each of them worked and profited from the field for only one year and abandoned it, which would explain why he did not bother to lodge a protest.

The Gemara asks: Is this to say that Rav holds that a bill of sale generates publicity, but witnesses do not generate publicity? But doesn’t Rav say that with regard to one who sells a field in the presence of witnesses, and that field is later seized by the creditors of the seller, the buyer collects from the liened property that the seller had sold to others, to be reimbursed for his seized field? If not for the fact that the sale in the presence of witnesses generates publicity, those who later purchased land from the seller would not have been aware that the property they are purchasing is liened to the first buyer. The Gemara answers: There, with regard to buyers, purchase. The only reason for the others to have a bill of sale is to cause the presumption of ownership to be established (Rashbam; Ramah).

And this is only if they all purchased the land with a bill of sale. It must be clear to all that they are all working and profiting from the field based on the first sale. Otherwise, the prior owner can claim that he did not see a need to lodge a protest, as each left on his own after only a year and no one was there for the requisite three years (Ri Migash; Rabbienu Barukh). Others hold that the first of the buyers is not expected to have kept his bill of sale, since three years passed since his purchase. The only reason for the others to have a bill of sale is to cause the presumption of ownership to be established (Rashbam; Ramah).

A bill of sale generates publicity – Since there is a need to employ a scribe and to summon witnesses, a number of people are present for the signing of the bill and the matter is publicized (Rashbam).

Three buyers combine – If three people each worked and profited from a field for a year each, having purchased it one from the other, the presumption of ownership is established for the third one to own the field. This is the halakha only if the sales were performed with a bill of sale. If not, no presumption of ownership is established. This is in accordance with the opinion of Rav (Rambam Sefer Mishpatim, Hilkhot Tamen VeNiten 17:16; Shulhan Arukh, Hoshen Mishpat 116:1).

One who sells a field in the presence of witnesses, the buyer collects from liened property – If one purchased a field and it was seized by a creditor as payment for the seller’s debt, the buyer collects another field from the seller as a replacement for the first field. If the seller had sold all of his remaining fields to other people after selling this one, the first buyer collects the replacement field from the most recent buyer. This is the halakha even if he purchased the field in the presence of witnesses without a bill of sale. There are those who hold that if he had received the field as a gift and it was later seized, the recipient collects from the most recent buyer only if the gift was given with a deed, as gifts do not generate publicity (Rambam Sefer Mishpatim, Hilkhot Malve VeLoveh 115 and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 116:1).

They caused their own loss – Typically, if there were only witnesses but no bill of sale, the matter would not generate publicity. Therefore, in the case of the three buyers, the presumption of ownership is not established without bills of sale. By contrast, in the case of liens, it is the responsibility of the buyer to investigate whether there are any liens on the property. Since there are witnesses, it is possible to ascertain the facts. If the buyer failed to do so, he bears responsibility for the consequences. He has no claim to compensation if he failed to investigate and lost the property as a result.

BACKGROUND

Unsold property – Unsold property stands in contrast to mortgaged property. In general, if a debtor sells his previously mortgaged property, his creditor may seize that property from the buyer. But the creditor may not seize property from the current owner if the debtor possesses non-liened property, even if it is inferior in quality to the mortgaged property.
Sells it in public – בְּמוֹכֵר. The Rashbam explains that this is referring to the seller, who publicizes that his property is for sale in order to attract potential buyers. By contrast, Rabbeinu Gershom Meor HaGola and others explain that it is the buyer who has an interest in generating publicity. The publicity bolsters his reputation as a wealthy man who is able to purchase land.

And the buyer for one year – הָאָב שָׁנָה. Here, and in the continuation of the discussion, it is referring to a case where the field was purchased from the son with a bill of sale (Rashbam).

The Gemara asks: Are you raising a contradiction from a case of a loan to a case of a sale? They are not comparable. In the case of a loan, when one borrows money he borrows discretely, in order that his property not be devalued, as people will pay less for his property if they know that he is pressed for capital. Since a loan is issued discretely, the presumption is that the borrowers were unaware of the loan. Therefore, the creditor does not collect from sold property. By contrast, in the case of a sale, one who sells land sells it in public in order that publicity be generated with regard to it. Therefore, the cases of loans and sales are not comparable.

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The Gemara continues the discussion of the establishment of the presumption of ownership by successive possessors. The Sages taught: If the father worked and profited from the land for one year and the son who inherited it from him worked and profited from it for two years, or if the father worked and profited from the land for two years and the son worked and profited from it for one year, or if the father worked and profited from the land for one year and the son worked and profited from it for one year, and the buyer, who purchased it from the son, worked and profited from it for one year, this is sufficient to establish the presumption of ownership.

The Gemara asks: Is this to say that with regard to a buyer, the transaction generates publicity? And one can raise a contradiction from a baraita (Tosefta 8:8): If one worked and profited from the land in the presence of the father, the prior owner, for one year, and in the presence of the son, who then inherited it from the father, for two years; or in the presence of the father for two years and in the presence of the son for one year; or in the presence of the father for one year and in the presence of the son for one year and in the presence of the buyer, who purchased it from the son, for one year; this is sufficient to establish the presumption of ownership. And if it enters your mind that with regard to a buyer, the transaction generates publicity, there is no greater protest than this. By selling his land to someone else, the son of the prior owner is clearly stating that it does not belong to the possessor.

Rav Pappa said: That is not a contradiction, as when that baraita is taught, it is taught with regard to one who sells his fields without specification. The son of the prior owner sold his fields without clarifying which fields he was selling. Since he did not specify the field from which the possessor is profiting, the possessor had no reason to assume that this field was being sold and that he needed to hold on to his deed, and he establishes the presumption of ownership despite the sale. In a case where the son of the prior owner stated explicitly that he was selling the field in question, the sale would serve as his protest.

The father profited from the land for one year, etc. – אֲכָלָה הָאָב שָׁנָה וּבִשָּׁנָה. If the father profited from the land for one year and the son profited from it for two years, or vice versa, or they each profited from it for one year and another who purchased the land with a bill of sale profited from it for a third, the presumption of ownership is established. The Maggid Mishne states (and see Shm) that it is immaterial whether the son is a minor (Rambam, Sefer Mishpatim, Hilkhot To’en VeNitan 12:7, Shulhan Arukh, Hoshen Mishpat 144:3).

One profited from the land in the presence of the father for one year, etc. – אֲכָלָה הָאָב שָׁנָה וּבִשָּׁנָה. If one worked and profited from a field for one year in the presence of its prior owner and for two years in the presence of his adult son (Maggid Mishne), or if he worked and profited from it for one year in the presence of each of them and for one year in the presence of the one who purchased it from the son, the presumption of ownership is established. The Rashbam and Tosafot limit this to a case where the land was purchased with a bill of sale, whereas the Rashba holds that it applies even where it was purchased before witnesses but without a bill of sale. This applies only if the son sold all of his fields without specifying where they are. If he sold the field in question and stated that he was specifically selling this field, then the possessor is considered to have been made aware that a protest has been lodged, and he should have kept his bill of sale (Rambam, Sefer Mishpatim, Hilkhot To’en VeNitan 12:8; Shulhan Arukh, Hoshen Mishpat 144:4).
Craftsmen — אַּוֹטְרוֹ־אָרִיסִין: Craftsmen are not able to establish the presumption of ownership with regard to items in their possession, whether or not they are items that are commonly lent and rented. Similarly, if they are working in someone’s land, even for an extended period of time, they cannot establish the presumption of ownership with regard to that land (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 9:1, 13:1, 4; Shulhan Arukh, Hoshen Mishpat 149:1, 149:28).

Partners — בַּמֶּה דְבָרִים אֲמוּרִים: A partner cannot establish the presumption of ownership in a field that he owns jointly with another if it is not large enough to be divided, even if he worked and profited from the entire field. If there are witnesses that the field was owned jointly and one partner claims sole ownership, the other partner takes an oath of inducement that he did not sell or give the field to him (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 13:1, 3, 8; Shulhan Arukh, Hoshen Mishpat 149:1–2).

Sharecroppers — אֵין אָבוּד אֲשֵׁרַיְהוּ אַ׳ְסִידוּ: A sharecropper that worked in a field cannot establish the presumption of ownership after profiting from the property for a certain duration, with the exception of the above people, said: It is said in a case of one who has more possession of the property, which does, in some cases, serve as proof of ownership. But in a case where another person gives one a gift, or there are brothers who divided their inheritance, or there is one who takes possession of the property of a convert who died without heirs and his property is now ownerless, as soon as one locked the door of the property, or fenced it or breached its fence even a bit, this is considered taking possession of the property, and it effects acquisition.

HALAKHA

A man does not have the ability to establish the presumption of ownership of the field. This is the halakha even if he had waived his right as a husband to the produce of her field and had stipulated that he would not inherit her property. Similarly, a wife cannot establish the presumption of ownership with regard to her husband’s property, even in a case where he designated a specific field for her use and she worked and profited from a different field. The Rema (citing Ramah, Tur, and Mordekhai) notes that if he causes damage to her property, e.g., he dug pits in her field, and she did not protest, he has established the presumption of ownership (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 13:1, 8; Shulhan Arukh, Hoshen Mishpat 146:10, and in the comment of Rema, 149:9). And a father does not, etc. — רִבְּנוֹסַף אַלּוֹ: A father who worked and profited from property belonging to his son, who was dependent upon him for support, or a son who worked and profited from property belonging to his father does not establish the presumption of ownership. The Rema adds that the same halakha applies with regard to other relatives who do not object to each other working and profiting from their property (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 13:8; Shulhan Arukh, Hoshen Mishpat 146:6).

But in a case where another gives a gift — הָאֲרִיסִין בַּמֶּה דְבָרִים אֲמוּרִים: Locking, fencing in, or breaching the wall of a field are effective acts of acquisition with regard to land, both for gifts and for purchases. Any of these acts of acquisition create a binding transfer of property, and they are effective even when carried out without witnesses (Rambam Sefer Kinyan, Hilkhot Mecheresh 1:8, 10 and Hilkhot Zekharya UMattana 1:31; Shulhan Arukh, Hoshen Mishpat 149:1, 3, 241:7).

Or one who takes possession of the property of a convert — אִינְהוּ אַ׳ְסִידוּ אַנַּ׳ְשַׁיְיהוּ: Acts of possession that are effective for purchases are also effective for the acquisition of ownerless property, such as that of a convert who died without heirs. In addition, there are methods of acquisition that are not effective for purchases but are nevertheless effective for acquiring ownerless property (Rambam Sefer Kinyan, Hilkhot Zekharya UMattana 1:31–3; Shulhan Arukh, Hoshen Mishpat 257:2).
A partner is considered as one who enters the field with permission. If one partner possesses the entire field, even if it was not commonly used for planting, has the advantage, meaning that he receives from the other partner the value of the enhancement or of his expenditures, whichever is greater (Rambam, Sefer Nitzkin, Hilkhos Gezeila VaAvoda 10:7; Shulhan Arukh, Hoshen Mishpat 139:5).

Both this and that are referring to a case where he enters the entire field (halakha of division), he establishes the presumption of ownership. But if it was not of sufficient area to be subject to the halakha of division, then he does not establish the presumption of ownership. The Rema writes (based on Rambam, Tur, citing Rosh) that if he possessed only half of the field, he does not establish the presumption of ownership in either case (Rambam Sefer Mitzpatim, Hilkhos Toen VeNitan 13:8; Shulhan Arukh, Hoshen Mishpat 149:2).

The Gemara explains: Some say it in this manner and some say it in that manner. On the one hand, it is possible to explain that if he entered half of the field he establishes the presumption of ownership with regard to that half, but if he entered the entire field he is merely acting as a partner. On the other hand, one could explain that entering half of the field does not establish the presumption of ownership at all, while entering the entire field does establish it.

Ravina stated a different resolution to the contradiction: Both this and that are referring to a case where he enters the entire field, and it is not difficult. This is referring to a case where the field is of sufficient area to be subject to the halakha of division. In this case, his being in possession of the other half of the field as well, which belonged to his partner, establishes the presumption of ownership. That is referring to a case where the field is not of sufficient area to be subject to the halakha of division. Since the property will not be divided but will remain co-owned, he is merely possessing it as a partner and does not establish the presumption of ownership.

Shmuel's father and Levi taught: A partner does not have the ability to establish the presumption of ownership of property in his possession, and, all the more so, this inability applies to a craftsman as well. But Shmuel teaches: A craftsman does not have the ability to establish the presumption of ownership of property in his possession, but a partner does have the ability to establish the presumption of ownership. The Gemara comments: And Shmuel follows his line of reasoning, as Shmuel says: Partners establish the presumption of ownership with regard to the property of each other, and they testify for each other and become paid bailees of their joint property with regard to each other. In terms of these issues, Shmuel considers partners to be independent parties.

And testify for each other. If an outsider challenges a partner's ownership of property, the other partner can testify together with another witness as to the first partner's ownership, and his testimony is not considered to be biased (Rashbam and other commentaries). And become paid bailees. If one of the partners was guarding a jointly owned item and it was stolen, he is liable to reimburse the other partner for his portion. Since they share the responsibility of guarding the item, it is viewed as if they are each employed by the other for this task; therefore, they are not viewed merely as doing a favor for each other, in which case they would be considered unpaid bailees and would be exempt from liability for theft and loss (Rashbam).

Some say it in this manner. The logic of saying it in this manner is that possessing half the field is merely a reflection of their partnership, and one does not establish the presumption of ownership by possessing half of the field even if one of the partners possessed half of the field for three years. It is only when one partner possesses the entire field, claiming the other partner sold it to him, that he establishes the presumption of ownership (Rashbam). Even if one partner possessed the higher-quality half of the field for all three years, he still does not establish the presumption of ownership, as partners often do not object to this type of arrangement.

And some say it in that manner. The logic of saying it in that manner is that if one of the partners possessed one-half of the field and claimed that the partnership had been dissolved and this was his permanent share, he established the presumption of ownership of that half of the field, while if one partner possessed the entire field, he does not establish the presumption of ownership, as the other partner is able to claim that they had an arrangement in which they took turns possessing the entire field (Rashbam). Rabbeinu Barukh cites a different interpretation: One partner claims that the half he possesses is exclusively his, and the other half is co-owned. The Ritva writes that if both partners, in fact, both made use of the second half of the field, the halakha would be as Rabbeinu Barukh suggested.
The Gemara addresses the matter itself. Shmuel says: A partner is considered as one who enters the field with permission. What is this teaching us, that there is no presumption of ownership in the context of partnership? If so, let him say explicitly: A partner does not have the ability to establish the presumption of ownership of property in his possession.

Rav Nahman says that Rabba bar Avuh says: Shmuel’s intent was to state that a partner who proactively works to improve their mutual property collects the enhancement that reaches shoulders; i.e., when the produce that grew due to the efforts of the partner is fully grown and ripened and can be harvested and carried upon one’s shoulders. He is not considered as one who entered another’s field without permission and improved it, who collects only for his expenditures. This is the halakha if he planted trees in a field that is not commonly used for planting trees, just as if he planted in a field that is commonly used for planting trees.

The Gemara continues its discussion of Shmuel’s statement: And testify for each other. A partner may join another witness in testifying with regard to the fact that he partner owns a share of their field in order to counter the claim of a one who claims ownership of the field, and his testimony is not disqualified due to being biased.

The Gemara asks: Why is this so? Aren’t partners biased in their testimony, as they jointly own the property in question?

The Gemara answers: With what are we dealing here? We are dealing with a case where the partner who is testifying wrote to the other partner: I do not have any legal dealings or involvement with regard to this field, thereby relinquishing his ownership of the field. The Gemara asks: And if he wrote this to him, what of it? But isn’t it taught in a baraita that one who says to another: I do not have any legal dealings or involvement concerning this field, or: I have no dealings with it, or: My hands are removed from it, has said nothing? That is to say, these statements have no legal standing.

The Gemara answers: With what are we dealing here? We are dealing with a case where the one testifying performed an act of acquisition with the other partner. Since relinquishing his share in this fashion is effective, his testimony is no longer biased. The Gemara asks: And if he performed an act of acquisition with the one testifying, what of it? His testimony is still biased, as he is establishing the field before his creditor. Once he transferred his share to his partner, his creditor will now be able to collect from the property that he formerly co-owned, as a creditor can collect from property that a debtor once owned despite the fact that he has relinquished his ownership of it. Since his testimony enables him to repay his debt, it is biased.
Without a guarantee — רבי שמואל מסמך דרומאウס: This is to say, this halakha applies even if there was no guarantee. If there was a guarantee, he is certainly an interested party, since as a result of his testimony on behalf of the buyer, he would not have to reimburse him due to the land being taken from him.

HALAKHA

One who sells a field to another without a guarantee — רבי שמואל מסמך דרומאウס: If one sold a field to another without a guarantee and its ownership was contested, the seller is unable to testify on behalf of the buyer, as his testimony is biased. Even though the seller is not obligated to compensate the buyer if the land is collected from him, he still benefits from his testimony, as his creditors can now collect from that land. The Rama (citing the Turi writes that this is the halakha only if the claim concerns the seller’s right to the field that he sold, but if the claim relates to obligations of the buyer to the one contesting his ownership, then the seller can testify (Rambam Sefer Shoftim, Hilkhot Edut 16:3, Shulhan Arukh, Hoshen Mishpat 37:15).

Residents of a city whose Torah scroll was stolen — רבי שמואל מסמך דרומאウס: The Gemara answers: The Gemara clarifies: Responsibility with regard to whom? If we say that he assumes general responsibility, such that if anyone collects the field from his former partner for whatever reason, he is liable to compensate the partner, then all the more so it is preferable for him that the field remain in his former partner’s possession, as if the claimant will be successful in obtaining the field, the witness will have to compensate the partner. Rather, it is referring to a case where he assumes responsibility only for a loss that comes to his former partner in the property resulting from the field being seized by one of his creditors to collect payment for his debts. He is, therefore, not an interested party, as in any event he owes the same debt, either to his creditor or to his partner.

The Gemara asks: And if he removes himself from the property by having the former partner acquire his share in it, is it actually effective to remove him, so that there is no longer a concern for biased testimony? But isn’t it taught in a baraita: With regard to a case of residents of a city whose Torah scroll was stolen, the case is not adjudicated by the judges of that city, and proof may not be brought from the testimony of the people of that city, as their testimony is biased? And if it is so that relinquishing one’s share renders one not as biased, then let two of them remove themselves from their share in the Torah scroll, and then the court can judge the case based on their testimony.

The Gemara suggests: A Torah scroll is different, as it stands for the people to listen to the Torah reading from it. Since they are obligated to listen to the Torah reading, they stand to benefit from this Torah scroll even if they relinquish their ownership share in it, and their testimony is biased.

The Gemara suggests: Come and hear a proof from a baraita: With regard to one who says: Give one hundred dinars to the poor of my city, the distribution of the funds is not adjudicated by the judges of that city, and proof may not be brought from the testimony of the people of that city, as their testimony is biased. Why not? Let two people remove themselves from their share in the funds and then the court can judge the case based on their testimony.

The Gemara suggests: Come and hear a proof from a baraita: With regard to one who says: Give one hundred dinars to the poor people of my city, the distribution of the funds is not adjudicated by the judges of that city, and proof may not be brought from the testimony of the people of that city, as their testimony is biased. And how can you understand the fact that the poor take the money and the judges are thereby disqualified as interested parties? Rather, say: The distribution of the funds is not adjudicated by the poor judges of that city, and proof may not be brought from the testimony of the poor people of that city. And why not? Let two people remove themselves from their share in the funds and then the court can judge the case based on their testimony.

As Ravin bar Shmuel says in the name of Shmuel: One who sells a field to another even without a guarantee — רבי שמואל מסמך דרומאウס: that if the field will be repossessed the seller will compensate the buyer for his loss cannot testify with regard to ownership of that field on behalf of the buyer because he is establishing the field before his creditor.
The Gemara answers: Here, too this halakha is stated with regard to a case where the gift was for the purpose of procuring a Torah scroll, and the same aforementioned reasoning applies. The Gemara asks: And if it is referring to money for purchasing a Torah scroll rather than money earmarked for charity, why does the baraita call the recipients: Poor people? Because everyone is poor with regard to a Torah scroll, as it is very expensive.

And if you wish, say instead: Actually, it is referring to people who are literally poor, as it teaches. And the ruling of the baraita is stated with regard to poor people, whose support is incumbent upon all of the residents. Therefore, a gift to these poor people reduces their obligation, and all of their testimony is biased. The Gemara clarifies: And what are the circumstances in which this baraita states its ruling? If it is a place where the sum of charity that each resident is obligated to give is fixed for them, let two of them give what is fixed for them to give to the poor, and then the court can judge the case based on their testimony.

The Gemara answers: With what are we dealing here? We are dealing with a case where the sum is not fixed for them. Therefore, this is not an option. And if you wish, say instead: Actually, it is referring to a place where the sum is fixed for them. And nevertheless, it is amenable to the residents of the city that the poor receive a gift, because once there is a gain for the poor people from this donation, there is a gain, and it lightens the burden on all of the people of the city.

The Gemara returns to discuss Shmuel’s statement concerning partners: And they become paid bailees of their joint property with regard to each other.

The Gemara asks: Why are they liable as paid bailees? Isn’t it a case of safeguarding accompanied by employment of the owner? Since both partners are safeguarding each other’s property, they are both employed by each other, and they should therefore be exempt from the obligations of safeguarding. Rav Pappa said: Shmuel is referring to a case where he says to his partner: Safe-guard me today, and I will safeguard for you tomorrow. In this circumstance, they are each the sole bailee at any given moment, and they do not receive the exemption from bailee payments for being employed by the owner.

The Sages taught: If one sold a house to another, or if he sold a field to him, he cannot testify about it for the buyer against a claimant because the financial responsibility to compensate the buyer for it is upon him, and his testimony is biased. By contrast, if he sold a cow to him, or if he sold a cloak to him, he can testify about it for the buyer because the financial responsibility to compensate the buyer for it is not upon him. The Gemara asks: What is different in the first clause that he cannot testify and what is different in the latter clause that he can? Why would one assume that in the first case he does bear responsibility, but not in the second?
The Gemara posits that this principle applies to partners who share (see also בִּרְאוּבֵן שֶׁגָּזַל). With regard to Reuven, who robbed Shimon of a field, and sold it to Levi, and then Yehuda comes and contests Levi’s ownership, stating that it was actually his. The baraita teaches that Shimon cannot go to court to testify for Levi, because it is preferable for Shimon that the field be returned to Levi, so that he can later collect it from him.

The Gemara asks: But once he testified that the field is Levi’s, how is he able to later remove it from his possession? The Gemara answers: This is referring to a case where Shimon says in his testimony: I know that this land is not Yehuda’s. He is therefore able to later claim it as his and not Levi’s. The Gemara asks: But why should he testify that it does not belong to Yehuda? With that same right by which he removes the land from the possession of Levi, let him remove it from the possession of Yehuda. It is not to his advantage to lie in order to establish it in the possession of Levi, and his testimony should not be considered biased.

The Gemara answers: Because Shimon says to himself: The second person is amenable to me, while the first is more difficult than he is, i.e., I prefer to litigate with Levi rather than with Yehuda.

And if you wish, say instead: It is referring to a case where this Master, Shimon, has witnesses attesting to his ownership, and that Master, Yehuda, also has witnesses testifying to his ownership, and the Sages said that under such circumstances the land should remain where it is. That is to say, it should remain with the one currently in possession. If Yehuda were to be awarded the land, Shimon would not be able to remove the land from his possession despite having witnesses to support his claim, as Yehuda also has witnesses supporting his claim and would be in possession of the land. As a result of Shimon’s testimony, the land will be awarded to Levi, who has possession as a result of his purchase from Reuven. Then Shimon will be able to remove the land from Levi’s possession by proving that Reuven stole it from him. Therefore, Shimon’s testimony is biased.

**HALAKHA**

**Perek III**  
**Daf 44**  
**Amud a**

**HALAKHA**

Robber — רִיבָא. If Reuven robbed Shimon of a field or an item (see Shm), and then Yehuda contested Reuven’s ownership, claiming that it actually was his and not Reuven’s, Shimon is not able to testify that it is not Yehuda’s. The reason is that he is biased in his testimony, as he may prefer to litigate with Reuven rather than Yehuda (Rambbam Sefer Shothtim, Hilkhhot Edar 161; Shulhan Arukh, Hoshen Mishpat 37:10).

The Gemara asks: And according to the understanding of Rav Sheshet, the baraita is disqualifying one whose field was stolen from testifying on behalf of one who purchased the field from the robber, why is it necessary to discuss a case involving a buyer, when it would be simpler to establish it with regard to testifying for the robber himself?

The Gemara writes, based on the Tur, that this applies only to his testifying that the land does not belong to Yehuda. He can testify that it belongs to Reuven. By doing so he relinquishes his claim to the land, and his testimony is therefore not biased (Rambbam Sefer Shothtim, Hilkhhot Edar 161; Shulhan Arukh, Hoshen Mishpat 37:10).

With regard to Reuven, who robbed Shimon of a field — רִיבָא שֶׁמָּחַל שְׁמוֹן שֶׁמָּזָל. If Reuven robbed Shimon of a field and then sold it to Levi, and Yehuda then contested Levi’s ownership, Shimon is unable to testify on behalf of Levi. His testimony is biased, as his testimony may facilitate the recovery of his field. This is in accordance with the analysis of Rav Sheshet. The Rema notes that this is referring to a case where Yehuda and Shimon each have witnesses to support their respective claims, as Yehuda also has witnesses testifying to his ownership, and the Sages said that under such circumstances the land should remain where it is. That is to say, it should remain with the one currently in possession. If Yehuda were to be awarded the land, Shimon would not be able to remove the land from his possession despite having witnesses to support his claim, as Yehuda also has witnesses supporting his claim and would be in possession of the land. As a result of Shimon’s testimony, the land will be awarded to Levi, who has possession as a result of his purchase from Reuven. Then Shimon will be able to remove the land from Levi’s possession by proving that Reuven stole it from him. Therefore, Shimon’s testimony is biased.

And establish it with regard to the robber — קַח מְהֵמָה בְּגַזְלָן. This is ostensibly a critique of Rav Sheshet’s interpretation of the baraita, suggesting that it be understood in a more straightforward manner (Rabbeinu Gershom Mareh HaGola). The Rashbam and Rambam, among others, argue that this interpretation is not tenable. It is not possible to suggest that the baraita is referring to a simple case of robbery, as it explicitly speaks of a sale. Therefore, the question should be understood as being directed at the baraita itself. Given the current interpretation of Rav Sheshet, why is the baraita not formulated in a more straightforward fashion?
The Gemara answers: The tanna of the baraita discusses a case involving a buyer because he wants to teach the latter clause: If he sold a cow to him, or if he sold a cloak to him, he can testify about it for the buyer. As in this clause, the tanna specifically needs to discuss a case where the robber sold it, because then it is a case of despair by the owners due to the robbery, and there is also a change in possession due to the sale, and the one who was robbed can no longer reclaim the stolen item. He is therefore no longer biased in his testimony and can testify for the one who purchased the item. But in the latter clause, if the robber did not sell it, in which case the stolen item is returned to the robbery victim, he cannot testify, as he prefers that the item be in the possession of the robber, so that he can recover it from him. Therefore, the tanna taught in the first clause as well about a case where he sold it.

The Gemara asks: And in the latter clause as well, where there is despair and change in possession, granted that he despairs of recovering the item itself, but did he despair of being reimbursed for its value? While it is true that he lost his ownership of the item, he is still entitled to payment. Therefore, he is still biased in his testimony. The Gemara answers: No, it is necessary in a case where the robber died, in which case the robbery victim cannot collect even the value of the stolen item, and is no longer biased in his testimony. As we learned in a mishna (Bava Kamma 111b): In the case of one who robs another of food and feeds it to his own children, or who left a stolen item to them as an inheritance, the children are exempt from paying the victim of the robbery after their father’s death. Since he is no longer able to collect the value of the stolen item, he is not biased in his testimony and can testify on behalf of the buyer.

The Gemara asks: And why not establish the entire baraita with regard to testifying for the robber’s heir? This would demonstrate the contrast that the tanna wanted to teach. In the case of a stolen field, which always must be returned to its owner, the robbery victim is biased in his testimony because the field can be recovered. Therefore, it is in his interest to establish that it is in the possession of the robber’s heirs. In the case of movable property, which cannot be recovered after the death of the robber, he is not biased in his testimony.

The Gemara notes: This works out well according to the one who says that the transfer of an item to the possession of an heir is not like the transfer of an item to the possession of a buyer, but is viewed as an extension of the possession of the legator. According to this opinion, it is well that the baraita did not establish its case with regard to the robber’s heir, as the robbery victim would be able to recover the item, and would be considered biased in his testimony. But according to the one who says that the transfer of an item to the possession of an heir is like the transfer of an item to the possession of a buyer, and the item is not recoverable in either case, what can be said to explain why the baraita does not state its case with regard to an heir?

And furthermore, this explanation was difficult for Abaye to understand, as according to Rav Sheshet’s explanation, it is accurate to state, as the baraita does, that the distinction exists between the cases of land and movable property because in the first clause the financial responsibility to compensate the buyer for the land is upon him, and in the latter clause the financial responsibility to compensate the buyer for the movable property is not upon him? That is not the crucial distinction. The tanna should have taught instead that the difference is: Here he cannot testify because the stolen field returns to him, and here he can testify because the stolen item does not return to him.

Notes

It is a case of despair and a change in possession – מַעַלְי וּרְדֵה: It is exclusively in the latter clause, which speaks of movable property, that the baraita teaches that the owner loses ownership after there is both despair and a change in possession. In the case of real estate, the property never leaves the owner’s possession (Rashbam).

Did he despair of being reimbursed for its value – מֶה כֵּן בְּמִדְּמָה: According to the Rashbam, the reason that the robbery victim prefers that the property remain in the possession of the one who purchased from the robber, and not in another person’s possession, is that if it is in the possession of the buyer, the robbery victim can demand compensation from the robber. If the court awards the property to another person entirely, the robber can claim that the court determined that it belongs to that third party and that he is not legally answerable to the robbery victim (Rashbam).

The possession of an heir – שֵׁרַד בְּמִדְּמָה: If one inherited a stolen item and consumed it before the robbery victim despaired, he is not liable to repay him, provided that the robber did not bequeath it to any additional property from which he can repay his debt. If the robber did leave property, then the heir is liable to repay the robbery victim, even if he consumed it after the owner had despaired. Today this halakha applies even if the robber bequeathed movable property to the heirs (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 5:5–6; Shulhan Arukh, Hoshen Mishpat 37:17).

One who robs and feeds – מַגֵּז וּמַאֲכִיל: If one inherited a stolen item and consumed it before the robbery victim despaired, he is not liable to repay him, provided that the robber did not bequeath it to any additional property from which he can repay his debt. If the robber did leave property, then the heir is liable to repay the robbery victim, even if he consumed it after the owner had despaired. Today this halakha applies even if the robber bequeathed movable property to the heirs (Rambam Sefer Nezikin, Hilkhot Gezeila VaAveda 5:5–6; Shulhan Arukh, Hoshen Mishpat 361:7; and Smo and Buir HaGora there).

MALAKHA

Where the robber died – נַעֲמָה: If Reuven robbed Shimon of an item and sold it to Levi, and Yehuda claimed that it actually was his, Shimon is not able to testify that it is not Yehuda’s. The reason is that if he testifies that the item does not belong to Yehuda, he would then be able to produce evidence that Reuven robbed him and to collect compensation for the item. If Reuven died, and the stolen item is movable property, Shimon can testify that the item is not Yehuda’s, since he is no longer able to collect compensation for the robbery. If Reuven left his heirs real estate, Shimon cannot testify, as he could collect compensation from the heirs. Today, the halakha is that he cannot testify even if the robber left only movable property, since the genin instituting that heirs must pay for the debt and robbery of their legator even if they must sell the movable property that they inherit in order to do so. Therefore, Shimon is biased in his testimony in all cases (Rambam Sefer Shoftim, Hilkhot Eduyot 16:2; Shulhan Arukh, Hoshen Mishpat 37:17).

The reason is that if he testifies that the item does not belong to Yehuda, he would then be able to produce evidence that Reuven robbed him and to collect compensation for the item. If Reuven died, and the stolen item is movable property, Shimon can testify that the item is not Yehuda’s, since he is no longer able to collect compensation for the robbery. If Reuven left his heirs real estate, Shimon cannot testify, as he could collect compensation from the heirs. Today, the halakha is that he cannot testify even if the robber left only movable property, since the genin instituting that heirs must pay for the debt and robbery of their legator even if they must sell the movable property that they inherit in order to do so. Therefore, Shimon is biased in his testimony in all cases (Rambam Sefer Shoftim, Hilkhot Eduyot 16:2; Shulhan Arukh, Hoshen Mishpat 37:17; and Smo and Buir HaGora there).

And furthermore, this explanation was difficult for Abaye to understand, as according to Rav Sheshet’s explanation, it is accurate to state, as the baraita does, that the distinction exists between the cases of land and movable property because in the first clause the financial responsibility to compensate the buyer for the land is upon him, and in the latter clause the financial responsibility to compensate the buyer for the movable property is not upon him? That is not the crucial distinction. The tanna should have taught instead that the difference is: Here he cannot testify because the stolen field returns to him, and here he can testify because the stolen item does not return to him.

The possession of an heir – שֵׁרַד בְּמִדְּמָה: An item is considered to change possession only where it is transferred to a new, independent ownership, e.g., the case of a sale or a gift. Inheritance is not considered to be a change in possession. Therefore, if a stolen item is still extant and unchanged, the heirs must return it to the robbery victim, even if he had already despair of recovering it. If it has changed form, they are liable to pay only its value and not to return the item itself. This is in accordance with the conclusion of the Gemara in Bava Kamma 112a (Sefer Nezikin, Hilkhot Gezeila VaAveda 5:5–6; Shulhan Arukh, Hoshen Mishpat 361:7, and Smo and Buir HaGora there).
According to the Rashbam, the reason that the robbery victim prefers the baraita (Rashbam).

Did he despair of being reimbursed for its value – among others, argue that this interpretation is not tenable. It is not necessary to say that Rav Sheshet’s interpretation of the baraita is not tenable because these items are movable property, and movable property is not liened to a creditor. And even though it is so that the debtor wrote to the creditor that he can collect the debt even from the cloak that is on his shoulders, that matter applies only when it is as is and in the possession of the debtor, but if it is not as is, since it is in the possession of the buyer, then no, the creditor cannot collect from movable property. Therefore, the debtor can testify on behalf of the buyer.

The Gemara clarifies this by noting: And this is the case specifically in the case of a house or a field. But in the case of a cow or a cloak, he is not biased in his testimony, and can testify on behalf of the buyer. The Gemara explains: It is not necessary to say that this is the halakha in a case where he sold a cow or cloak without specification, where it is not liened to the creditor. What is the reason for this? It is because these items are movable property, and movable property is not liened to a creditor. And even though it is so that the debtor wrote to the creditor that he can collect the debt even from the cloak that is on his shoulders, that matter applies only when it is as is and in the possession of the debtor, but if it is not as is, since it is in the possession of the buyer, then no, the creditor cannot collect from movable property. Therefore, the debtor can testify on behalf of the buyer.

The Gemara continues: But even in a case where he set the cow or cloak aside as designated repayment [apotekē],1 the creditor cannot collect from it. What is the reasoning? It is in accordance with the statement of Rava, as Rava says: If a master set aside his slave as designated repayment of a debt and then sold him, the master’s creditor collects the debt from the proceeds of the sale of the slave. But if one set aside his ox or his donkey as designated repayment and then sold it, the creditor does not collect the debt from the proceeds of the sale of the ox or the donkey.

What is the reason for this distinction? This setting aside of the slave as designated repayment generates publicity, and that setting aside of the ox or donkey as designated repayment does not generate publicity. Therefore, when the slave had been set aside as designated repayment, the buyer would have been aware of this. Since he bought the slave while having this knowledge, the slave can be seized from him by the seller’s creditor. By contrast, the buyer of the cow or cloak would not have been aware that it had been set aside as designated repayment, so the seller’s creditor cannot seize it from him.
The Gemara asks: But let there be a concern that perhaps the debtor transferred the movable property to the creditor, not for him to own, but for him to have a lien on the movable property, by means of, i.e., together with, an acquisition of land, as Rabbi said. If the debtor transferred movable property to the creditor as liened property by means of an acquisition of land, the creditor acquires the land and acquires the movable property, i.e., a lien is created with regard to both. And Rav HIsda said: And that is the halakha only where the debtor wrote to the creditor: This lien is not like a transaction with inconclusive consent [Etc. asmakhta], which does not effect acquisition, and not like the template [ketofesa] for documents, which are not actually used to collect debts. Rather, it is a legally binding document.

The Gemara answers: With what are we dealing here? We are dealing with a case where the debtor had purchased the movable property and immediately sold it, and there was no opportunity for him to transfer their liened. Therefore, there is no possibility of his being biased in his testimony due to a desire to repay his debt.

The Gemara asks: But let there be a concern that perhaps it is a case in which the debtor wrote to the creditor: I will repay you even from that which I will acquire in the future, which would presumably mean that the creditor can collect from the buyer even though the debtor purchased the item after taking the loan. From the fact that this is not a concern, do you learn from it that even if the debtor wrote: I will repay you even from that which I will acquire in the future, and he then purchased and sold property or purchased and bequeathed it, that which he purchases is not liened to his creditor? This would seem to settle what is otherwise assumed to be an unresolved question.

The Gemara rejects this proof: No, one need not reach that conclusion, as it is necessary to teach the halakha in a case where witnesses say: We know about this one who sold these items that he never had any land. Therefore, it cannot be that the creditor acquired a lien on the movable property by means of an acquisition of land.

The Gemara asks: But doesn't Rav Pappa say that even though the Sages said: In the case of one who sells a field to another without a guarantee, and a creditor came and repossessed it, the buyer cannot return to the seller, i.e., the debtor, who sold him the field, to claim reimbursement, but if it is found that the field was not the seller's in the first place, the buyer can return to the seller to claim reimbursement. In this case, if the claimant establishes that the cow or cloak is his and was not the seller's, the buyer will be able to claim reimbursement. The seller is therefore biased in his testimony, and should not be able to testify on behalf of the buyer.

The Gemara notes: There are those who hold that since omission of the guarantee of the sale from a document is a scribal error, all forms of liens are included in the guarantee, including the commitment to repay from that which he will later acquire (Tur citing Rosh; Rashba; see Shaht). The Nimekure Yosef holds that if he specified some of the forms of guarantee, then the commitment to repay from that which he will later acquire is not assumed to be implicit (Rambam Sefer Mishpatim, Hilkhot Malve Veloveh 18:2; Shulhan Arukh, Hoshen Mishpat 121:1; Bava Batra 44b). It is found that it was not his - מינתן. If one sold his field without a guarantee, the buyer is not compensated by the seller if it is seized from him because it had been stolen, even if the robbery was known, and certainly not if the field was collected as payment for the seller's debt. This is in accordance with the opinion of Rav Zevi (Rambam Sefer Kinyan, Hilkhot Melkhiya 19:8 and Sefer Shofetim, Hilkhot Eduh 164 and commentaries there; Shulhan Arukh, Hoshen Mishpat 235).

There are specific acts of acquisition for movable property, but if one acquires land at the same time as movable property, the act of acquisition employed to acquire the land suffices for the acquisition of the movable property as well. Furthermore, just as movable items themselves can be acquired by means of an act of acquisition of land, so too a lien on them can be established in this manner. If the debtor transferred the movable property together with an acquisition of land, any lien that takes effect with regard to the land extends to the movable property as well (Rashbam).

There are those who hold that if the debtor wrote, that I will acquire - מינתן, the question of the efficacy of this formula is discussed later (17a) and is left unresolved there. The Gemara here is suggesting that one can ostensibly conclude that this formula: That I will acquire, is not effective in creating a lien on property he will purchase henceforth. The reasoning for this is that since he has not yet purchased the property in question, it tantamount to an acquisition of an entity that has not yet come into the world, which is not an acquisition (Rashbam).

This answer supplants the previous answers given by the Gemara. Since he did not possess any land, there was no means by which he could have created a lien with regard to his movable property (Rashbam).

The term asmakhta refers to a commitment to perform an act of acquisition in the future, contingent upon certain conditions being met. The Sages ruled that such an acquisition is not valid, as there is no conclusive intent to effect the transaction. The Ritva asks how writing that it is not like an asmakhta causes the acquisition to take effect if in fact the circumstances are those of an asmakhta. He answers, citing his teacher, the Ralh, that the debtor is stating that the acquisition is to be outright and immediate. This interpretation also appears in the writings of Rav Shemta Gaon and his son Rav Hai Gaon. By contrast, the Ramban explains that this is not actually a case of an asmakhta. Rather, since the creditor relies primarily on his ability to collect the debt from land, his secondary reliance on collection from movable property is akin to an asmakhta. Specifying that it is not an asmakhta is sufficient to negate this concern (see Rashbam).

And not like the template for documents - אל tstfot. These are templates for documents that student scribes copy for practice, which are not intended for actual use (Rashbam).

Purchased and immediately sold - מינתן ו.samekh v.w. Tason and other early commentators ask, Why, then, is there a distinction between land and movable property, as in neither case could it have been liened? They suggest that the Gemara could have raised this objection, but elected to raise a more inherent difficulty instead.

You learn from it that if the debtor wrote, that I will acquire - מינתן, The question of the efficacy of this formula is discussed later (17a) and is left unresolved there. The Gemara here is suggesting that one can ostensibly conclude that this formula: That I will acquire, is not effective in creating a lien on property he will purchase henceforth. The reasoning for this is that since he has not yet purchased the property in question, it tantamount to an acquisition of an entity that has not yet come into the world, which is not an acquisition (Rashbam).

The term asmakhta - מינתנת קומתא is the Greek teto, teto, meaning to engrave or form a model. By extension, it refers to any standardized or form or formula, including that of documents. Templates of documents can refer to standardized documents that scribes prepare for themselves.
One who sells a field – היהкупן שדה

If Reuven sold a field to Shimon and then Yehuda contested Reuven’s ownership, claiming that it actually was his and not Shimon’s, Reuven is not able to testify that the field is not Yehuda’s, as he is biased in his testimony. This is due to the fact that Reuven prefers that the field remain in Shimon’s possession so that his creditors can collect his debt, and he will not be considered a wicked borrower, who does not repay his debts. This is in accordance with the conclusion of the Gemara. This halakha applies even if the debtor has other fields from which the creditor could collect, as it could be that this field was set aside as designated repayment, or that there are other debtors who will collect those other fields (Shakh citing Tur; see Kesef Mishne). The Rema writes, citing the Tur, that this halakha applies only when Yehuda’s claim is that Reuven did not own the property in the first place. If it is based on a claim of debt against Shimon, Reuven is able to testify (Rambam Sefer Shoteiim, Hilkhot Eduot 16:3; Shulhan Arukh, Hashem Mishpat 37:15).

The Gemara answers: With what are we dealing here? We are dealing with a case where the buyer admits that he recognizes that this is the offspring of the seller’s donkey, and will not claim in court that the seller had no right to sell it.

The Gemara returns to the statement of Rav Pappa and comments: But in contrast to the opinion of Rav Pappa, Rav Zevid says: Even if it is found that the field was not the seller’s, the buyer cannot return to the seller to claim reimbursement, as the seller can say to the buyer: It is for this reason that I sold it to you without a guarantee, i.e., so that if it is taken from you, I will not bear liability.

The Gemara returns to Shmuel’s statement, in order to examine the matter itself. Ravin bar Shmuel says in the name of Shmuel: One who sells a field to another even without a guarantee that if the field will be repossessed the seller will compensate the buyer for his loss cannot testify with regard to ownership of that field on behalf of the buyer, because he is establishing the field before his creditor. The Gemara asks: What are the circumstances of this halakha?

If this is a case where the seller has other land, that he did not sell, in addition to the field that he sold with regard to which he currently wishes to testify, his creditor will go after it, and collect from that land. In that case, he is not biased in his testimony concerning the field that he sold. If this is a case where the seller does not have other land, what difference does it make to him if the buyer is unable to keep the land? In any event the creditor cannot collect directly from the seller.

The Gemara answers: Actually, Shmuel is referring to a case where the seller does not have other land, and the reason is that he is nevertheless biased in his testimony is that he wants his creditors to be able to collect the debt because he says to himself that it is uncomfortable for him to be in the category of: “The wicked borrows, and pays not” (Psalms 37:21).

The Gemara asks: But ultimately, he is also in the category of: “The wicked borrows, and pays not” (Psalms 37:21) with regard to the other one, to whom he sold the land. He took money from the buyer, who did not receive anything in exchange, as the land was seized from him. The Gemara answers: He is not concerned about his behavior toward the buyer, as he can say to him: For this very reason I sold it to you without a guarantee, so that if it would be seized from you I would not be liable.

If this is a case where he has other land – אם naam ליה אדריאו אקראהドורילו – בהיו היה הקונה מיארא אקראהドורילו, The halakha is that if the debtor owns any land, the creditor may not seize land from a buyer of the debtor’s land, even if there is a lien on the sold property. This is the halakha even if the land belonging to the debtor is of inferior quality. Since the creditor will not collect from the land in question in any case, the seller is not biased in his testimony (Rashbam).

Uncomfortable for him to be – אם naam ליה אדריאו אקראהドורילו. He would prefer that the land be in the buyer’s possession, as otherwise his creditor will be unable to collect, and he will be in the category of: “The wicked borrows, and pays not”. Therefore, he is biased in his testimony on behalf of the buyer (Rashbam). The Ri Migash asks: How could it be that in order to avoid being in the category of a wicked person who borrows without paying, one would be prepared to commit the even greater sin of testifying falsely? He answers, as do many other early commentators, that it means that he would rather sin secretly by testifying falsely than be viewed by others as a wicked person who fails to pay his debts.
The Gemara relates: Rava announced, and some say it was Rav Pappa who announced: All those who ascend from Babylonia to Eretz Yisrael and all those who descend from Eretz Yisrael to Babylonia should be aware of the following: In a case of this Jew who sold a donkey to another Jew, and then a gentile came and seized it from him, claiming that it was really his, the halakha is that the seller should rescue (dimfatzei) from the gentile or reimburse the buyer.

The Gemara points out: And we said this halakha only in a case where the buyer does not recognize that this is the offspring of the seller’s donkey, and it is possible that the gentile’s claim is true. But if the buyer recognizes that this is the offspring of the seller’s donkey, then the seller is not liable to reimburse him. It is clear that the gentile’s claim is false, so the seller bears no responsibility for the buyer’s loss. And furthermore, we said this halakha only in a case where the gentile did not seize it and the saddle with it. But if he seized it and the saddle with it, it is clear that the gentile is a robber, and it is assumed that there is no validity to his claim with regard to the donkey. Therefore, the seller is not liable to reimburse him.

Ameimar said: Even if there are not any of these factors, the seller is not liable to reimburse him. What is the reasoning for this? It is that it is known that an ordinary gentile is an extortionist, so it is assumed that the donkey did indeed belong to the seller, as it is stated: “Whose mouth speaks falsehood, and their right hand is a right hand of lying” (Psalms 144:8).

The Gemara returns to discuss the statement of Shmuel (42b): A craftsman does not have the ability to establish the presumption of ownership of the property in his possession, but a partner has the ability to establish the presumption of ownership. Rabbi says: They taught this only in a case where the owner transferred the item to the craftsman in the presence of witnesses. But if the owner transferred the item to the craftsman not in the presence of witnesses, then, since the craftsman is able to say to the one who claims to be the owner: These matters never occurred, i.e., you did not give me this item but it was mine to begin with, and he would keep possession of the item with that claim, then even when the craftsman says to him: It is purchased by me from you, and that is why it is in my possession, he is deemed credible.

Abaye said to Rabba: If so, then even if the owner transferred the item to the craftsman in the presence of witnesses as well, he should be deemed credible. Since the craftsman is able to say to the owner: I returned the item to you, and he would be exempt from payment, when the craftsman says to him: It is purchased by me from you, and that is why it is in my possession, he is deemed credible.

Rabba said to Abaye: Do you maintain that...
Halka: When the Gemara refers to the owner having seen his property in the possession of the craftsman, it means that there are witnesses to his having seen it. Otherwise, the craftsman can simply deny that the owner ever saw it in his possession (Rashbam).

His slave — Rav: Rashbam interprets this to refer to an adult slave who had been in the possession of the craftsman for three years in order to learn a craft. It cannot be referring to a shorter period of time, as the Gemara stated previously (9a) that slaves are not subject to presumptive ownership resulting from mere possession, and that would indicate that three years of use would establish the presumption of ownership with regard to a slave. The ruling that a craftsman cannot establish the presumption of ownership is stated even with regard to three years of use. By contrast, the Meiri and other commentators interpret this Gemara as referring to an infant slave who cannot walk on his own and is therefore subject to presumptive ownership by means of possession, like other movable property. According to this understanding, the craftsman in question is a doctor, and the slave was brought to him for medical attention.

Where there are witnesses, and that is the halakha where he saw — Rav: The two factors complement each other. Since there are witnesses, the craftsman cannot claim that it was never given to a slave. Additionally, since it was seen in his possession, he is unable to claim that he returned it (Rashbam).

HALAKHA

With regard to a case where it emerges from the possession of another — One who saw his cloak in another’s possession and demanded its return, and the other claims that he witnessed the first person instructing a craftsman who was in possession of it to sell it, and that he purchased it, he is deemed credible and keeps the cloak. If the other says that the craftsman sold it to him, and the craftsman claims that he did so in accordance with the owner’s instructions, that person is not deemed credible. The Shm notes that this is the halakha only in a case where witnesses saw it in his possession at the time of one’s demand that it be returned. If there are no witnesses, the other is deemed credible in either case (Shuham Arukh, Hoshen Mishpat 134:4).

Where there are witnesses, and that is the halakha where he saw — Rav: In a case where one deposited an item of his in another’s possession to safeguard, or in the possession of a craftsman to fix, if he deposited it in the presence of witnesses, or if witnesses saw it in the other person’s possession at the time it was demanded from him, then the first person is deemed credible that the item is his and he collects the item. The other can insist that the former take an oath of inducement (Rambam Sefer Mishpatim, Hilkhos Shelos U’Kradon 6:4 and Hilkhos Toldos Ve’Nihan: 9:2; Shuham Arukh, Hoshen Mishpat 64:5, 13:7–13, 297:1).

Abaye raises an objection to Rabba’s ruling from a baraita (Tosefta 2:6): There is a case where one saw his slave in the possession of a craftsman, or his cloak in the possession of a laundrifer, and says to him: What is the nature of its presence in your possession? If the craftsman or laudrifer replied: You sold me the slave or cloak, or: You gave the slave or cloak to me as a gift, he has not said anything, and must return it, since a craftsman does not establish the presumption of ownership. But if the craftsman or laudrifer replied: You said to me in your presence to someone else to sell the slave or cloak to him or to give the slave or cloak to me as a gift, i.e., to sell or give the slave or cloak to the craftsman or laudrifer himself, as a gift, then his statement is valid.

Before Abaya raises his objection, he first clarifies the ruling of the baraita. What is different in the first clause that the craftsman is not deemed credible and what is different in the latter clause that he is?

Rabba said: The latter clause is stated with regard to a case where the slave or cloak emerges from the possession of another, and not from the possession of the craftsman, and this other person is saying to the owner: You said to me in your presence to the craftsman to sell the slave or cloak or to give the slave or cloak to me as gift. This person is deemed credible despite acknowledging that he received it from the craftsman, since if he had wanted to, he could have said to the owner of the item: I purchased the slave or cloak from you. As this third party is not a craftsman, he is able to establish the presumption of ownership through possession and would be deemed credible. Therefore, when he says to him as well: You said to him in my presence to sell the slave or cloak, his statement is valid, and he is also deemed credible.

After having clarified the ruling of the baraita, Abaye presents his objection: In any event, the first clause of the baraita teaches that the case where a craftsman is not deemed credible is where the owner saw the slave or cloak in the possession of the craftsman. What are the circumstances? It is referring to a case where there are witnesses to the fact that the owner gave the slave or cloak to the craftsman for training or cleaning, respectively, why do I need for the owner to have seen them in the craftsman’s possession? Let the owner simply bring witnesses and take back his slave or cloak. Rather, it is not referring to a case where there are no witnesses, and nevertheless, when the owner saw the slave or cloak in the craftsman’s possession, he may seize the slave or cloak in any case? This contradicts Rabba’s statement that the decisive factor is whether the transfer took place in the presence of witnesses.

Rabba answers this objection: No, that is not the case of the baraita. Actually, it is referring to a case where there are witnesses, and nevertheless, that is the halakah, that he may seize the slave or cloak only where he saw it in the possession of the craftsman. But if there are no witnesses that it is currently in his possession, he would be deemed credible if he were to claim that he purchased the slave or cloak from the owner, as he could have claimed that he returned the slave or cloak.
Abaye asked him: But you are the one who said: In the case of one who deposits an item with another in the presence of witnesses, the recipient must return it to him in the presence of witnesses. Therefore, if it was given to the craftsman in the presence of witnesses, he would not have the ability to make a more advantageous claim [miggo] that he returned it. Rabba said to Abaye: I retracted that opinion and hold that he may return it even when not in the presence of witnesses.

Rava raises an objection from a baraita to support the opinion of Rabba: With regard to one who gives his cloak to a craftsman, and then the craftsman says: You fixed two dinars as my payment, and that one, the owner, says: I fixed only one dinar as your payment, then, so long as it is so that the cloak is in the possession of the craftsman, it is incumbent upon the owner to bring proof that the fee was one dinar. If the craftsman gave the cloak back to him, then there are two scenarios: If the claim is lodged in its proper time, i.e. on the day of the cloak’s return, then the craftsman takes an oath and receives the two dinars. But if its proper time passed, then the burden of proof rests upon the claimant, and the craftsman would need to bring proof that the fee was two dinars.

Rava continues with an analysis of this baraita: What are the circumstances of the case discussed in this baraita? If it is a case where there are witnesses who saw the transfer of the item, let us see what the witnesses say about the fee, as they presumably heard the details of the arrangement.

Rather, is it not referring to a case where there are no witnesses to the transfer, and it teaches that the craftsman is deemed credible? Since if he had wanted to he could have said to him: It is purchased and that is why it is in my possession, he is deemed credible with regard to his claim about his fee as well. This supports the ruling of Rabba that if there are no witnesses, the craftsman is deemed credible if he says that the item belongs to him.

The Gemara rejects this proof: No, actually, perhaps the baraita is referring to a case where there are no witnesses to the transfer, but it is specifically referring to a case where the owner did not see the cloak in the possession of the craftsman, who could consequently deny ever having received it from the owner. Therefore, it is not a proof in support of the ruling of Rabba that the craftsman would be deemed credible even if there are witnesses that it is currently in his possession.

Rav Nachman bar Yitzḥak raises an objection to Rabba’s ruling from Shmuel’s paraphrase of the mishna: A craftsman does not have the ability to establish the presumption of ownership of property in his possession. This indicates that it is specifically a craftsman who does not have the ability to establish the presumption of ownership, but another person in similar circumstances has the ability to establish the presumption of ownership.
In truth I will not bring it out – בְּבֵית הָאֵבֶל

Hilkhot Gezeila VaAveda, Ĥoshen Mishpat

While this is a false claim concealed beneath language that was mistakenly switched with this, it is not a sincere response, and the craftsman merely referred, as it is not a sincere response, and the craftsman merely.

In a house of mourning — בְּבֵית הַמִּשְׁתֶּה

The Gemara presents another halakha pertaining to the giving of an item to a craftsman. The Sages taught: If one’s utensils were mistakenly switched with another’s utensils in the house of a craftsman, this one who received the wrong utensils may use them until the time when that one, whose utensils he received, comes and takes his. But if his utensils and another’s utensils were mistakenly switched in a house of mourning or in a house of a wedding feast, this one who took the wrong utensils may not use them in the interim, i.e., until the time when that one, whose utensils he took, comes and takes his. The Gemara asks: What is different in the first clause where he may use the utensils, and what is different in the latter clause where he may not?

Shulĥan Arukh

The craftsmen’s words are not as there, its precise meaning is uncertain, but it appears from the context to generally refer to a coat worn by the craftsman himself, who told him: Take these utensils, without saying to me: And is a person not likely to say to the craftsman: Sell my cloak for me after you finish repairing it? It is possible that the craftsman mistakenly sold the utensils of another client instead, and gave to that other client the utensils that should have been sold. Since the owner of these utensils received the money from the sale of the other client’s utensils, the craftsman has a right to give the remaining utensils to the other client in the interim. This reasoning does not apply in the case of the house of mourning or a wedding feast, where one simply took utensils belonging to another.

Rema writes that one is obligated to return them even if he does not receive his own utensils in return (Rambam Sefer Nezikin; Hilkhot Gezeila 6:6; Shulhan Arukh, Ĥoshen Mishpat 136:1).

The Gemara presents another statement with regard to craftsmen. Abaye said to Rava: Come and I will show you what the swindlers of Pumbedita do. There was a case where the owner of an item said to a craftsman: Give me back my cloak [sarbela], that I gave you to repair, and the craftsman replied: These matters never occurred. The owner responded: But I have witnesses who saw it in your possession. The craftsman said to the owner: That was a different cloak that they saw. The witnesses are uncertain as to whether it was really his cloak. The owner then said: Bring it out and we will see it, so as to determine whose it is. The craftsman said to the owner: In truth, I will not bring it out, as you have no valid claim to the cloak and I am not willing to show you another’s property. This is the trickery to which Abaye referred, as it is not a sincere response, and the craftsman merely wishes to keep the cloak.

Rava said to Abaye: The craftsman is saying well to the owner, and his claim will be accepted.
A sharecropper does not have the ability to establish the presumption of ownership – אָרִיס אֵין לִשְׁוּם מֵעָנָיו

Even if a sharecropper worked and profited from a field for three years, he does not establish the presumption of ownership of the land. This is the halakha in a case where the sharecropper also worked for the landowner’s father or his family. In such a relationship, the owner would not lodge a protest when seeing him consume all of the produce, but would settle accounts with him after a time. A standard sharecropper, who does not have a long-term relationship with the landowner, does establish the presumption of ownership of the land if he has consumed all of the produce of the field for three years. This is in accordance with the conclusion of the Gemara, and in accordance with the opinion of Rabbi Yohanan (Rambam Sefer Mishpatim, Hilchos Tzon Vehiklab 131:5, and Kesef Mishne, and Lehem Mishne there; Shulhan Arukh, Hoshen Mishpat 149:25).

A sharecropper who installed sharecroppers – אָרִיס אַחֲרוֹן

A sharecropper, even a family sharecropper, who installed other sharecroppers in his place establishes the presumption of ownership of the land. The assumption is that if the field belonged to someone else, the owner would have lodged a protest when seeing such behavior. If the sharecropper assigned jobs to sharecroppers who had already been working for that owner, he does not establish the presumption of ownership, as it is possible that the owner appointed him merely as a supervisor. This is in accordance with the opinion of Rav Nahman and Rabbi Yohanan (Rambam Sefer Mishpatim, Hilchos Tzon Vehiklab 13:6; Shulhan Arukh, Hoshen Mishpat 149:26).

The Gemara discusses a ruling that it paraphrases from the mishna: A sharecropper does not have the ability to establish the presumption of ownership of property in his possession. Why not? Isn’t it so that until that time, while he was definitely working as a sharecropper, he consumed only half of the produce of the land, and now, for the past three years, he consumed all of its produce? He should be able to establish the presumption of ownership by consuming more produce than a sharecropper does. Rabbi Yohanan says: The ruling of the mishna is stated with regard to family sharecroppers. This type of sharecropper, who works for a family for many years, gathers all of the produce into his property, and then returns the landowner’s share. Therefore, his collecting all of the produce into his property does not establish the presumption of ownership.

With regard to family sharecroppers – אָרִיס אַחֲרוֹן

In other words, the ruling of the mishna is stated with regard to sharecroppers who work for a family on a long-term basis. Rather than dividing the produce of each year, such sharecroppers will consume all of the produce some years and give all of the produce to the owners other years (Rashbam). Alternatively, the sharecropper takes all of the production of one field as payment for his work on all of the fields (Rabbeinu Gershom Meor HaGola). Others explain that these sharecroppers gather all of the produce into their house and then return the owner’s share to him. Since they do not normally divide the produce in the field, the fact that the sharecropper gathered the produce into his property does not demonstrate ownership of the land (Rabbeinu Hananel; Rabbeinu Barukh).

A sharecropper who divided among different sharecroppers – אָרִיס אָרָחִין

The commentators explain this case based on their respective understandings of the case of a sharecropper who installs other sharecroppers. The Rashbam, following the interpretation of Rav Hai Gaon, suggests that the sharecropper delegated various aspects of his job to other sharecroppers, while continuing to work as well. Rabbeinu Gershom Meor HaGola explains that he pays them with his produce but does not give them a percentage of the produce of the field that they worked as if they were his sharecroppers. The Rashbam and others maintain that he assigned specific fields to individual sharecroppers who already were working for this landowner. Rabbeinu Hananel’s interpretation is that he gave the sharecroppers their portion and took the owner’s produce into his house. See also Rabbeinu Barukh, who explains that the sharecropper divided all of the produce of that year between himself and the other sharecroppers.
A sharecropper can testify – שֶׁחִלֵּלָא רַבְרָבִין

With regard to family sharecroppers – שֶׁחִלֵּלָא רַבְרָבִין

sharecroppers who already were working for this landowner. Rabbeinu someone else, he would lose his share of the produce. The Rashbam the sharecropper his share of the produce. The case of the Gemara is as it would be easy for him to find another such arrangement as a just like one who worked another’s field with the owner’s consent. The worked the land but the produce had yet to grow, he is not considered as it would be unreasonable for him to remain in the debtor’s possession, to minimize the possibility that he will have to pay for one of the debtor’s debts. The Rashbam answers that since it is a far-fetched possibility that the debtor will need to pay debts from each parcel of land, it is not sufficient to disqualify the guarantor as a witness.

HALAKHA

A guarantor can testify for the debtor – הלך ללוכו

If one borrowed money and then another contested the ownership of one of his fields, neither the creditor nor the guarantor is eligible to testify on his behalf. The Shulchan Arukh notes that this is the halakha even if the debtor owns movable property. They are biased in their testimony, since it is to their benefit that the field remain in the ownership of the debtor. This halakha applies unless the debtor owns another field, even one of inferior quality (Shino), that is of sufficient value to repay the debt (Rambam Sefer Shoftim, Hilkhot Edut 15:6; Shulhan Arukh, Hoshen Mishpat 372 and Smo there).

Similarly, if two people purchase land from one seller, the first buyer can testify for the benefit of the second buyer if the latter owns a particular parcel of land, but that is the halakha only if the debtor has other land from which the creditor can collect. Otherwise, he is biased in his testimony, as the creditor could collect from him if the debtor were to lose ownership of this land. A creditor can testify for the benefit of the debtor that the latter owns a particular parcel of land, but that is the halakha only if the debtor has other land from which the creditor can collect. Otherwise, he is biased in his testimony, as this land is the only land available for collection.

The Gemara presents the word Amalek as a mnemonic for the cases discussed in the baraita. It stands for: Ayin, guarantor [arev]; mem, creditor [malve]; lamed, buyer [lokeah]; kuf, unconditional guarantor [kablan].

NOTES

Where there is produce – אֵין כִּפָּא הַמַּקְרֵא: If there is produce, then the sharecropper is biased in his testimony, as, if the field were awarded to someone else, he would lose his share of the produce. The Rashbam rules that the same holds true if the sharecropper already worked the land with the expectation of receiving a portion of the produce of the field that had yet to grow. By contrast, the Ramah maintains that if he worked the land but the produce had yet to grow, he is not considered biased in his testimony, as in any event he would be paid for his labor, just like one who worked another’s field with the owner’s consent. The Rashba and the Riva hold that if the produce in the field is ready to be harvested, the sharecropper is not biased in his testimony, as in such a case the one who is awarded the field would be required to give the sharecropper his share of the produce. The case of the Gemara is where the produce is not ready to be harvested, and the sharecropper is concerned that he will not receive his share of the produce. Although he would still receive wages for his labor from the new owner, the wages are of lower value than his share of the produce.

Where there is no produce – אֵין כִּפָּא הַמַּקְרֵא: His desire to retain his work relationship with the owner does not suffice to render him biased, as it would be easy for him to find another such arrangement as a sharecropper. Furthermore, there is no guarantee that the first owner will continue to employ him (Rashbam, Tosafot).

If the debtor has other land – אֵין כִּפָּא הַמַּקְרֵא: The early commentators ask why the guarantor is not still biased in his testimony, as it is in his interest that as many fields as possible remain in the debtor’s possession, to minimize the possibility that he will have to pay for one of the debtor’s debts. The Rashbam answers that since it is a far-fetched possibility that the debtor will need to pay debts from each parcel of land, it is not sufficient to disqualify the guarantor as a witness.

First buyer – הלך עָרֵב מֵעִיד לֵיהּ אַרְעָא אַחֲרִיתִי: The case is one where Reuven owned several fields and sold one of them to Levi, and then sold another to Yehuda. Then, Shimon contested Yehuda’s right to the field of which he was in possession. Levi can testify for the benefit of Yehuda, provided that Yehuda has another field that he purchased from Reuven after Levi made his purchase. In such a case, if Reuven’s creditor were to collect the debt, he would collect it from Yehuda’s other field before collecting it from the field that Levi purchased. Therefore, Levi is not biased in his testimony with regard to the ownership of the field in question. The same halakha would apply if Reuven himself owns another field, as in such a case the creditor would collect from Reuven, rather than from the buyers (Rashbam).
With regard to an unconditional guarantor [kablan],⁵⁹ from whom the creditor can collect even if the debtor is able to repay the loan, some say that he can testify on behalf of the debtor if the latter owns other land, and some say that he cannot testify even if the debtor owns other land. The Gemara explains: Some say that he can testify because he is like a guarantor, and some say that he cannot testify, as it is preferable for him that both fields be in the debtor’s possession, so that when a creditor comes to collect the debt, he will take what he wants, and not collect from the unconditional guarantor.

The Gemara asks: What are the circumstances under which there is a distinction between the sons of the craftsman and the sharecropper and the son of the robber? If they come to court with the claim that the item in question belonged to their fathers, then even these sons of the craftsman and the sharecropper should not be able to establish the presumption of ownership, since their claims are based on ownership by those who cannot establish the presumption of ownership. If the case is that they do not come to court with the claim that the item in question belonged to their fathers, but that they own the item in their own right, then even the son of a robber should be able to establish the presumption of ownership.

The Gemara answers: No, it is necessary to state this distinction in a case where the witnesses say: The prior owner admitted to their father in our presence⁶⁰ that the property was the father’s and not stolen. The Gemara explains: With regard to these, the sons of the craftsman and sharecropper, it can be said that the sons are saying the truth, as their claim is substantiated by the testimony of the admission. But with regard to that one, the son of the robber, even though the prior owner admitted this, the son is still not deemed credible, in accordance with the statement of Rav Kahana, as Rav Kahana said: If the prior owner would not have admitted this to the robber, the robber would have brought him and his donkey to the taskmaster [leshayvar],¹ meaning he would have caused him great difficulties. As a robber is assumed to be a ruffian, it is likely that the prior owner admitted this because he was intimidated, and not because the statement was true, so there is no evidence to support the claim of the robber’s son.

Unconditional guarantor [kablan] – עִיְּנָן. Unlike in the case of a regular guarantor, a creditor may collect from an unconditional guarantor, if he wishes, even if the debtor is capable of repaying the loan. The Rashbam offers a novel interpretation of this concept, suggesting that he is referred to as a kablan because he receives [mekabbel] the loan from the creditor and then transfers it to the debtor. Nearly all other commentators explain that he is called a kablan because he accepts [mekabbel] a greater responsibility for the loan than a regular guarantor.

Where the witnesses say: The prior owner admitted to their father in our presence – נִמְשָׁה. The Rashbam explains that there are witnesses who attest that the prior owner admitted that the item belonged to the father. Many commentaries find this difficult; if there are witnesses to such an admission, then even the fathers themselves would be deemed credible, and Rabbi Yoĥanan would not discuss the cases of a son. Therefore, many commentators accept a version of this Gemara that does not mention witnesses. They explain that the son claims that the prior owner admitted in his presence to the father’s ownership. The son is deemed credible because he has a miggag claim that he would have been deemed credible had he claimed that the owner sold it to him, as he is not a craftsman or sharecropper, and he is therefore deemed credible with regard to the admission. The son of a robber would not be deemed credible, as although the court would accept the fact that the owner did admit this, an admission made to a robber is of no significance (Rabbeinu Tam, cited in Tosafot and Sefer Hilkhot; Ramah, Rabbi Beinenu Barukh). The gemara and the Rif accept the version of the text that mentions witnesses. Rabbi Beinenu Hanael explains that Rabbi Yoĥanan is in fact addressing whether the father is deemed credible in each case, and the halakha with regard to the sons reflects that of the fathers.

Taskmaster [shahvar] – שָׁחְוָר. The meaning of the root shir, hit, reish in this context is forced labor performed for the government. This root is used in Aramaic in the classical biblical translations. Some understand it to be used in the Hebrew as well, in the form of tishbaret (see Avot 3:12), according to the interpretation of some of the commentators. Accordingly, shahvar refers to an officer who is in charge of forced labor.

Unconditional guarantor – עִיְּנָן. The Rambam and the Shulĥan Arukh do not distinguish between an unconditional guarantor and a regular guarantor. By contrast, the Rema writes that there are those who hold that an unconditional guarantor may not testify at all (Tur), in accordance with the latter opinion in the Gemara (Shulĥan Arukh, Hoshen Mishpat 37:13, and in the comment of Rema).
Son of the son of the robber – יָרַד מֵאוּמָּנוּת שֶׁאֲ. The son of the son of a robber is deemed credible if his claim is based on his father's possession of the item in question, but not if it is based on the possession of his father's father. The Rema writes that there are those who hold that if he claims that the prior owner admitted to him that he sold it to his grandfather, he is deemed credible. The Tur, citing the Rosh, notes that if the son of the robber made a similar claim it is not accepted, as it is assumed to have been made as a result of intimidation (Rambam Sefer Mitzvot Hamikra, Hilkhot To'en VeNetan 13:11; Shulhan Arukh, Hoshen Mishpat 134:5, 149:28).

What are the circumstances under which one is considered a robber – בֶּן בְּנוֹ שֶׁל גַּזְלָן: If one is established as a robber with respect to a certain field (see Maggid Mishne), he cannot establish the presumption of ownership with regard to that field. If one's family is known to kill people because of monetary matters, he cannot establish the presumption of ownership at all. There are those who limit this halakha to a case where he himself is known to kill people because of monetary matters (Tur; see Lehem Mishne). In these cases, the property reverts to the owner, even if one worked and profited from the land for the three years requisite for presumptive ownership (Rambam Sefer Mitzvot Hamikra, Hilkhot To'en VeNetan 13:11; Shulhan Arukh, Hoshen Mishpat 134:5, 149:28).

Descended from his craftsmanship – דַּי. A craftsman performing construction work on land cannot establish the presumption of ownership even if he worked and profited from land for the three years requisite for presumptive ownership. Once he ceases working as a craftsman he can establish the presumption of ownership by working and profiting from the land for three years from that time. With regard to movable property, as soon as he ceases working as a craftsman he is like anyone else, even with regard to items that came into his possession while he was a craftsman. Some hold that this is the halakha only if he retained possession of the item after he ceased working as a craftsman past the point when people would generally reclaim their items after hearing that he had ceased working (Rambam Sefer Mitzvot Hamikra, Hilkhot To'en VeNetan 13:9; Shulhan Arukh, Hoshen Mishpat 134:5, 149:28).

Descended from his position as a sharecropper – דַּי. A sharecropper cannot establish the presumption of ownership. Once he stops working in his position as a sharecropper, he can establish the presumption of ownership by working and profiting from the land for three years from that time (Rambam Sefer Mitzvot Hamikra, Hilkhot To'en VeNetan 13:11; Shulhan Arukh, Hoshen Mishpat 134:5, 149:27).

A son who separated – דַּי. If a son is supported by his father, neither one can establish the presumption of ownership with regard to the other's property. Once the son is no longer supported by his father, they can each establish the presumption of ownership with regard to the other's property (Rambam Sefer Mitzvot Hamikra, Hilkhot To'en VeNetan 13:9; Shulhan Arukh, Hoshen Mishpat 149:4).

And a woman who became divorced – דַּי. A woman cannot establish the presumption of ownership with regard to her husband's property. After she is divorced, she can establish the presumption of ownership with regard to his property. This is the halakha even if there is uncertainty whether the divorce took effect, and the husband is consequently still obligated in his wife's sustenance (see 47b). Some (Sha'ar Hatorah, ibid.) hold that in such a case of uncertainty the woman can establish the presumption of ownership only if he designated a specific field for her sustenance and she worked and profited from a different field (Rambam Sefer Mitzvot Hamikra, Hilkhot To'en VeNetan 13:9; Shulhan Arukh, Hoshen Mishpat 149:10).

When even the son of the son of the robber – דַּי. Some early commentaries have a variant text that reads: There are times when even the son of a robber has the ability to establish the presumption of ownership, where he comes to court with the claim that the item in question belonged to his father's father. Since the grandfather was not a robber and had the ability to establish the presumption of ownership, the grandson's claim of ownership as his heir is valid as well. The Rashbam favors this variant version of the text. Other early commentaries cite that version as well, noting that the standard version is based on the texts of the Gemara extant in Spain.

Where it is established that he is in possession of this field – דַּי. The Rashbam notes that the difference between the statement of Rabbi Yohanan and that of Rav Hisda is whether one's lack of ability to establish the presumption of ownership is limited to a particular field or is universal. Several commentaries, including the Rashbam, point out that Rabbi Yohanan agrees that in terms of the practical halakha, a robber who kills does not have the ability to establish the presumption of ownership at all, but he holds that the statement: A robber does not have the ability to establish the presumption of ownership, was stated with regard to a regular robber, not one who kills (see Rambam).

Rava says: There are times when even the son of the son of the robber does not have the ability to establish the presumption of ownership. What are the circumstances under which this is so? This is so, for example, in a case where he comes to court with the claim that the item in question belonged to his father's father. Since his claim is based on its having belonged to one who did not have the ability to establish the presumption of ownership, he too is unable to establish the presumption of ownership.

The Gemara asks: What are the circumstances under which one is considered a robber? Does not have the ability to establish the presumption of ownership? Rabbi Yoḥanan says: In a case such as where it is established that he is in possession of this field through robbery. And Rav Hisda says: Not only in a case where there is knowledge about this specific field, but even in a case such as where he is a member of the household of someone, a certain known criminal family at the time who kill people over monetary matters. Since people would be afraid to lodge a protest against them, members of this family cannot establish the presumption of ownership with regard to any land.
in a case where there is uncertainty whether she is divorced or whether she is not divorced, and this is in accordance with the opinion of Rabbi Zeira. As Rabbi Zeira says that Rabbi Yirmeya bar Abba says that Shmuel says: Wherever the Sages said with regard to a woman that there is uncertainty whether she is divorced or whether she is not divorced, her husband is still obligated with regard to her sustenance. One might have thought that since she still has some right to her husband's property, insofar as he still has an obligation with regard to her sustenance he would not lodge a protest if she used his land without his authorization. It is therefore necessary to clarify that this is not so, and she has the ability to establish the presumption of ownership in her husband's property.

Rav Nahman said: Rav Huna said to me that with regard to all of the types of people who do not have the ability to establish the presumption of ownership, when they bring proof by means of a document or witnesses that a field belongs to them, their proof is a valid proof and the court places the field in their possession. But if there is a robber who brings proof that a field is his, his proof is not a valid proof, and the court does not place the field in his possession. This is due to a concern that the proof was obtained through illegitimate means.

The Gemara asks: What is this teaching us? We already learned in a mishna (Gittin 53b): If one purchased land from a Sicarius [Sikarikos], a violent gentile who had extorted the field from its owner with threats, and afterward one returned and purchased the same field from the prior owner, his purchase is void, as the owner of the field can say that he did not actually intend to sell him the field. This teaches that a purchase following a robbery is invalid, despite the existence of documents or testimony, rendering the statement of Rav Huna superfluous.

The Gemara asks: Granted, it was necessary to state that a son who separated himself establishes the presumption of ownership. If the baraita had not stated this, it would enter your mind to say that the father forgave the unauthorized use of his land by his son, and did not lodge a protest despite the fact that the land did not belong to the son. Therefore, the baraita teaches us that this is not so, and that the son does establish the presumption of ownership. But in the case of the woman who became divorced, it is obvious that she has no relationship with her ex-husband, so why is it necessary for the baraita to teach that she is able to establish the presumption of ownership? The Gemara answers: No, it is necessary to teach that she does not establish the presumption of ownership.

There is uncertainty whether she is divorced or whether she is not divorced. It is uncertain whether a woman is divorced, her husband is required to provide her with sustenance during his lifetime until she is definitely divorced. Nevertheless, she is not sustained from his property after his death (Rambam Sefer Nashim, Hilkhot Ishut 18:25; Shulhan Arukh, Even HaEzer 93:2).

All of them when they bring proof – Even haEzer 99a. If one does not have the ability to establish the presumption of ownership, e.g., a partner or a craftsman, is awarded the property if he produces evidence that the owner sold or gave it to him. The exception to this halakha is a robber, who is not awarded the property even if he produces evidence (Rambam Sefer Mishpatim, Hilkhot Temim VeTiten 14:1; Shulhan Arukh, Hoshen Mishpat 15:11).

If one purchased land from a Sicarius – Shulhan Arukh, Even HaEzer 99a. A violent gentile extorts a field from its owner and then sells it to a Jew, and the buyer then purchases it from the prior owner, he still does not acquire it. The purchase is invalid even if the prior owner wrote a bill of sale, unless he also writes a property guarantee. This is in accordance with the opinion of Shmuel, as KohaKo follows the opinion of Shmuel, rather than Rav, in their disputes concerning monetary law. The buyer is awarded the field if the prior owner admits to the buyer's ownership or if witnesses saw the owner receive payment for the field. This is in accordance with the statement of the Gemara on 48b (Shulhan Arukh, Hoshen Mishpat 15:4).

Her husband is obligated with regard to her sustenance – Even haEzer 101a. Despite the fact that he is obligated to provide for her sustenance, she is able to establish the presumption of ownership. There is no concern that perhaps the field from which she is profiting was set aside by her husband for her sustenance, and that is why he did not lodge a protest. Given that he divorced her, it is reasonable to assume that he is not fond of her and would provide her support in a minimal fashion, and would not allow her to freely use his property (Rashbam; Rabbeinu Gershon Meir HaGola). Tosafot explain differently, that she can establish the presumption of ownership only if her husband set aside a different field for her sustenance, and that is why there is no concern that he is allowing her use of his lands for her sustenance. Rabbeinu Yona and the Rashba object to this interpretation, as were this the case, this stipulation should have been mentioned by the Gemara.

Sicarius [Sikarikos] – Borrowed from the Latin sicarius, meaning assassins or murderers. These people used daggers, sica in Latin, to execute their aggressive activities. It should be noted that there is a difference between the Sicarii in the Talmud and the faction of the Sikarikim, an extremist faction in existence during the period of the Great Revolt who were given this pejorative name by their detractors.

The Sicarii included different types of people, among them soldiers discharged from the Roman army, other gentiles who acted as the occupying force, and various Jewish collaborators. Through threats and extortion they bought properties or received them as gifts. The properties were acquired by ostensibly legal means such as deeds of sale and the like.

Most of the Sicarii were not interested in maintaining these properties but rather sought to profit from them. For this reason, after they seized the properties they would sell them to the locals, both Jews and gentiles. Since the Sicarii secured these properties for almost nothing and had no interest in maintaining them, they would sell them at rates far below their market value.
Yona and the Rashba object to this interpretation, as were this the Whatever a person sells – that he is allowing her use of his lands for her sustenance. Rabbeinu would wish for in a perfect world, it is still his own decision. This is not his own internal drives and desires. Although he might feel compelled, property guarantee demonstrates the sincerity of the seller. Rabbeinu lodge a protest. Given that he divorced her, it is reasonable to assume concern is that the land was seized, not sold. In that case, the writing

HALAKHA

םֶהָּיָהּ מֵאוּנְסָא דְּאַחֲרִינֵי! אָבָל מָעוֹת יֵשׁ לוֹ; בַּמֶּה דְּבָרִים אֲמוּרִים – שֶׁאָמְרוּ הַגֵּלֶף דִּאָבָל מָעוֹת יֵשׁ לוֹ אִי לָאו דְּאוֹדֵי לֵיהּ, אֲבָל מָעוֹת יֵשׁ לוֹ.

אִי לָאו דְּאוֹדֵי לֵיהּ, אֲבָל מָעוֹת יֵשׁ לוֹ

יני_final

The Gemara answers: Rav Huna’s statement serves to exclude that which Rav says, as Rav says: They taught that the purchase of a field from the prior owner after one purchased it from a Sicarius is void only when the prior owner said to the buyer at the time of the sale: Go take possession and thereby acquire the field, but did not write a document. But if the transaction was performed along with a document being given, the buyer acquired the field.

Therefore, Rav Huna teaches us that he rules in accordance with the opinion of Shmuel, as Shmuel says: He does not acquire the field even if the transaction was performed along with a document being given, until the owner of the field writes a property guarantee, i.e., a document that states that if the property is seized by the seller’s creditor, the seller will reimburse the buyer for his loss. Writing such a document indicates that it is a sincere transaction.

And Rav Beivai concludes that discussion of the statement of Rav Huna, that a robber does not retain possession of the field even if he brings proof of the transaction, with a comment in the name of Rav Nahman: The robber does not have rights to the land, but he does have rights to the money that he paid for the land, and the owner has to reimburse him. In what case is this statement that the robber is reimbursed said? It is specifically where the witnesses said: The robber counted out the money for the owner and gave it to him in our presence; but if the witnesses said: The owner admitted to the robber in our presence that he received payment, then the robber is not reimbursed, as the admission may have been made under duress. This is in accordance with the opinion of Rav Kahana, who says: If the owner would not have admitted to the robber that he received payment, the robber would have brought him and his donkey to the taskmaster.

S Apropos transactions performed under duress, the Gemara cites that which Rav Huna says: If one was suspended, e.g., from a tree, and thereby coerced to sell a certain item, and he sold it, his sale is valid. What is the reason? The Gemara suggests that it is because whatever a person sells, were it not for the fact that he is compelled by his need for money, he would not sell it, and even so, his sale is valid. This indicates that a transaction performed under duress is valid. The Gemara rejects this: But perhaps duress that results from his own needs, such as his need for money, is different from duress that results from another, as in this case. Rather, the basis for Rav Huna’s ruling is as it is taught in a baraita:

Does not have rights to the land – לְאַל מָאוּ נְכָסִים. אִי לָאו דְּאוֹדֵי לֵיהּ אֲבָל מָעוֹת יֵשׁ לוֹ. אֲבּוּל מָעוֹת יֵשׁ לוֹ אִי לָאו דְּאָבָל מָעוֹת יֵשׁ לוֹ. אֲבּוּל מָעוֹת יֵשׁ לוֹ.

HALAKHA

If one was suspended and he sold – לְאַל מָאוּ נְכָסִים. אִי לָאו דְּאָבָל מָעוֹת יֵשׁ לוֹ. אֲבּוּל מָעוֹת יֵשׁ לוֹ. אֲבּוּל מָעוֹת יֵשׁ לוֹ.

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Apropos transactions performed under duress, it is known that a certain individual robbed another of a particular field, then even if he produces proof in a document (Sima) that the owner admitted that he sold him this field and received payment for it, the field is not awarded to the robber. He must return the field and is not entitled to reimbursement for the money that he allegedly paid for it. If there are witnesses to his having paid the money he is reimbursed. There are those who hold that if the owner was paid, albeit under duress, and he did not write a preemptive declaration (see 41b), the sale is valid (Rambam Sefer Mishpatim, Hilkhot Tolin Vehalitan 14:1 and Sefer Nezikin, Hilkhot Gezeila Vaaveda 914; Shulhan Arukh, Hoshen Mishpat 151:3).

If one was suspended and he sold – לְאַל מָאוּ נְכָסִים. אִי לָאו דְּאָבָל מָעוֹת יֵשׁ לוֹ. אֲבּוּל מָעוֹת יֵשׁ לוֹ. אֲבּוּל מָעוֹת יֵשׁ לוֹ.

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The Gemara rejects this proof: But perhaps there it is different, since he is in fact amenable to achieving atonement, despite his earlier statement to the contrary. But rather, prove Rav Huna’s ruling from the latter clause of a mishna (Arakhan 21a): And similarly you find this halakha with bills of divorce, that when the court rules that he must divorce his wife, they coerce him until he says: I want to divorce my wife.

The Gemara rejects this proof as well: But perhaps there it is different, because it is a mitzva to listen to the statement of the Sages. The assumption is that when he is required by the court to divorce his wife, his real desire is to perform the mitzva of listening to the Sages, and therefore he actually wants to divorce her. This does not apply to the case of a transaction performed under duress. Rather, Rav Huna’s ruling does not have a source in a mishna or baraita, but is based on logical reasoning: By means of his being coerced, the seller then willingly decides to sell the field and transfers it.

Rav Yehuda raises an objection to Rav Huna’s ruling from a mishna: With regard to a bill of divorce that the husband was compelled by the court to write and give his wife, if he was compelled by a Jewish court it is valid, but if he was compelled by gentiles it is not valid. And with regard to gentiles, they may beat him at the request of the Jewish court and say to him: Do what the Jews are telling you, and the divorce would then be valid. The Gemara asks: But why is a bill of divorce compelled by a gentile court invalid? There too, let us say that as a result of his coercion, the husband decides to do what the court says and divorces her.

The Gemara answers: In fact that reasoning is correct, as for this reason wasn’t it stated with regard to that mishna that Rav Mesharshiyya says: By Torah law a bill of divorce that the husband was compelled to give, even if he was compelled by gentiles, is valid. And what is the reason the Sages said that if it is compelled by gentiles it is not valid? It is so that each and every woman will not go and through temptation or bribery depend on a gentile to compel her husband to divorce her, and thereby release herself from her husband illegitimately.

With regard to one who pledges to bring a burnt-offering, the verse states: “If his offering be a burnt-offering of the herd, he shall offer it a male without blemish; he shall bring it to the door of the Tent of Meeting, according to his will, before the Lord.” (Leviticus 1:3). The seemingly superfluous phrase “he shall offer it” teaches that they can coerce him to bring the offering. One might have thought that it can be offered entirely against his will, by taking it from his possession and sacrificing it. Therefore, the verse states: “According to his will” (Leviticus 1:3). How can these texts be reconciled? They coerce him with various punishments until he says: I want to bring the offering. This seems to prove that consent resulting from coercion is considered to be valid consent. Perhaps this principle can apply to acquisition, as a source for Rav Huna’s ruling.

Rav Hammuna raises an objection to Rav Huna’s ruling from a mishna (Gittin 53b): If one purchased land from a Sicarius and afterward returned and purchased the same field from the prior owner, his purchase is void, as the prior owner of the field can say that he did not actually intend to sell the field to this buyer. But why is the sale invalid? There too, let us say that by means of his being coerced, the seller then willingly decides to sell the field and transfers it.
The Gemara asks: And according to Shmuel, who says: He does not acquire the field even if the transaction was performed along with a bill of sale being given, what can be said? The Gemara answers: Shmuel concedes that the sale is valid where the buyer gave money for the field even though the owner sold it under duress, as is the case in the ruling of Rav Huna.

The Gemara asks: And according to Rav Beivai, who concludes that statement of Rav Huna with a comment in the name of Rav Nahman: The robber does not have rights to the land, but he does have rights to the money that he paid for the land, and the owner has to reimburse him, what can be said? Rav Beivai, who is referring to a case where there was a payment, as the robber is being reimbursed, seems to hold that the sale is invalid even where the robber paid for the field. The Gemara answers: The statement of Rav Beivai is an amoraic statement, not a citation of a tannaitic ruling, and Rav Huna, who is also an amora, does not hold in accordance with that amoraic statement.

Rava says: The halakha is that if one was suspended and thereby coerced to sell a certain item, and he sold it, his sale is valid. And we said that this is the halakha only.

If one was suspended and he sold – דב מח מכיוון עות. The conclusion is that a sale made under duress is valid. This applies only to a sale where the owner is compensated, and not to a gift given under duress. The Tosafot add that any type of intimidation is considered duress, not only the threat of loss of life or limb.

In an unspecified field – מבט השדה. There is more reason to say that he agreed to the sale when he was able to choose the field, because then he would presumably have picked an inferior field, which he does not mind parting from (Rashbam). Others explain that the very act of freely choosing the field that he sold is indicative of his agreement to sell (Ri Migash; Rabbeinu Barukh).

Did not count [arzetz] the money – does not specify. Some early commentators explain that the seller did not count the money he received, indicating his dissatisfaction with the sale (Rashbam; Rabbeinu Yona). Others explain similarly that he did not inspect the quality of the currency that he received to see if it was damaged or not (Rabbeinu Gershom Meor HaGola; Ri Migash). Others explain that this means that the buyer did not give the money immediately, but merely promised to do so later (Tosafot; Rif; Ri Migash).

If a man suspended and betrothed – הרתי משיחתו. Many commentators explain this as referring to a case where a man coerces a woman to become betrothed to him. The betrothal is valid, despite the fact that being betrothed to a particular man is certainly comparable to the case of the sale of a specific field (Rashbam; Rabbeinu Gershom Meor HaGola; Ritva). Others understand this as referring to betrothal in general, that it would be valid if either the man or the woman was coerced into participating (Rambam). The Rambam understands that Ameimar is referring specifically to where it is the man who is coerced to betroth a specific woman.

If a man suspended a woman and betrothed her – הולך סוליש בetrothal. A woman can be betrothed only willingly. If she was coerced to accept betrothal, it is not valid. The Rema writes that the betrothal is invalid only if it is known definitively that she did not desire the betrothal, but mere circumstantial evidence that she did not intend to become betrothed is not sufficient to invalidate the betrothal. By contrast, if a man was coerced to betroth a certain woman and he acquiesced, some (Ravad; see Maggid Mishne) say the betrothal is valid, whereas others hold that it is not. In practice, it is treated as a betrothal whose status is uncertain (Rambam; Sefer Nashim, Hilkhos Geirushin 12:4; Shulhan Arukh, Even HaEzer 42:1).

In all of these cases is that their sale is valid – גם אם נאמר עות. And we said: if one is subjected to physical coercion, and certainly a lesser form of coercion (simulacrum) to sell an item, and he indicates that he is willing to sell (see Lehem Mishne) and receives payment, the sale is valid, provided that he did not write a preemptive declaration. Some say that this applies even if there were no witnesses to the payment, whereas others hold that the sale is valid only if there were witnesses to the payment (Rambam Sefer Kinyan, Hilkhos Mekhira 101; Shulhan Arukh; Hoshen Mishpat 205:1, and in the comment of Rema).

In all of these cases is that their sale is valid – אף אם נאמר עות. If a man suspended a woman and betrothed her, his betrothal is valid, despite the fact that she was coerced.
Mar bar Rav Ashi said: In the case of a woman who was forced to accept betrothal, the betrothal is certainly not valid. Ameimar is referring specifically to where it is the man who is coerced (Rambam Hilkot Mekhira 1:2), and Rashi's teachers that betrothal with money is derived through a verbal analogy, which has the status of a Torah law (

The Gemara relates: Someone named Tavi suspended another person named Pafi on a kinara and compelled him to sell his field. Rabba bar bar Hana signed both on Pafi’s preemptive declaration nullifying the sale (see 40b) and on the bill of sale (Ashkaltta). Rav Huna said: The one who signed on the preemptive declaration acted well by signing, and the one who signed on the bill of sale acted well by signing.

The Gemara challenges: Whichever way you look at it, Rav Huna’s statement is problematic. If the preemptive declaration is valid, then there is no place for a bill of sale. And if the bill of sale is valid, then there is no place for a preemptive declaration. How can Rav Huna commend signing on both of these mutually exclusive documents? The Gemara explains: This is what Rav Huna is saying: If it were not for his also having signed the preemptive declaration, the one who signed on the bill of sale acted well by signing. In this statement, Rav Huna conforms to his line of reasoning, as Rav Huna says: If one was suspended and thereby coerced to sell a certain item and he sold it, his sale is valid.

The Gemara asks: Is that so that Rabba bar bar Hana can, by means of the preemptive declaration, invalidate the bill of sale that he himself signed? But doesn’t Rav Nahman say: With regard to witnesses who said: Our statement that we signed was a document of trust, i.e., a false promissory note given by one person to another, trusting that he will not make use of it until there is an actual loan.

The Sages deemed his sexual intercourse as licentious sexual intercourse, which does not create a bond of betrothal.
HALAKHA

Our statement was a document of trust – אֲמָנָה הָיוּ דְּבָרֵינוּ
If the witnesses who signed a promissory note claim that it is a document of trust, they are not deemed credible, since signing as a witness on such a document of trust is essentially bearing false testimony, and witnesses are not deemed credible to incriminate themselves that they did this act. Although they are not deemed credible to invalidate the promissory note, they are obligated to pay for causing financial loss to the putative debtor through their signing of the document (Rambam Seefer Shotetim, Hilkhot Eduq 3:7; Shulhan Arukh, Hoshen Mishpat 46:37 and Beur HaGra there).

A man does not have the presumption of ownership, etc. – רַבָּנָא אָמַר: רַבָּנָא אָמַר: אֱמָנָה הָיוּ דְּבָרֵינוּ, נֶאֱמָנִין
A man does not have the ability to establish the presumption of ownership with regard to his wife’s usufruct property, even if he had been enjoying the profits of the property for the requisite years for establishing the presumption of ownership. Even if he had written to her that he has the right to the profits from her property, and even if he stipulated while she was betrothed but not yet married that he would not inherit her property, he still does not have the ability to establish the presumption of ownership, since wives are generally not particular about their husbands utilizing their property in this way (Rambam Seefer Mishpatim, Hilkhot Tikunim 121; 121 and Sefer Nashim, Hilkhot Ishut 22:15; Shulhan Arukh, Hoshen Mishpat 149:9 and Even HaZer 89:1).HALAKHA

Notes

Witnesses who said our statement was accompanied by a preemptive declaration, are deemed credible – אֲמָנָה הָיוּ דְּבָרֵינוּ
They are deemed credible because they are not negating their testimony in the document, but rather adding an additional piece of information, and the transaction detailed in the document is nullified by itself (Rashbam; see Tosafot). Rabbeinui Hananel explains that Mar bar Rav Ashi holds that a declaration that the seller was coerced can be written even after the bill of sale has been signed. Since the witnesses had the legal ability to write such a document, they are deemed credible when they testify orally as well. Some early commentaries maintain that the witnesses are deemed credible only when their signatures on the document of sale have been authenticated by their word alone, but not if there is external proof that they had signed (Rabbeinui Hananel; Tosafot; Ramah; Ra’ah). Others hold that the witnesses are deemed credible even if their signatures on the document can be independently authenticated (Rambam; Rashbam).

May be written – בַּקְרָה כִּי
Not only is it permitted for the witnesses to write a preemptive declaration, it is actually a mitzva. By doing so they are saving the oppressed from his oppressor. A preemptive declaration is not comparable to a document of trust, which may not be written at all. Others explain that this phrase is referring to the bill of sale. Although the sale was made under duress, it is permitted for the witnesses to sign the bill of sale, since there is a preemptive declaration (Rabbeinui Hananel). Some commentaries add that there is even a benefit in signing it, as it indicates the amount of money that needs to be refunded to the buyer (Ran on Ketubot 19b).

Background

His wife’s property – אֲמָנָה הָיוּ דְּבָרֵינוּ
A married woman’s property is divided into two categories, usufruct property and guaranteed property. Usufruct property is property that a wife brings to the marriage, and that is not included in her marriage contract, as well as property that she inherits or receives as a gift after her marriage. All this property remains hers even after she is married. It is prohibited for her husband to sell it, although he is entitled to profit from it. The husband must take care of this property, but he is not liable if it decreases in value, provided that the loss was not intentionally caused by him. The property is returned to the wife’s control if the husband divorces her or dies, and any increase or decrease in its value at that time by comparison with its value at the beginning of the marriage is her profit or loss. By contrast, any appreciation or depreciation of guaranteed property goes to the husband, and the wife is guaranteed exactly the original value of such property in the event of his death or divorce. If a wife dies during the lifetime of her husband, he inherits her usufruct property. Before marriage, a couple may make any agreement they wish with regard to such property.

The Gemara returns to discuss the matter itself: Rav Nahman says that witnesses who said: Our statement was accompanied by a preemptive declaration, are not deemed credible. And similarly, witnesses who said: Our statement was accompanied by a preemptive declaration, are not deemed credible. However, witnesses who said: Our statement was accompanied by a preemptive declaration, are deemed credible. What is the reason for the difference between the cases? The reason is that this document that was accompanied by a preemptive declaration may be written, as it is merely written under duress, but that document of trust may not be written, as it is a false document. Testifying that they wrote it is self-incriminating, and the witnesses are not deemed credible to incriminate themselves.

The Gemara responds: No, it is necessary to teach this halakha in a case where the husband wrote to his wife: I do not have any legal dealings or involvement with your property, i.e., he forfeits his right to enjoy the profits of her property, and therefore if he subsequently did enjoy the profits of her field, one might assume that it is because he acquired the land from her. It was therefore necessary for the mishna to teach that this does not indicate that he owns the land, since it is possible that she does not prevent him from enjoying the profits, due to their relationship.

The Gemara answers: That matter of witnesses not being deemed credible to nullify a document applies only when the witnesses attempt to nullify the document by means of an oral declaration, as an oral declaration cannot come and weaken a written document. But if the witnesses attempt to nullify the bill of sale by means of testimony in another document, e.g., by signing the preemptive declaration, then this preemptive document can come and weaken a written document, in this case, the bill of sale.
The Gemara asks: And if he wrote this to her, what of it? And isn’t it taught in a baraita: One who says to another: I do not have any legal dealings or involvement concerning this field, or: I have no dealings with it, or: My hands are removed from it, has not said anything. That is to say, these statements have no legal standing.

The scholars of the school of Rabbi Yannai said with regard to this: The mishna states its ruling with regard to one who writes this formulation to her while she is still only betrothed, before he had any rights to her property. Therefore, he is able to prevent his rights from taking effect after the marriage. And this is in accordance with the statement of Rav Kahana, as Rav Kahana says:

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**HALAKHA**

Anyone who says, I do not want to avail myself, etc. – דָּאָרְא יָמַר אִי אֶ

With regard to any ordinance instituted by the Sages that benefits one in monetary matters, he may say: I do not want to avail myself of this ordinance (Rambam Sefer Mitpaḥah, Hilkhōt Ma‘aseh Velaṿeṿ 14:6 and Hilkhōt To’en Velaṿeṿ 14:1).

A woman can say, etc. – יַרְבּוּ רַבּוּ שָׁעָה שְׁמַעְתָּו רַבּוּ שָׁעָה שְׁמַעְתָּו

The Gemara asks: What is meant by: Such as this one? The Gemara explains: Rava is referring to that statement of Rav Huna, who said that Rav says a certain ruling. As Rav Huna says that Rav says: A woman can say to her husband: I will not be sustained by you and, in turn, I will not work, i.e., you will not keep my earnings. The Sages instituted that a husband must provide sustenance for his wife, and in exchange is entitled to her wages. Since this was instituted for the benefit of wives, the wife is able to opt out of this arrangement. Similarly, the husband may waive his rights to the profits from his wife’s land. It is in such a circumstance that the mishna rules that even if he relinquished his rights, he does not establish the presumption of ownership by enjoying the profits.

The mishna teaches that a husband does not establish the presumption of ownership of his wife’s field by enjoying its profits. The Gemara suggests: By inference, the husband has the ability to bring proof that he purchased the field from his wife or received it as a gift from her and consequently be regarded as the owner of the field. The Gemara asks: Why is this proof decisive? Let her say: I did it, i.e., I gave or sold the field to my husband, only to please my husband, but I did not mean it.

The Gemara quotes a source for this claim: Didn’t we learn in a mishna (Gittin 53b): If one first purchased land from the husband⁶ and afterward returned and purchased it from the wife, i.e., he purchased her rights to this land after the death of her husband or in the event of their divorce, as stipulated in her marriage contract, then his transaction is void.⁷ Apparently, she said: I did it, i.e., signed this bill of sale, only to please my husband, but I did not mean it. Here too let her say: I did it only to please my husband but did not mean to give or sell the field to him.

His transaction is void – דָּאָרְא יָמַר אִי אֶ

The Gemara answers: But wasn’t it stated with regard to that mishna that Rabbi bar Rav Huna says: The halakḥa that a woman can claim that she acted only in order to please her husband is not stated with regard to all of her property, but is necessary only with regard to those three types of fields that have special status: One field about which he wrote to her in her marriage contract that it would serve as payment of her marriage contract;

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**NOTES**

His transaction is void – דָּאָרְא יָמַר אִי אֶ

His transaction is void – דָּאָרְא יָמַר אִי אֶ

His transaction is void – דָּאָרְא יָמַר אִי אֶ

His transaction is void – דָּאָרְא יָמַר אִי אֶ
And one that he specified to her for her marriage contract - לְמַעוּטֵי שְׁאָר נְכָסִים.

The definition of these three types of fields is the subject of various interpretations, specifically with regard to the distinction between a field that he wrote as designated for her in her marriage contract and one that he specified to her as payment for her marriage contract. The Roshbam explains that both of these types are designated for the payment of her marriage contract, but the first is mentioned explicitly in the contract, in addition to the general lien on his property, while the second was designated in the presence of witnesses after they were married. Other early commentators reject this opinion, as there would be no significant difference between these two types of fields. They explain in accordance with the explanation of the Gemara, that the first type is a field guaranteeing payment of the main sum of the marriage contract, while the first type is an additional field added to the main sum of the marriage contract. The first type of field is one that is worth more than the marriage contract, and the second one is that of the precise value of the marriage contract.

A completely different opinion is held by Tosafot, who explain in accordance with the context of the contract that the first type is a field guaranteeing payment of the main sum of the marriage contract, while the first type is an additional field added to the main sum of the marriage contract. The first type of field is one that is worth more than the marriage contract, and the second type is one that is of the precise value of the marriage contract.

The Gemara answers: מַאי? אִילֵימָא לְמַעוּטֵי שְׁאָר.

The Gemara asks: But where the two of them sold it – דְּזַבֵּין אִיהוּ וכו.

Rabbeinu Hananel, the Rif, the Ri Migash, and other commentators have a different version of the Gemara that reads: Where he brought into the marriage an appraisal of a field from his own property. According to their version, this refers to a specific field that he gave her, corresponding to its value at the time of their marriage if the marriage terminated due to a rabbinic ordinance, and in accordance with the statement of Rabbi Yosei bar Ĥanina, as Rabbi Yosei bar Ĥanina says:

Where he sold, etc. – דָּאָמַר רַבִּי יוֹסֵי בַּר חֲנִינָא. Similar ly, if a husband sells his wife's usufruct property or usufruct property unilaterally. Where he sold the property and then died, she can come and remove it from the buyer. Alternatively, in a case where she sold it and then died, he can come and remove it, due to a rabbinic ordinance, and in accordance with the statement of Rabbi Yosei bar Hanina, as Rabbi Yosei bar Hanina says: When the Sanhedrin convened in Usha, they instituted a woman who sold her usufruct property in her husband's lifetime and then died, the husband repossesses it from the buyers.

The Gemara clarifies: To exclude what type of property did Rabba specify these three types of fields? If we say that he intends to exclude the rest of the husband's property secured to pay her marriage contract, it is all the more so the case that he will bear her enmity if she does not agree to the sale, as he will say to her: You have placed your eyes on divorce or on my death, i.e., you will not allow me to sell my property because you are expecting and planning for my death or our divorce. Therefore, she should be able to claim that she consented to the sale only in order to please her husband with regard to other property as well.

Rather, these three types of fields were specified in order to exclude usufruct property, i.e., property that belongs to the wife and remains in her possession while the husband has the right to enjoy the profits, in which case if the wife consents to the sale, it is valid. The Gemara asks: But doesn't Ameimar say that if there was a man or a woman, i.e., a husband or a wife, who sold the wife's usufruct property, they did not accomplish anything, as the sale does not take effect?

The Gemara answers: When the statement of Ameimar was stated, it was to say that neither the husband nor the wife can sell the property unilaterally. Where he sold the property and then died, she can come and remove it from the buyer. Alternatively, in a case where she sold it and then died, he can come and remove it, due to a rabbinic ordinance, and in accordance with the statement of Rabbi Yosei bar Hanina, as Rabbi Yosei bar Hanina says: When the Sanhedrin convened in Usha, they instituted that in the case of a woman who sold her usufruct property in her husband's lifetime and then died, the husband repossesses it from the buyers.

But where the two of them sold it" to someone, or if she sold it to her husband," the sale is valid. The inference that the Gemara drew from the mishna, that if the husband produces evidence that his wife sold usufruct property to him then he is regarded as the owner, is relevant when she sells her usufruct property to him.
And if you wish, say instead that Ameimar said his statement in accordance with the opinion of Rabbi Elazar, who holds that one can sell property only if he possesses the item itself and also has the right to enjoy its profits.

This is as it is taught in a baraita: In the case of one who sells his Canaanite slave to another, and contracted with him that the sale is on the condition that the slave will serve the seller for thirty days before he is transferred to the buyer, the outcome of this sale is that during those thirty days, the first master enjoys the use of the slave and the buyer is the owner of the slave himself. As detailed in the Torah (Exodus 21:18–21), if one strikes another and the injury leads directly to the victim's death, the one who struck him is subject to court-imposed capital punishment. But if a master strikes his Canaanite slave, and the slave lingers with his injuries for more than a day or two and then dies, the master is exempt from court-imposed capital punishment.

The baraita states four opinions: Rabbi Meir says that during those thirty days, only the first master is included in the halakha of “a day or two days” (Exodus 21:21). Rabbi Meir holds that in this case, the first master is included in this exemption, because the slave is under his authority, as he enjoys the use of the slave, but the second master is not included in the halakha of “a day or two days,” because the slave is not under his authority.

Rabbi Meir’s reasoning is that he holds that ownership of the rights to use an item and the profits it engenders is like ownership of the item itself. The status of the first master as the owner negates the possibility that the second master would be regarded as the owner with regard to this halakha, and he would not be included in the exemption.

The baraita continues: Rabbi Yehuda says that the second master is included in the halakha of “a day or two days,” because the slave is “his money” (Exodus 21:21), i.e., his property; but the first master is not included in the halakha of “a day or two days,” because the slave is not “his money.” Rabbi Yehuda’s reasoning is that he holds that ownership of the rights to use an item and the profits it engenders is not like ownership of the item itself. Therefore, the first master, who currently enjoys the use of the slave, does not have the status of an owner with regard to this halakha.

The baraita continues: Rabbi Yosei says that both of them are included in the halakha of “a day or two days.” This first master is included because the slave is under his authority, and that second master is included because the slave is “his money.” The Gemara explains Rabbi Yosei’s reasoning: And he is uncertain if ownership of the rights to use an item and the profits it engenders is like ownership of the item itself, in which case only the first master would be exempt, or if it is not like ownership of the item itself, in which case only the second master would be exempt. And where there is an uncertainty in a case of capital law, the ruling is to be lenient. Therefore, neither of them would receive court-imposed capital punishment in this case.
The Gemara explains how Ameimar’s statement is in accordance with the opinion of Rabbi Elazar. And Rava says: What is the reason for the opinion of Rabbi Elazar? The verse states: “Notwithstanding if he continue a day or two days, he shall not be punished; for he is his money” (Exodus 21:21), and he understands this to be referring to a slave that is “his money,” a slave that is unique to him, so this exemption does not apply to one who does not have total ownership of the slave. Rabbi Elazar holds that one is considered to own an item only if he owns the item itself and also enjoys the use of it. This is the source of Ameimar’s statement that neither the husband nor the wife can sell usufruct property: The husband cannot sell it because he does not own it, and the wife cannot sell it because only the husband has the right to enjoy the profits.

The baraita continues: Rabbi Elazar says that both of them are not included in the halakha of “a day or two days,” and both would receive court-imposed capital punishment. This second master is not included because the slave is not under his authority, and that first master is not included because the slave is not “his money.” Rabbi Eliezer holds that one must both own the slave himself and enjoy the use of the slave to be included in the exemption.

The Gemara asks: But doesn’t Rav say that a married woman must protest? The Gemara clarifies: With regard to whom must she protest? If we say: With regard to another, i.e., one who is not her husband who has taken possession of her property, that is problematic: But doesn’t Rav say that one cannot establish the presumption of ownership with regard to the property of a married woman, as she can claim that she did not lodge a protest because she expected her husband to do so? Rather, Rav’s intention must be that she must lodge a protest with regard to the husband. This indicates that absent her protest, it is possible for a husband to establish the presumption of ownership with regard to her property, in contrast to the ruling of the mishna.

Rava said: Actually, Rav is referring to her lodging a protest with regard to the husband, and is speaking of a case where he digs pits, ditches, and caves in her property. In other words, he did not simply work and profit from the land, but damaged it in a way that demonstrates that he considered himself the owner. If he does this for three years and she does not lodge a protest, he establishes the presumption of ownership. The mishnah, which states that he cannot establish the presumption of ownership, is referring to standard use.

The Gemara asks: But doesn’t Rav Naḥman say that Rabba bar Avuḥ said: There is no presumptive ownership with regard to damage? This is understood to mean that one cannot establish the presumption of ownership of another’s field by damaging it, as it is not considered to be standard use. Therefore, even after three years have passed the owner can remove one from his field. Since in this case the husband is damaging the field, he should not be able to establish the presumption of ownership.

The Gemara answers: Say that this means that the halakha of presumptive ownership does not apply with regard to damage, meaning that one who damages another’s property without the owner lodging a protest does not need three years to establish the presumption of ownership, but does so immediately, as an owner who sees another damage his land is expected to protest without delay. Consequently, a husband who digs pits and the like in his wife’s property without her lodging a protest establishes the presumption of ownership immediately.
The Gemara offers an alternative answer. If you wish, say instead: Was it not stated with regard to the halakha that there is no presumptive ownership with regard to damage that Rav Mari says: Damage is referring specifically to smoke, and Rav Zevid says that it is referring to a bathroom? The statement that there is no presumptive ownership [hazaka] with regard to damage was not stated concerning establishing the presumption of ownership of property, but concerning acquiring the privilege [hazaka] to engage in certain activities on one’s own property, and is stating that even if one has engaged in activities that produce smoke or foul odors, the fact that the neighbors did not lodge a protest in the past does not prevent them from doing so in the future.

Rav Yosef said: Actually, Rav is referring to her lodging a protest with regard to another, and is speaking of a case where the one who has possession of her property worked and profited from the field for part of the time necessary to establish the presumption of ownership during the husband’s lifetime, and for three additional years after the husband’s death. In this case, if the woman does not lodge a protest, the possessor establishes the presumption of ownership, since if he wanted to, he could say to the woman: I purchased it from you and then possessed the field for three years, and he would be awarded the field. When he said to her as well: You sold the field to your husband and he sold it to me, he is deemed credible.

The Gemara returns to discuss Rav’s statement: With regard to the matter itself, Rav says that one cannot establish the presumption of ownership with regard to the property of a married woman,
If she has proof with regard to a deed of gift – she is. If he gave her the land as a gift, it is clear that he intended only to give her the land, and not to expose any concealed money that might be in her possession. Tosafot note that the halakha would be the same if he wrote her a document admitting that the land is hers.

Remove the money from here – do not take into account whether she acquired the land, do not take into account whether she paid, since in any event he gave her a bill of sale. The Rashbam explains that writing a bill of sale cannot be attributed to a desire to expose her concealed money, since one would not engage in such an extensive artifice. The Rida explains that since he gave her a valid document, he cannot nullify the transaction with a mere claim, even at the time of the transfer of the bill of sale. Therefore, whatever the circumstances, she has acquired the field through this bill of sale.

Can one conclude from this mishna that in the case of one who sells a field to his wife, she has acquired it, and we do not say that he desires to expose her concealed money? The Gemara answers: No, as one may say that the inference from the mishna that if she has proof then she has ownership rights is the halakha only with regard to a deed of gift, as, if her husband gave her the field as a gift, he cannot claim that he did so in order to expose her concealed money.

The Gemara relates: Rav Nahman said to Rav Huna: The Master was not with us in the evening in the study hall that is within the boundaries of the town, where we said a superior matter. Rav Huna said to him: What superior matter did you say? Rav Nahman responded: In the case of one who sells a field to his wife, she has acquired it, and we do not say that he desires to expose her concealed money.

Rav Huna said to him: That is obvious; remove the money from here and she will acquire the property by means of the bill of sale, as, even if she has not yet given him the money, she acquires the land by means of the bill of sale. Didn’t we learn in a mishna (Kiddushin 26a): Property that serves as a guarantee, i.e., land, can be acquired by means of giving money, by means of giving a document, or by means of taking possession of it?

Rav Nahman said to him: But wasn’t it stated with regard to this that Shmuel says: They taught that the document alone suffices only if the transaction is with a deed of gift, but if the transaction is with a bill of sale, the buyer does not acquire the property until he gives him his money? Rav Huna responded: But didn’t Rav Hamnuna raise an objection to this, based on this following baraita: How is acquisition by means of giving a document performed? If he wrote it for him on paper or earthenware, then even though the paper or the earthenware is not worth even one peruta, if he writes: My field is sold to you, or: My field is acquired by you as a gift, it is thereby sold or given. This indicates that a document suffices to complete an acquisition both in the case of a sale and a gift.

Rav Nahman responded: But is it not so that he, Rav Hamnuna, raises the objection and he himself resolves it? The baraita states its ruling with regard to one who sells his field due to its poor quality. The seller wants to be rid of his field due to its low value, and would like to transfer ownership of it as quickly as possible. In this case, writing a document suffices to complete the acquisition. By contrast, in standard cases it does not. Since the acquisition of a field requires monetary payment in addition to a bill of sale, Rav Nahman’s statement, that if one sells a field to his wife the sale is valid and we do not say that he desires to expose her concealed money, is a novelty.

**Property that serves as a guarantee, etc.** – With a bill of sale the buyer does not acquire until he gives him its money – but in other cases he acquires it as soon as the bill enters his possession. If one gives a field to another as a gift and writes him a deed of gift, the receiver acquires the land as soon as the deed enters his possession, even if there are no witnesses and even if the deed is written upon a worthless substance or upon a substance that is susceptible to forgery (Sno, citing Tosi). The same halakha applies in the case of one who sells his field because it is of low quality. By contrast, in the case of the sale of a standard field, the bill of sale is not sufficient to effect the acquisition, and the transaction is not complete until the buyer pays the agreed-upon price of the field (Sno). This is in accordance with the statements of Shmuel and Rav Hamnuna (Rambam Sefer Kinuyan, Hilkhote Mehkira 13; and Hilkhote Zekharya UMattanah 3:13; Shulhan Arukh, Hosen Mishpat 190:1, 241:1).

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Property that serves as a guarantee, etc. – When one sells a house, it is with regard to a deed of gift. If a seller cannot nullify a transaction once he has given a bill of sale, he cannot claim that he did so in order to expose her concealed money. Therefore, whatever the circumstances, she has acquired the field through this bill of sale.
The Gemara notes that in interpreting this baraita, Rav Beivai would conclude in the name of Rav Nahman, or, according to another version, Rav Ashi says: Why does a document suffice for him to acquire the land? It is because it is assumed that he wanted to give it to him as a gift. And why did he write the document for him employing the terminology of a sale? It was in order to enhance the power of the one acquiring the land, since with regard to a property guarantee, i.e., a document that states that if the property is seized by the seller’s creditor, the seller will reimburse the buyer for his loss, a bill of sale is superior to a deed of gift.

The Gemara raises an objection to the ruling of Rav Nahman, that we do not say that he desires to expose her concealed money, from a baraita: If one borrowed money from his own slave and then frees him, or if one borrowed money from his wife and then divorces her, they do not have any claim on him, and he need not repay them. What is the reason for this? Is it not because we say that he desires to expose their concealed money, and his taking of the loan was a mere artifice to claim to which he was entitled?

The Gemara answers: It is different there, because there is an additional reason to think it was an artifice, as it is uncomfortable for him to make applicable to himself the verse: “The rich rules over the poor, and the borrower is servant to the lender” (Proverbs 22:7). It is therefore reasonable to posit that his intention was not to borrow money, but to expose the concealed money that was in the possession of his slave or wife. This concern does not apply to one who sells property to his wife, and therefore the sale is valid.

The Gemara relates that Rav Huna bar Avin sent a ruling to those in the study hall: In the case of one who sells a field to his wife, she has acquired it, but if he was aware of its existence and borrowed from her he must repay her, even if they get divorced (Rema, citing Tur). The Rema, based on the Nimmukei Yosef, rules that in a case where he wrote her a promissory note, if he subsequently claims that the money had been concealed while she claims that he was aware of its existence, the burden of proof is upon her (Rambam, Sefer Mishpatim, Hilkot Malve Velohe 2:8; Shulhan Arukh, Even HaEzer 86:2).

Halakha

Borrowed from his own slave and then frees him – מַלְוֶה לֹוֶה לְאִישׁ מַלְוֶה. If one borrows money from his own slave and then frees him, and similarly if a husband borrows money from his wife, even money that she had concealed (Sina, citing Rambam), and then divorces her, they have no claim on him and they cannot insist on repayment. This is certainly the halakha for a husband and wife while they are still married (Rema). Some say that this applies only if the wife’s money was concealed, and as long as they remain married, the husband enjoys the profits, as he would with any usufruct property. But Rabbi Abba and Rabbi Abbahu and all of the great Sages of the generation said that the assumption is that the husband wanted to give it to her as a gift. And why did he write the deed for her employing terminology indicating that it is for the sake of a sale? It was in order to enhance her power.

The Gemara raises an objection from a baraita to the ruling that the wife acquires the property: If one borrowed from his own slave and then freed him, or if one borrowed from his wife and then divorced her, they do not have any claim on him, and he need not repay them. What is the reason for this? Is it not because we say that he desired to expose their concealed money, and his taking of the loan was merely an artifice to claim money to which he was entitled? Similarly, the assumption should be that his sale to her was merely an artifice.

NOTES

He wanted to give it to him as a gift, etc. – הוא מושם לו למתן. This is Rav Ashi’s resolution of the apparent contradiction between Shmuel’s statement and the baraita. The baraita is discussing a document that is essentially a deed of gift, even though it is written as a bill of sale (Rashbam). Others explain that this statement is a continuation of the previous answer, i.e., that the baraita is discussing one who is selling his field because of its poor quality. This is consistent with the version of the text of the Gemara that reads: Rav Beivai would conclude. The phrase: He wanted to give it to him as a gift, means that he wanted to use the language of a gift so that the other party would be unable to renege on the deal, even though he had not yet given the money (Rabbeinu Yona, Ramah).

The borrower is servant to the lender – הוא דִּבְעָא לְגַלּוּיֵי זוּזֵי הוּא דִּבְעָא. It is reasonable that his only intention was to discover the concealed money to which he is entitled (Rashbam). It can be inferred that if he borrowed money of whose existence he was already aware, and he is consequently unable to claim that he desired to discover their concealed money, he is obligated to repay the loan (Rashba). Some explain that if he were truly in need of funds he would have borrowed money from someone else and become that person’s so-called servant, since one does not desire to become his wife’s servant, and certainly not his slave’s (Kos HaYeshuot; Ran). According to this explanation, there is no distinction whether the money was concealed or not, as the loan is always viewed as being an artifice in order to take possession of the money (see Rambam).

And why did he write for her that it is for the sake of a sale, in order to enhance her power – הוא מושם לו למתן. As married women generally do not have access to their own funds, the assumption is that it was not a sale, rather, he intended to give it to her as a gift. He employed the terminology of a sale to strengthen the deed of gift, so that if the field is seized by a creditor, she can repossess it. According to the opinion of the great Sages of the generation, the husband may not enjoy the profits from the field (Rashbam).

By contrast, Tosafot cite Rabbeinu Tam’s version of the Gemara, which reads: In order to enhance his power. In other words, even though he gave the land itself as a gift, he employed the terminology of a sale in the deed so that he would continue to have the right to enjoy the profits, which he would not have had he given the land to her as a gift. Accordingly, the opinion of the great Sages of the generation supports that of Rav Huna bar Avin.
As a gift she has acquired it, etc. – As related here, Rabban Neĥemya and Rabban Ukva, or, as referred to elsewhere, Rabbanba Ulka were the sons of Rav’s daughters. Their honorific indicates that they were of the family of the Exilarch, and this is corroborated by other sources as well. It is possible that they were grandsons of the Exilarch Mar Ukva, who was a contemporary and friend of Rav. Apparently, Rabban Ulka and Rabban Nebehya were students of Rav Hida, and Rabban Ulka even delivered public homilies after being instructed to do so by Rav Hida. As embodiments of the confluence of Torah scholarship with wealth and power, they were described as lofty princes of Israel.

As a gift she has acquired it and the husband does not enjoy the profits, etc. – One may not accept deposits from married women, slaves, or minors. If one did accept a deposit from a married woman, she should return it to her or to whomever she says it belongs (Rema). Some hold that he may return it to her husband ( Beit Shmuel, citing Rambam). If she died without having said to whom the deposit belongs, it is returned to her husband. Some say that if this woman conducts business affairs with her husband’s possessions, she is not deemed credible to say that the deposit belongs to someone else (Tur, citing Rambam). If one accepted a deposit from a slave, he should return it to the slave, and if the slave died, even if he was freed beforehand, one should return the deposit to the slave’s master. If one accepted a deposit from a minor, he should sell and purchase with the proceeds a Torah scroll, or an item that yields profit, on the minor’s behalf (Shulĥan Arukh, Even HaEzer 85:7 and see Sma there).

HALAKHA

As a gift she has acquired it, and the husband does not enjoy the profits. If one sells land to his wife and she has been aware of the existence of the money that she used in the purchase, the sale is valid, but the husband still enjoys the profits. If the money was concealed, the sale is not valid. This is in accordance with the statement of Rava and the conclusion of the Gemara (Rambam, Sefer Nashim, Hilkhot Shituf 22:29; Shulhan Arukh, Even HaEzer 85:9).

As a gift she has acquired it, etc. – Rabbinah Ḥisda said: In order to enhance his power. In other words, even if she uses the money, which she is not entitled to keep, it is likely that the husband kept money openly, and her husband is aware of its existence, she should return it to him. Accordingly, the opinion of the great Sages of the generation, which reads: In order to enhance his power. Even HaEzer and the Ge’onim (Rabbi Yoĥanan, Rabbi Uĥva, and Rabbi Noĥemya – Rambam, Sefer Nashim, and see Rambam) were described as lofty princes of Israel.

The Gemara responds: It is different there, because there is an additional reason to think it was an artifice, as it is uncomfortable for a person to be described by the verse: “The rich rules over the poor, and the borrower is servant to the lender” (Proverbs 22:7). It is therefore reasonable to posit that his intention was not to borrow money, but to expose the concealed money that was in the possession of his slave or wife. This concern does not apply to one who sells property to his wife, and therefore the sale is valid.

The Gemara quotes a related statement. Rav says: In the case of one who sells a field to his wife, she has acquired it, and the husband enjoys the profits. In the case of one who gives a married woman the field as a gift, she has acquired it and the husband does not enjoy the profits, since he gave it to her completely. And Rabbi Elazar says: In both this case and that case she has acquired it, and the husband does not enjoy the profits.

The Gemara relates: Rav Ḥisda performed an action in accordance with the opinion of Rabbi Elazar, and did not allow a husband to enjoy the profits of a field he sold to his wife. Rabban Ulka and Rabban Nebehya, the sons of Rav’s daughters, said to Rav Ḥisda: Does the Master abandon a greater Sage, i.e., Rav, the greatest Sage of his generation, and act in accordance with the opinion of a lesser Sage, i.e., Rabbi Elazar, who was Rav’s student? Rav Ḥisda said to them: But I too am acting in accordance with the opinion of a greater Sage, as when Rava came from Eretz Yisrael, he said that Rabbi Yoĥanan said: In both this case and that case she has acquired it, and the husband does not enjoy the profits. I am consequently not relying exclusively on Rabbi Elazar’s opinion, but also on that of Rabbi Yoĥanan.

Rava says that the halakha is: In the case of one who sells a field to his wife, she has not acquired it, and the husband enjoys the profits. In the case of one who gives a married woman the field as a gift, she has acquired it and the husband does not enjoy the profits. The Gemara asks with regard to the first halakha: Can these two ostensibly contradictory rulings be given? Rava’s statement that the wife has not acquired the field means that the husband still owns it, while his statement that the husband enjoys the profits, i.e., he merely enjoys the profits but does not own the field, indicates that the field itself is owned by the wife.

The Gemara responds: This is not difficult, because Rava is referring to two different cases. Here, where he says that she has not acquired the land, he is referring to a case where her money was concealed, and the sale was an artifice to expose it; while there, where he says that she acquires the land, he is referring to a case where she had money that is not concealed. As Rav Yehuda says: If she purchased the field with concealed money, she has not acquired it; if she purchased it with money that is not concealed, she has acquired it.

The Sages taught in a baraita: One may not accept deposits from women, and not from slaves, and not from children. Since it is likely that they do not own property, they might have taken the item without authorization from their husband, master, or parent, respectively. Consequently, one should not accept the deposit. If, however, one accepted a deposit from a woman, he must return it to the woman, as he cannot be certain that it is not hers. And if the woman died, he must return it to her husband, as he is her heir. If one accepted a deposit from a slave, he must return it to the slave, since it might not belong to the master. And if the slave died, he must return it to his master.

NOTES

As a gift she has acquired it and the husband does not enjoy the profits. There is a dispute among the early commentaries with regard to whether this is a full-fledged gift, which she has the right to sell, and also with regard to whether the husband inherits this property after her death. According to the opinion of the majority of early commentaries, the husband would inherit this property if she dies, just as he inherits her other property. If she sold it and then died, the husband can repossess it from the buyer ( Ge’onim; Rabbeinu Tam; Ramban). By contrast, the Ramah holds that it is a full-fledged gift, and that the husband has completely abdicated his rights to the property. Therefore, he would not inherit this property if she dies, and if she sells it he cannot repossess it from the buyer.

Where her money was concealed, etc. – As a woman keeps money openly, and her husband is aware of its existence, she may use this money for whatever she desires. This is the halakha whether this was a condition at the time of their marriage, or whether her husband gave her this money to use as she sees fit. Therefore, if she were to purchase property from her husband using that money, that wealth would not be included in any other sale. In the case of concealed money, which she is not entitled to keep, it is likely that the husband orchestrated the sale as an artifice in order to expose the money and then seize it.

And if the slave died he must return it to his master – As it is possible that the item belonged to someone else, it is most likely that it belonged to his master and was taken without authorization.

PERSONALITIES

Rabban Ultra and Rabban Nebehya – As related here, Rabban Ultra and Rabban Nebehya, or, as referred to elsewhere, Rabban Ultra, were the sons of Rav’s daughters. Their honorific indicates that they were of the family of the Exilarch, and this is corroborated by other sources as well. It is possible that they were grandsons of the Exilarch Mar Ultra, who was a contemporary and friend of Rav. Apparently, Rabban Ultra and Rabban Nebehya were students of Rav Hida, and Rabban Ultra even delivered public homilies after being instructed to do so by Rav Hida. As embodiments of the confluence of Torah scholarship with wealth and power, they were described as lofty princes of Israel.
If one accepted a deposit from a minor, he cannot return it to him, as a minor is unable to properly safeguard the item. Instead, he must make a safe investment [segulla]1 for him, and if the minor dies, he must return it to his heirs.

And with regard to all these people, who said at the time of their death that the deposited item belongs to so-and-so, the bailee should act as they had explained, and if their explanation was not credible, the bailee should form an explanation2 of their explanation, i.e., ignore what they said.

The Gemara relates: When the wife of Rabba bar bar Hanä was dying she said: These rings that are in my possession belong to Marta and the sons of her daughter. Rabba bar Hanä came before Rav to ask what he should do. Rav said to him: If she is credible in your eyes,3 act as she had explained, and if not, form an explanation of her explanation, i.e., ignore what she said, and as her heir, keep them for yourself.

And there are some who say that this is what Rav said to him: If you assess that it is likely that the rings were deposited with her, act as she had explained, and if not, form an explanation of her explanation.

The baraita stated that if the bailee took a deposit from a minor, he must make a safe investment for him. The Gemara asks: What is meant by a safe investment? Rav Hisda says: The bailee should purchase a Torah scroll for the minor. Rabba bar Rav Huna says: He should purchase a date palm,4 from which the minor will consume dates.

The mishna teaches: And a father does not have the ability to establish the presumption of ownership with regard to a son's property, and a son does not have the ability to establish the presumption of ownership with regard to a father's property. Rav Yosef says: Even if they separated and the son is no longer dependent on his father, the presumption of ownership still cannot be established by a father or son with regard to the other's property. Rava says: If they separated, that is not the halakha, and the presumption of ownership can be established.

Rav Yirmeya of Dimfi said: Rav Pippi performed an action and ruled that if they separated, that is not the halakha, in accordance with the opinion of Rava. Rav Nahman bar Yitzhak said that Rav Hiyya, from the city of Hormuz Ardeshid,5 told me that Rav Aha bar Yaakov told him in the name of Rav Nahman bar Yaakov: If they separated, that is not the halakha. The Gemara notes: And this is the halakha: If they separated, that is not the halakha, and the presumption of ownership can be established. This is also taught in a baraita: A son who separated himself from his father's finances and a wife who became divorced are like all other people with regard to establishing the presumption of ownership.

Notes

1. Some explain that the phrase: If on their deathbed they did not identify an owner. In such a case the bailee should return the item to its presumed owner, i.e., the husband, master, or father. The Rashbam quotes this opinion and rejects it.

2. There is an alternate version of the text that reads: There are those who say, in place of: And if not. In other words, there is an alternative opinion that the bailee should not listen to the depositor's explanation at all, but should simply return the item to the presumed owner (Rashbam). Another way to understand this version of the text is that the bailee should investigate the matter well before giving it to the one the depositor mentioned (Ri Migash).

3. Date palm – segulla. In this case the principal, i.e., the tree itself, remains secure and the child may consume its produce (Rashbam). The Riva writes that this includes any investment that yields profit while the principal remains secure, and excludes one where there is a risk of losing the principal.
The bailee should instead return the item to the husband or master.

If not he should form an explanation, etc. – secure and the child may consume its produce (Rashbam).

The Ritva writes that this includes any investment that yields profit while the principal remains intact. Losing the principal.

The first version of the text reads: There is an alternate opinion that the bailee should not listen to the depositor’s explanation.

Some explain that the phrase: If not, means: If he does not believe them, i.e., he suspects that they are lying and that they stole the items.

Rabbeinu Gershom Meor HaGola explained the words: If not, as: And if not. In other words, there is an alternative opinion that the bailee should listen to the depositor’s explanation.

Rav says: It is upon him to bring proof of ownership, otherwise the property is divided equally among the brothers. And Shmuel says: It is upon the brothers to bring proof that the money or property belonged to their common father and consequently now belongs to all of them. Shmuel says: Abba, i.e., Rav, concedes to me that if that brother dies, it is upon the brothers to bring proof in order to collect money from the deceased brother’s heirs.

Rav Pappa objects to Shmuel’s addendum: Do we claim on behalf of orphans anything that their father could not claim for them? But didn’t Rava remove a pair of scissors used for cutting garments and a book of aggada from orphans without requiring the prior owner who had asked the orphans to return these items to bring proof of ownership, and he would rule the same in the case of all items with regard to which it is common for them to be lent, and the one in possession has no presumption of ownership.

As Rav Huna bar Avin sent a ruling: If one other than the one previously established to be the owner is in possession of items that are typically lent or rented, and says: They are purchased, and that is why they are in my possession, he is not deemed credible. In this case as well, as the father of the orphans could not be awarded these documents without bringing proof, the same should be true of his orphans. Why, then, would Rav concede to Shmuel? The Gemara concedes: This is difficult.

Rav Hisda says: They, i.e., Rav, taught his ruling, that the brother must bring proof that he owns the property listed in the documents that appear under his name, only when they do not divide any of their property, even with regard to their dough, i.e., they share everything, even their food. But if they divide with regard to their dough, say that this brother removed money from his dough, i.e., reduced his expenses for food, thereby amassing his own property.

It was stated: There was a case of one of the brothers in a family who was engaging in commerce in the house, managing the family finances after the death of their father, and there were bills of sale (onot) and other documents circulating with his name appearing as the owner of the property and as a lender, and that brother said: The money and property are mine, as they fell to me as an inheritance from the house of the father of my mother, who is not the mother of the other brothers, Rav says: It is upon him to bring proof of ownership, otherwise the property is divided equally among the brothers.

Shakh explains that it means scissors used for cutting garments, while others explain that it means a folded garment (Rabbeinu Gershom Meor HaGola) or two garments (Assik).

Items that are typically lent – מִלְּטֵה יְמִים מִשְׁמוֹנִים הֵלֵכָּה שֵׁלַי נֶאֱמָן: If one seeks to contest the ownership of items that are commonly lent or rented and brings witnesses who can recognize with certainty that these were his items and testify to his ownership (Shakh), then even if they do not know how the items came to be in the other’s possession, the latter’s claim that he purchased them is not deemed credible. In such a case, the claimant takes an oath (Shakh), and the other must return the items, even if they had been in his possession for a long time. If the possessor of the items dies, they may be taken from his heirs without the claimant taking an oath. Others say that even in that case the claimant must take an oath, and then he may take the items (Rambam, citing gemara Ravad).

According to the Shakh this is an oath of indubitable, while according to the Shakh it is an oath taken while holding a sacred item (Rambam Sefer Mishpatim, Hilkhot To’en VeNitan 8:3; Shulhan Arukh, Hoshen Mishpat 72:18, 133). When they do not divide any of their property even with regard to their dough, i.e., they share everything, even their food. But if they divide with regard to their dough, say that this brother removed money from his dough, i.e., reduced his expenses for food, thereby amassing his own property.

BACKGROUND

The city of Bardeshir, a deity. The city was built by Ardeshir, the first Sassanian monarch of Persia, and was an important economic center and fortress.

The Gemara as well as the Sefer Mishpatim, mean something.

Some argue that the phrase: If not, means: If he does not believe to their dough, say that this brother removed money from his dough, i.e., reduced his expenses for food, thereby amassing his own property.
With regard to the requirement that proof be brought, the Gemara asks: With what is one considered to have brought proof?" Rabba says: Proof is brought with the testimony of witnesses that he purchased the property listed in the document or granted the loan with his own money or that he inherited it from his mother’s family. Rav Sheshet says: Proof is brought with the court’s ratification of the document⁶ in which his name appears.

Rava said to Rav Nahman: This is the opinion of Rav and this is the opinion of Shmuel; this is the opinion of Rav and this is the opinion of Rav Sheshet. In accordance with whose opinion does the Master hold? Rav Nahman said to him: I know a baraita,⁷ which is the source of my opinion, as it is taught (Tosefta 9:2): In a case where there was one of the brothers who was engaging in commerce in the house, managing the family finances, and there were bills of sale and other documents circulating with his name appearing as the owner of the property or as a lender, and that brother said: The money and property are mine, as they fell to me as an inheritance from the house of the father of my mother, who is not the mother of the other brothers, it is upon him to bring proof of ownership.

The baraita continues: And similarly, in the case of a woman, i.e., a widow, if her husband’s heirs see that she is engaging in commerce⁸ in the house with the property that had belonged to her husband, and there were bills of sale and other documents circulating with her name appearing on them as the owner, and she said: The money and property are mine alone, as they fell to me as an inheritance from the house of the father of my father or from the house of the father of my mother, and did not belong to my husband, it is upon her to bring proof. Rav Nahman consequently holds in accordance with the opinion of Rav.

Having quoted the baraita, the Gemara seeks to clarify it, and asks: What is the purpose of the clause of the baraita that begins: And similarly, where the halakha appears to be identical to that of the first clause? Lest you say that in the case of the woman, since the matter is laudable for her, in that people say: She is toiling on behalf of orphans; she would not steal from the orphans, and is therefore deemed credible if she says that the property in the documents that bear her name is her own, the baraita teaches us that this assumption cannot be relied upon, and she must bring proof of ownership.

The mishna teaches: In what case is this statement, that one establishes the presumption of ownership after profiting from the property for a certain duration, said? It is said in a case of one who has mere possession of the property, which does in some cases serve as proof of ownership. But in a case of one who gives a gift, or brothers who divided their inheritance, or one who takes possession of the property of a convert who died without heirs and his property is now ownerless, as soon as one locked the door of the property, or fenced it or breached its fence even a bit, this is considered taking possession of the property, and effects acquisition. The Gemara asks: Is that to say that all of these whom we previously said possessed the field for three years are not subject to the halakhet of taking possession of property in this manner?

The Gemara responds that the mishna is incomplete and this is what it is teaching: In what case is this statement said? It is said with regard to possession that is accompanied by a claim, i.e., when the possessor has a claim to counter that of the claimant, such as where the seller, i.e., the claimant, says: I did not sell, and the buyer, i.e., the possessor, says: I purchased. In that case, working and profiting from the land for three years establishes the presumption of ownership.

NOTES

With what is one considered to have brought proof – Rabba: The Rashbam explains that the dispute between Rabba and Rav Sheshet is only with regard to the opinion of Rav, as Rav Sheshet’s opinion that proof is with ratification is incomprehensible if it is the other brothers who need to bring proof. By contrast, many early commentators understand that the dispute between Rabba and Rav Sheshet is identical to that of Rav and Shmuel. Rav, who requires the brother whose name appears in the documents to bring proof, requires proof by means of witnesses. Shmuel, who does not require him to bring witnesses, holds that the document bearing his name needs to be ratified by the court (Ramban, citing Ran; Rid; Ra’avad; see Ramah).

With proof of ratification of the document – Rav Sheshet: It can be assumed that in the course of ratifying the document, the judges also would investigate the veracity of its contents. Therefore, ratification is confirmation of the fact that the money belonged to this brother (Rashbam). A slightly different explanation is given by Rabbeinu Gershon Meir Ha’Gola, who says that the judges would not have ratified the document if they were not certain that the document belongs to the one who circulated it (see Ramban). Many early commentators question these explanations, as judges who ratify a document are required only to authenticate the signatures of the witnesses and need not pay heed to the details of the transaction described in the document. They therefore cite this Gemara as proof of the explanation that Rav Sheshet’s opinion is identical to that of Shmuel, who does not require the brother to bring proof, yet holds that the document bearing his name needs to be ratified by the court. The Ritva writes that even if the judges do no more than authenticate the signatures of the witnesses, it can be assumed that witnesses investigated the matter and would not have signed a document if they suspected that the property did not belong to the brother whose name appears in it.

I know a baraita – According to the Rashbam: The interpretation of the Gemara, Rav Nahman did not answer the question completely, since he cited proof for Rav’s opinion but did not state whether he holds in accordance with the opinion of Rabba or Rav Sheshet. According to the commentators who say that the two disputes are identical, Rav Nahman did answer the question completely: He holds in accordance with the opinion of Rav and Rav Sheshet.

HALAKHA

A woman that she is engaging in commerce, etc. – The Rashbam: A woman, either married or widowed, engages in commerce in her husband’s house, and her name appears on promissory notes or deeds of sale, or if she is in possession of movable property that she claims she inherited or received as a gift for her exclusive use, she must bring witnesses to support her claim. Otherwise, all the property remains in the possession of her husband or his heirs (Rambam Sefer Mishpatim, Hilkhut Nahalot 9:2 and Sefer Nashim, Hilkhut Isht 22:30; Shulhan Arukh, Hoshen Mishpat 62:1 and Even Ha’Zer 86:2, and in the comment of Rema).

BACKGROUND

This method of explanation is often found in the Gemara. The addition introduced by the Gemara is an elaboration upon that which is written in the mishna, based on various difficulties raised in the Gemara that render the mishna in its taught form incoherent or inconsistent with another authoritative source. The addition provides the necessary clarification.
Locked – רַבָּא. The Rashbam (54b) explains that in this context, locking is achieved by installing a lock in the gate of the property, and that locking the gate with an existing lock is insufficient. By contrast, Tosafot and other early commentators prove that locking the gate with an existing lock is an act of taking possession, whereby the buyer asserts his ownership by preventing people from entering the premises.

HALAKHA

Go take possession and thereby acquire – קנה בעיון ותן. One who receives land as a gift or purchases land from another and locks the door of the property, or fences it in, or breaches its fence even a bit has acquired the land, provided that he does this in the presence of the prior owner. If the prior owner says: Go, take possession, and thereby acquire the property, the other acquires it by means of this act even if he did not perform it in the presence of the prior owner (Ramban, Sefer Kinyan, Hilkhot Mekhira 18; Shulhan Arukh, Hoshen Mishaṭ 192:2).

HALAKHA

And what is the halakha with regard to a sale, etc. – ד dennא רבי ויסק. In order to acquire a gift, the recipient must be instructed by the giver to take possession of it, and then he must take possession of it, because an item given as a gift must be acquired by the same means as an item that was sold. This is in accordance with the opinion of Shmuel (Rambam, Sefer Kinyan, Hilkhot Mekhira 18; Shulhan Arukh, Hoshen Mishaṭ 192:2).

Built a fence, and now completed it, etc. – ד רבי ויסק ד dennא. How is property acquired by means of building a fence? If the property contained a fence that one could climb over with ease, and even a small bit was added to it so that it stood at a height of ten handbreadths so that one could climb over it only with effort, the one who completed the fence has acquired the property. Some say that the measure of ten handbreadths is not applied in every case, and the determining factor is the increase in effort required to climb over the fence (Tur; Beit Yosef). This is in accordance with the opinion of Shmuel, as explained by the Gemara (Rambam, Sefer Kinyan, Hilkhot Mekhira 111; Shulhan Arukh, Hoshen Mishaṭ 192:4).

Or breached a breach – ד dennא. How is property acquired by means of creating a breach? If the fence contained a breach large enough for people to pass through with effort, and one enlarged it even a bit so that people could pass through with ease, the one who enlarged the breach has acquired the property. This is in accordance with the opinion of Shmuel, as explained by the Gemara (Rambam, Sefer Kinyan, Hilkhot Mekhira 111; Shulhan Arukh, Hoshen Mishaṭ 192:5).

NOTES

And how much is the measure of a bit – ד dennא. The early commentators note that the Gemara could have asked how this measure applies in the case of locking (see Tosafot). In fact, some commentators hold that this measure was not stated with regard to locking (Torat Hayyim). The Ran explains that it means that he locked the door for a brief period of time, provided that this was in a locale where only an owner would do so.

But with regard to possession that does not need to be accompanied by a claim, as the prior owner concedes that the one in possession is the owner, such as a case where another person gives one a gift, or there are brothers who divided their property, or there is one who takes possession of the property of a convert who died without heirs, where the function of possessing the item is only to acquire it and not to establish the presumption of ownership, if one locked the door of the property, or fenced it or breached its fence even a bit, this is considered taking possession of the property.

Rav Hoshaya teaches in the baraita of tractate Kiddushin that was taught in the school of Levi: If one locked the door of the property, or fenced it or breached its fence even a bit, if this was done in the presence of the seller, this is considered taking possession of the property. The Gemara asks: One could infer that in his presence, yes, he acquires it; but not in his presence, no, he does not acquire it. Why not? In any event he has taken possession. Rava said that this is what Rav Hoshaya is saying: If the act was performed in the seller’s presence, the seller need not say to him: Go, take possession, and thereby acquire the property. Since the buyer is performing the act in the seller’s presence, there is no need for the seller to specify that he consents to the buyer’s acquiring it.

And the Gemara clarifies: And how much is the measure of a bit? It is in accordance with the statement of Shmuel, as Shmuel says: If one had previously built a fence, and now completed it to a height of ten handbreadths, which is the height of a halakhically significant barrier; or similarly, if one had previously breached a breach, and now expanded it in order that it be large enough that a person can enter and exit through it, this is considered taking possession.

The Gemara asks: What are the circumstances of this fence? If we say that initially one could not climb over it to enter the field, and now too one still could not climb over it, what did he accomplish? Nothing has changed through his completing the height of the fence. And alternatively, if it was such that initially one could climb over it to enter the field, and now one could not climb over it, he has accomplished a great deal, and the mishna should not have referred to this addition as: A bit. The Gemara answers: No, it is necessary to state this ruling if the height of the fence was such that initially one could climb over it with ease, and now one could climb over it only with effort.
The Gemara similarly asks: What are the circumstances of the breach? If we say that initially, one could enter the field through it, and now too one could enter the field through it, what did he accomplish? Nothing has changed through his expanding the breach. And alternatively, if it was such that initially one could not enter the field through it, and now one could enter the field through it, he has accomplished a great deal, and the mishna should not have referred to this as: A bit. The Gemara answers: No, it is necessary to state this ruling if the size of the breach was such that initially one could enter the field through it with effort, and now one could enter the field through it with ease.

Rav Asi says that Rabbi Yehanan says: If one placed a stone and it helps to serve some objective, or if one removed a stone and it helps to serve some objective, this act is considered taking possession. The Gemara asks: What is the meaning of placed, and what is the meaning of removed?

If we say that he placed a stone into the fence and stopped the water from flooding the field, or he removed a stone from the fence and thereby fashioned an opening that released water that had been flooding the field, this is analogous to one who chases away a lion from another’s property. In other words, these acts prevent damage to the field, which one is obligated to prevent even in the case of the property of another, and accordingly, they do not constitute a demonstration of ownership. Rather, it means that he placed a stone that connected water to the field and irrigated it, or he removed a stone and enhanced the flow of water to it.

The Gemara notes that the dilemma similarly asks: What are the circumstances of the breach? If we say that initially, one could enter the field through it, and now too one could enter the field through it, what did he accomplish? Nothing has changed through his expanding the breach. And alternatively, if it was such that initially one could not enter the field through it, and now one could enter the field through it, he has accomplished a great deal, and the mishna should not have referred to this as: A bit. The Gemara answers: No, it is necessary to state this ruling if the size of the breach was such that initially one could enter the field through it with effort, and now one could enter the field through it with ease.

Rav Asi says that Rabbi Yohanan says: If one placed a stone and it helps to serve some objective, or if one removed a stone and it helps to serve some objective, this act is considered taking possession. The Gemara asks: What is the meaning of placed, and what is the meaning of removed?

If we say that he placed a stone into the fence and stopped the water from flooding the field, or he removed a stone from the fence and thereby fashioned an opening that released water that had been flooding the field, this is analogous to one who chases away a lion from another’s property. In other words, these acts prevent damage to the field, which one is obligated to prevent even in the case of the property of another, and accordingly, they do not constitute a demonstration of ownership. Rather, it means that he placed a stone that connected water to the field and irrigated it, or he removed a stone and enhanced the flow of water to it.

The Gemara cites another statement of the same amora with regard to taking possession. And Rav Asi says that Rabbi Yohanan says: If there were two fields with one boundary and one took possession of one of the fields in order to acquire it, he has acquired it.
One who builds large palaces, etc. – Rav Naĥman says: If there were two houses in a courtyard, this one situated within the courtyard relative to that one, and one took possession of the outer house in order to acquire it, he has acquired it. If his intention was to acquire it and also acquire the inner house, he has acquired the outer house, but has not acquired the inner house. If he took possession of the outer house in order to acquire the inner house alone, he has not acquired even the outer house.

Similarly, Rav Naĥman says that Rabba bar Avuh says: If there were two houses in a courtyard, this one situated within the courtyard relative to that one, and one took possession of the outer house in order to acquire it, he has acquired it. If his intention was to acquire it, and also acquire the inner house, he has acquired the outer house, but has not acquired the inner house.

If he took possession of the outer house in order to acquire it, he has acquired it. If his intention was to acquire it and also acquire the outer house, he has acquired both of them. Since the residents of the inner house possess the right to pass through the outer house in order to enter and exit the courtyard, the outer house is viewed as an extension of the inner house. If he took possession of the inner house in order to acquire only the outer house, he has not acquired even the inner house, since he did not take possession of the property that he intended to acquire.

The Gemara continues its discussion of taking possession of ownerless property. Rav Naĥman says that Rabba bar Avuh says: When regard to one who builds large palaces [palterin] on the property of a convert who died without heirs, and another came and placed doors upon them, the latter has acquired the property. The Gemara explains: What is the reason for this? The first, i.e., the one who built the palaces, merely turned over bricks, i.e., building an incomplete house is not sufficient to take possession of the property.

Rav Dimi bar Yosef says that Rabbi Elazar says: One who finds palaces built on the property of a convert who died without heirs and plastered them with one application of plaster or tiled them with one tile, has acquired them. The Gemara asks: And how much, i.e., what is the minimum area that must be plastered or tiled? Rav Yosef said: A square cubit. Rav Hisda said: And he acquires it in this manner only if it was plastered or tiled opposite the entrance, where it can be easily seen.

Two houses, this one situated within the courtyard relative to that one – Rav Naĥman says: If there were two houses, one situated further within the courtyard than the other, and one took possession of one of the houses, he has acquired only that house, even if he intended to acquire the other as well. If he took possession of one house in order to acquire only the other house, he has not acquired either house. Some say that if he took possession of the inner house in order to acquire it and also acquire the outer house he has acquired both houses (Rambam Sefer Kinyan, Hilkhot Zekhiya Umattana 2:9, and Maggid Mishne there, Shulhan Arukh, Hoshen Mitspat 275:10, and in the comment of Rema).

One who builds large palaces, etc. – Rav Dimi bar Yosef says: If one built a large palace on ownerless property and another came and affixed doors to it, the latter has acquired the property and the building, since the building is not fit for use until it has doors. The Rema writes that some (Tos; Rosh) say that affixing the doors is insufficient and he acquires the property only if he locks it as well. If one built a structure that is fit for use as is, he has acquired the property. Some say that if one dug for the purpose of laying the foundation of the structure, he has acquired the property (Maggid Mishne, citing Rambam), while others say that he has not (Nimukei Yosef, citing Ramban). An additional opinion is that the one who affixed the doors acquires the property only if the one who built the house did so with materials that had belonged to the convert. If he built it with his own materials, neither the one who affixed the doors nor the one who built the house acquired the property, and it remains ownerless (Rambam Sefer Kinyan, Hilkhot Zekhiya Umattana 2:9; Shulhan Arukh, Hoshen Mitspat 275:11).

One who finds palaces – Rav Yosef says: If one found a large palace on ownerless property, e.g., that of a convert who died without heirs, and he plastered one square cubit or placed a decorative tile the size of one square cubit, facing the entrance, he has acquired it. This is in accordance with the opinion of Rav Dimi, Rav Yosef, and Rav Hisda. If he plastered or placed a tile somewhere other than facing the entrance, some say that if the area plastered or tiled is larger than one square cubit, he has acquired the property, while others say that he has not acquired it (Rambam Sefer Kinyan, Hilkhot Zekhiya Umattana 2:9 and Maggid Mishne and Lehem Mishne there; Shulhan Arukh, Hoshen Mitspat 275:13).
Rav Amram said: Rav Sheshet said this statement to us, and he enlightened our eyes from a baraita⁷ that alludes to the same matter. He said: One who spreads out mattresses on the property of a convert who died without heirs has acquired it. And that which I said that he enlightened our eyes from a baraita, what is it? As it is taught in a baraita (Tosefta, Kiddushin 1:5): How does one acquire a Canaanite slave through taking possession? If the slave placed one’s shoe for him, or untied his shoe for him, or if it occurred that he carried his garments after him to the bathhouse, or undresses him, or bathes him, or anoints him, or scrubs the oil off him, or dresses him, or puts on his shoes, or lifts him, one acquires the slave. Rabbi Shimon said: The acquisition generated by taking possession should not be considered greater than the acquisition generated by lifting, as lifting acquires property in any situation.

With regard to this last statement, the Gemara asks: What is Rabbi Shimon saying here, as the first tanna also said that a slave can be acquired by lifting? The Gemara explains: This is what he is saying: The first tanna holds that if he lifted his master, he acquires him, as he is performing labor for the master, but if his master lifted him, the master does not acquire him, as the slave has not performed labor on his behalf. With regard to this halakha, Rabbi Shimon said: Acquisition generated through taking possession should not be greater than the acquisition generated through lifting, as lifting acquires property in any situation. Consequently, one can acquire a slave even by lifting him.

Rav Yirmeya Bira’a says that Rav Yehuda says: With regard to this one

And he enlightened our eyes from a baraita – although it does not effect a change to the property, improves his appearance (Meiri).

There is a disagreement among the commentators regarding how this baraita sheds light on the ruling that spreading mattresses suffices to take possession of the property. According to the Rashbam, the comparison is that just as the master’s making use of the slave qualifies as taking possession, so too, making use of the property, even by spreading mattresses on it, qualifies as taking possession. Others explain that the comparison is to the halakha of a slave carrying the master’s garments to the bathhouse. The master takes possession of the slave when the latter performs a service that enables the master to then enjoy the benefit of wearing the garments. Similarly, spreading mattresses on the property enables one to enjoy the benefit of sleeping on the ground (Ramah).

Yet others understand that the comparison is to the halakha of the slave helping the master get dressed. Although the slave did not effect any change to the master himself, the fact that he improved the master’s appearance qualifies as the latter’s taking possession of him. Similarly, spreading out mattresses, although it does not effect a change to the property, improves its appearance (Meiri). Some note that this comparison is imprecise, as in the Gemara the one acquiring the property can be said to be dressing the property (Ramah). Indeed, the Ri Migash explains that the intention of the baraita is that the master dresses the slave, and by so doing improves his appearance, which is parallel to the case of one who spreads out mattresses.

One who spreads out mattresses on the property of a convert – Some early commentators explain that since the primary aim is to derive benefit from the property, the mattresses must be utilized for lying down or sitting, and not merely be spread out (Rashbam). It is also noted in Tosafot that the mattresses must be spread out by the one who seeks to acquire the property. Lying down on mattresses that were already present does not qualify as taking possession. The Ril notes that lying down directly on the ground is also insufficient, as this is not ordinary use of the property. Others hold that spreading out a mattress is sufficient to acquire the property, either because doing so constitutes an improvement to the property (Shita Mekubetzet), or because it is the final phase of preparing the property for use (Ramah).

One who spreads out mattresses on the property of a convert: If one spreads out mattresses in ownerless property and this improved its appearance, then he has acquired it. The Ril writes, quoting the Tur, that some say that this applies only if one spreads out the mattresses and lies down upon them, thereby deriving benefit from them (Rambam Sefer Kinyan, Hilkhot Zekhiya UMattana 2:4, and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 12:39, and Sma there, 275:15).

How does one acquire a Canaanite slave through taking possession – If in the presence of his prior master, a slave serves one in the normal manner in which a slave serves his master, e.g., puts his shoes on him or takes them off, washes him, or takes his garments to the bathhouse, he has acquired the slave. Additionally, if the slave lifts him on his command he has acquired the slave. The Rambam, who either had a different version of the baraita (Maggid Mishne) or ruled in accordance with the Jerusalem Talmud (Gra) or in accordance with the opinion of Rabbi Shimon, says that if the master lifts the slave he has acquired him by means of lifting. According to the ruling of the Rambam, even if the slave performed labor that was not related to the master’s body, e.g., sewed a garment for him, the master has acquired him. This is analogous to the halakha that the property of a convert who died without heirs can be acquired through consuming its produce. The Rosh disagrees, and rules that one cannot acquire the slave in this manner (Rambam Sefer Kinyan, Hilkhot Zekhiya UMattana 2:22; Shulhan Arukh, Hoshen Mishpat 1963:4).
Who threw turnip seeds — עֶזֶכָא קַיְצְיָא לִי: One who throws seeds into the crevices of an ownerless field has not acquired it, since neither the field nor the produce is enhanced. Turnip seeds have grown and the value of the field is enhanced. What is the reason for this? As at the time that he threw the seeds there was no enhancement to the value of the field. Now that the turnips have grown and the value of the field is enhanced, it is enhanced by itself.

And Shmuel says with regard to this one who clears [dezakkei zikheya] a field of trees, if he had in mind the improvement of the field, to prepare it for plowing, he has acquired it; but if he had in mind the collection of the wood, he has not acquired it. The Gemara asks: What are the circumstances in which it can be known what he had in mind? The Gemara answers: If he took branches from this side and from that side, he had in mind the acquisition of the palm tree, as this assists the growth of the tree; but if the branches that he took were all from one side, he had in mind the benefit of the animals. Who threw turnip seeds — עֶזֶכָא קַיְצְיָא לִי: The Rashbam explains that the act of putting the seeds on the ground is insufficient in terms of taking possession of the field, as no action was performed on the land itself, e.g., covering the seeds with earth. The Ramah notes that in fact one can acquire property by covering seeds with earth. The Ritva explains that the reason he does not acquire it is that the seeds were thrown into land that had not been plowed and would therefore not grow well. According to his opinion, throwing seeds into a plowed field is an act of acquisition.

Threshing floor — דִּשְׁדָא לִי: This refers to a place where grain is threshed. The reason that he does not acquire the property is that since the common purpose of this field is for planting, the construction of a threshing floor is not considered to be an improvement. According to the Rashbam, the Gemara is referring specifically to when he converted it into a temporary threshing floor. If he converted it into a permanent threshing floor, he has acquired the property. The Ritva notes that if that were to be his intention, he would exercise greater care in leveling the land.

Crevices (filei) — דִּשְׁדָא: Apparently from the word pithe. In Babylonian Aramaic, many guttural letters are dropped, so the word took on this form. Its meaning is crevices or cracks.

Clears a field [zakkei zikheya] — צַכֵּי זִיכְיָא: Apparently from the root zain, kaf, kaf, which can mean cleaning. This refers to one who clears the ground, cleaning various items, in this context branches and dry plants.

Turnip — קַיְצָה: The turnip, Brassica rapa, is a common garden vegetable, the bulbs of which are ordinarily eaten cooked.

Notes

Turnip seeds in the crevices — דִּשְׁדָא לִי בָּן צַכֵּי זִיכְיָא: In the opinion of many of the commentators, this halakha and the ones that follow it all pertain to one who performs an act of acquisition in order to acquire ownerless property. According to Rav Hai Gaon, these cases are discussing one who acquires a field from another. He can acquire the property even with the types of uses detailed by Shmuel. Even if it is not evident that he had the improvement of the property in mind, since he is doing so in the presence of the owner, or has been told: Go take possession and thereby acquire it, any productive act suffices to acquire the property.

Although the Gemara (57a) states with regard to the property of a convert who died without heirs that one who consumes the produce has not thereby acquired the property, the Raaved explains that this is due to the fact that both the property and its produce are ownerless. Therefore, one who consumes the produce has not performed any act of acquisition with regard to the property itself. By contrast, when one acquires property of another, the fact that he consumes the produce of the property without the owner’s lodging a protest is proof of acquisition.

The Rashbam strongly disagrees with this distinction between acquisition of ownerless property and acquisition of property from another.
And Shmuel says with regard to this one who opened a blockage and enabled water to enter into a section of land, if he had in mind the improvement of the field, to irrigate it, he has acquired it; but if he had in mind the catching of the fish, i.e., to enable the water to flow in so that he could catch the fish therein, he has not acquired it. The Gemara asks: What are the circumstances in which it can be known what he had in mind? The Gemara answers: If he opened two gates, one bringing in the water and one taking out the water, this indicates that he had in mind the catching of the fish, as the water will flow out of the field, giving him the means to catch the fish; but if he opened only one gate, this indicates that he had in mind the improvement of the field.

The Gemara relates: There was a certain woman who profited from an ownerless palm tree by cutting its branches for thirteen years. Another then came and plowed beneath it a bit. The case came before Levi, and some say that it came before Mar Ukva, who established the property in the possession of the one who plowed. The woman came and shouted before him, protesting the perceived injustice of his ruling. Mar Ukva said to her: What can I do for you, as you did not take possession of the property in the manner that people take possession?

Rav says: One who draws an image, e.g., he paints an image on the wall, on the property of a convert who died without heirs has acquired it, as Rav himself acquired the garden of the house of Rav, which had been ownerless property, only by drawing an image.

It was stated: With regard to a field that is defined by its boundaries, i.e., it has clearly demarcated boundaries on all sides, Rav Huna says that Rav says: Once he struck the land with a hoe one time, he acquired the entire property. And Shmuel says that he has acquired only the place that he struck with the hoe.
And if it is not defined by its boundaries, up to how much of the field is acquired by one strike of the hoe? Rav Pappa said: He acquires as far as an ox driver goes and returns, i.e., the size of a standard furrow, beginning where the hoe entered the ground.

Rav Yehuda says that Shmuel says: With regard to the property of a gentile that was sold to a Jew for money, it is ownerless like a desert until the purchaser performs an act of acquisition; anyone who takes possession of it in the interim has acquired it. What is the reason for this? The gentile relinquishes ownership of it from the moment when the money reaches his hand, while the Jew who purchased it does not acquire it until the deed reaches his hand. Therefore, in the period of time between the giving of the money and the receiving of the deed, the property is like a desert, and anyone who takes possession of it has acquired it.

Abaye said to Rav Yosef: Did Shmuel actually say this? But doesn’t Shmuel say that the law of the kingdom is the law, i.e., the halakha obligates Jews to observe the laws of the locale in which they reside, and the king said that land may not be acquired without a document? Therefore, taking possession should not be effective for acquisition. Rav Yosef said to him: I do not know how to reconcile this contradiction, but there was an incident in the village of Dura that was founded by shepherds, where there was a Jew who purchased land from a gentile by giving money, and in the interim another Jew came and plowed it a bit. The two Jews came before Rav Yehuda for a ruling, and he established the property in the possession of the second individual. This accords with the ruling of Shmuel that the property is ownerless until a Jew performs an act of acquisition.

Notes

As an ox driver goes, etc. — יד קומם מאחר איל אולær. Most of the commentators explain that the question is: In a field that is not defined by its boundaries, how much of it is acquired with one strike of a hoe, and Rav Pappa responds: The standard length of a furrow. The meaning of Rav Pappas’s statement is therefore that the area acquired is the standard length of a furrow by the width of two furrows, one plowed while going and one while returning. This is the understanding of Rabbi Eizen Ginsberg Meir Hakcola, Rabbi Eizen Hananel, and Rabbi Eizen Tam in Sefer HaHalachot.

Other commentators offer a similar explanation, but in their opinion the area acquired is the length and width of one furrow, as the meaning of Rav Pappas’s statement is the area plowed by an ox in a single direction, before it returns to plow in the opposite direction (Rambam; Ravbeinu Yona). Others maintain that he acquires one square furrow, as the meaning of the word: Returns, is: Turns to the side (Rashba; Ritva). Rabbi Eizen Barukh explains that the reason for this opinion is that presumably, one does not intend to acquire less than that amount.

The Rashbam has a completely different understanding, and explains that a field that is not defined by its boundaries is acquired entirely by plowing two furrows along one full side of the field (see Melik).

Anyone who takes possession of it has acquired it — בקניא דסDrivers to récupérer. According to the Rashbam, the one who took possession of the field is not required to compensate the purchaser, and is considered to have acquired ownerless property. The purchaser must litigate his claim with the gentile who sold him the field. The Rashbam does hold that the one who took possession is considered wicked, since this is analogous to one who seizes an ownerless item that a poor person was in the process of acquiring it (see Kiddushin 59b).

In the opinion of the Rosh and the Ritva, he is not even considered wicked. The majority of the commentators hold that the one who took possession of the property must compensate the purchaser in the amount that was paid to the gentile (Rav Hai Gaon; Rabbi Eizen Hananel).

From when the money reaches his hand, etc. — מכות שנואך מנה. Since according to Torah law acts of acquisition involving gentiles are performed with money, the gentile relinquishes his rights to the property as soon as he receives the money.

The Jew does not acquire, etc. — יד קומם מאחר איל אולær. The Rashbam explains that the Gemara is discussing a locale where it is standard practice to write a deed for the sale of land. Therefore, the Jew acquires the land only with a deed, as acquiring the land with a deed of sale is assumed to be his intention. Tosafot explain that the Jew acquires the land with a deed and not by giving the money, despite the fact that land may be acquired from a gentile by giving money, since he assumes that he will acquire property in the same manner that he acquires property from a Jew.

The Rambam explains that a Jewish purchaser, out of suspicion that he may be deceived, insists on a deed so that he may have full-fledged proof of the purchase. In his opinion and that of the Rashba, because the purchaser relies fully on the deed, he does not acquire the land even if he took possession before the second individual took possession of the property. This is contrary to the opinion of Rabbi Eizen Hananel and the Rashbam.
The Gemara relates: Rav Huna purchased land from a gentile. Another Jew came and plowed it slightly. Rav Huna and that Jew came before Rav Nahman, who established the property in the possession of the latter. Rav Huna said to Rav Nahman: What are you thinking in issuing this ruling? Is it because Shmuel says that the property of a gentile is like a desert, and anyone who takes possession of it has acquired it?

If so, the Master should do for me in accordance with another statement of Shmuel, as Shmuel says that one who hoes ownless property has acquired only the place that he struck with the hoe. Rav Nahman said to him: In this matter I hold in accordance with our halakha, as Rav Huna says: Once he struck the land with a hoe one time, he acquired the entire property.

The Gemara relates that Rav Huna bar Avin sent a ruling: In the case of a Jew who purchased a field from a gentile, and then another Jew came and took possession of it, it is not removed from the possession of the second Jew. And so too, Rabbi Avin, and Rabbi Ile’a, and all of our Rabbis agree with regard to this matter.

Rabba said: These three statements were told to me by Ukvan bar Nehemya the Exilarch in the name of Shmuel: The law of the kingdom is the law; and the term of Persian sharecropping [arista] is for up to forty years, since according to Persian laws the presumption of ownership is established after forty years of use; and in the case of these tax officials [zaharure] who sold land in order to pay the land tax, the sale is valid, as the tax officials were justified in seizing it, and one may purchase the land from them.

Abaye said to him: Are you saying that the incident occurred in Dura that was founded by shepherds? Proof cannot be brought from that case, as there the fields were concealed, since the owners of fields would not pay the land tax [taska] to the king, and the king says that one who pays land tax may profit from the field. Therefore, in that case, the gentile who sold the property did not actually own it, and consequently by the laws of the kingdom could not sell it. The one who took possession of the property acquired it in accordance with the law of the kingdom, as he committed to pay the land tax. Elsewhere, one would not acquire the field until he received a deed of sale from the gentile.

The fields were concealed – דロー קפוע חם: Since it is impossible to conceal a field, this must mean that the fields were not found in the government’s administrative records. It is possible that as the town developed, people took parcels of land for themselves without informing the government, so that as far as the authorities were concerned, these fields did not exist.

Sharecropping (arista): In the work of several of the early commentators, including the Arukh, this word appears as areša. They explain that it derives from the Persian word araš, meaning statute or custom. Therefore, some early commentators explained that the Gemara is referring to the halakha of presumptive ownership. Alternatively, this word may be derived from the Akkadīn erēš, meaning a tenant farmer.

Tariffs (zaharure): The origin of this word, which may be Aramaic, is unclear, although later in the Gemara it is used to mean estate or property. Accordingly, it would refer either to people who own property or to those appointed by the government to tend to property.

And these tax officials – והם: If a Jew purchased land confiscated by the government because its owner defaulted on payment of taxes, in accordance with the laws of that kingdom, the purchase is valid (Rambam Sefer Nezikin, Hilkhōt Gezerot 5:14; Shulhan Arukh, Ḥoshen Mishpat 369:9).

Background

Land tax (taska): The usual meaning of this word in the Talmud is land tax. There is a similar word in Arabic, ثكَّة, taska. Some claim that the source is the Late Latin word taxare, meaning to take taxes.

Language

Pereq III

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Notes

Persian sharecropping – אָרִיסטָא: The majority of commentators explain that this word is not specifically discussing sharecroppers, rather that according to Persian law, the presumption of ownership of land is established after forty years of use. Alternatively, it means that the standard term of a sharecropper is forty years. The Rashbam understands this to mean that despite the fact that the halakha of presumptive ownership do not generally apply to a gentile or to one who purchases property from a gentile, who can acquire only with a deed of sale, if one purchased land from a gentile who had possessed it for forty years, that sale is recognized as valid by the government. He also explains that in Persia, even a Jew who took possession of another Jew’s property could establish the presumption of ownership only after forty years, and not three.

Rabbeinu Yona writes that while it is reasonable to say that
You have abolished the inheritance of the firstborn son – בטלת ירושת הבכור. If one died and left behind land upon which there is a lien, e.g., to a creditor or for payment of his marriage contract, this property is considered to be in the possession of the heirs, and the firstborn son is entitled to a double portion. If so, you have abolished the inheritance of the firstborn son of one who owes taxes to the kingdom. Everything can be seized by the tax collectors to pay the father’s debt, any property that he left behind is only a potential inheritance, not actually property of the heirs, and the halakha is that the firstborn does not take a double share in a potential inheritance as he does in property that the deceased possessed.

Rav Ashi said: Huna bar Natan said to me that Ameimair raised a difficulty with regard to this statement of Rav Huna, son of Rav Yehoshua: If so, you have abolished the inheritance of the firstborn son of one who owes taxes to the kingdom. Everything can be seized by the tax collectors to pay the father’s debt, any property that he left behind is only a potential inheritance, not actually property of the heirs, and the halakha is that the firstborn does not take a double share in a potential inheritance as he does in property that the deceased possessed.

The Gemara notes: And this statement applies to land seized to pay the land tax, but not to land seized to pay the head tax. What is the reason for this? The head tax is placed on a man’s head, i.e., the obligation of this tax is on the individual and is unrelated to his property. It is therefore theft for the tax officials to sell land for this purpose. Rav Huna, son of Rav Yehoshua, said: Everything, even the barley in the pitcher, is mortgaged for the payment of the head tax.

Rav Ashi said: Huna bar Natan said to me that Ameimair raised a difficulty with regard to this statement of Rav Huna, son of Rav Yehoshua: If so, you have abolished the inheritance of the firstborn son of one who owes taxes to the kingdom. Everything can be seized by the tax collectors to pay the father’s debt, any property that he left behind is only a potential inheritance, not actually property of the heirs, and the halakha is that the firstborn does not take a double share in a potential inheritance as he does in property that the deceased possessed.

Rav Ashi said: Huna bar Natan said to me: I asked the scribes who wrote documents and recorded halakhic rulings in the court of Rava, and they said to me that the halakha is in accordance with the opinion of Rav Huna, son of Rav Yehoshua, who states that one’s possessions are all mortgaged for the payment of the head tax. The Gemara notes: But that is not so, as there, Huna bar Natan said that in order to buttress his previous statement.6

And Rav Ashi said: An idler [pardakht] must assist the town4 by paying taxes even though he has no income in that town. And this matter applies in a case where the town saved him from his obligation by asking for a reduction on his behalf. But if the tax collectors [andiseki] do not seek to collect his debt this is regarded as heavenly assistance, and he is not obligated to volunteer to pay his share.

Notes

There he said that in order to buttress his statement – ההו הלוי הפסקה, בולע לולע תכלית א. If so, you have abolished the inheritance of the firstborn son – בטלת ירושת הבכור. If one died and left behind land upon which there is a lien, e.g., to a creditor or for payment of his marriage contract, this property is considered to be in the possession of the heirs, and the firstborn son is entitled to a double portion. If so, you have abolished the inheritance of the firstborn son of one who owes taxes to the kingdom. Everything can be seized by the tax collectors to pay the father’s debt, any property that he left behind is only a potential inheritance, not actually property of the heirs, and the halakha is that the firstborn does not take a double share in a potential inheritance as he does in property that the deceased possessed.

Language

Idler [pardakht] – פדוקט: Some of the early commentators interpreted this word as an abbreviation of the words poriya dukaneth, his place is the bed, meaning an idle individual who spends a great deal of time in bed.

Tax collectors [andiseki] – אנדיסקיה: The origin of this word is unclear. It has been suggested that it derives from the Middle Persian term hamsan, meaning an official who oversees the collection of taxes.
Rav Asi says that Rabbi Yoḥanan says: The boundary between fields and the sea squill that was planted to demarcate the border between fields serve as a barrier between fields with regard to the property of a convert who died without heirs, so that one who takes possession of the property acquires land only until the boundary or the sea squill, but not other land the convert had possessed beyond that point. But they do not serve as a barrier between fields with regard to the matter of produce in the corner of the field, which is given to the poor and ritual impurity, and even the area beyond it is considered to be part of the same field. When Ravin came to Babylonia from Eretz Yisrael, he said in the name of Rabbi Yoḥanan: They serve as a barrier between the fields even with regard to the halakhah of pe'a and ritual impurity.

The Gemara explains: What is the halakhah of pe’a that is affected by determining whether it is one or two fields? As we learned in a mISHna (Pe’a 2:1): And these serve as a barrier for the purpose of pe’a, i.e., the presence of any of these divides a field so that each section constitutes a distinct field from which pe’a must be given independently: A stream that passes through the field; and a canal.

The boundary and the sea squill, etc. – רַּפְיָא רַבִּי הַגְּרָמָא ייָשָׁב אָמְרָה ייָשָׁב אָמְרָה ייָשָׁב אָמְרָה ייָשָׁב):

A boundary or sea squill serves as a barrier with regard to the property of a convert who died without heirs. Therefore, one who takes possession of one of the fields acquires only up to the boundary or sea squill (Rambam Sefer Kinyan, Hilkhot Zekhia UMattana 1:10; Shulhan Arukh, Hoshen Mishpat 275:4).

And these serve as a barrier for pe’a – רַּפְיָא רַבִּי הַגְּרָמָא ייָשָׁב אָמְרָה ייָשָׁב אָמְרָה ייָשָׁב):

A large field that is planted with one type of crop is divided by any of the following: A stream, even if it is dry; a wide canal that contains water; a private road, i.e., one that is four cubits wide; a public road, i.e., one that is sixteen cubits wide; a private or public trail, which is not as wide as a road but is in use in both summer and winter. A field that contains any of these is considered to be divided, and each section carries its own obligation with regard to pe’a (Rambam Sefer Zera’im, Hilkhot Mattanot Aniyim 32:3).

But not with regard to the matter of pe’a and ritual impurity – רַּפְיָא רַבִּי הַגְּרָמָא ייָשָׁב אָמְרָה ייָשָׁב אָמְרָה ייָשָׁב):

The reasoning behind the distinction is that although these are not natural boundaries, the Sages ruled they be treated as boundaries. With regard to matters of Torah law, such as pe’a and ritual impurity, they are not treated as boundaries.

A stream (nahaf) – רַּפְיָא רַבִּי הַגְּרָמָא ייָשָׁב אָמְרָה ייָשָׁב אָמְרָה ייָשָׁב):

Some explain that this refers to hard ground that is not suitable for agriculture, i.e., a wadi (Rashbam), similar to its meaning in Deuteronomy 21:4. Others explain that this is a stream, where water flows naturally, as opposed to a canal, whose water flow is induced (Rambam).

Canal – רַּפְיָא רַבִּי הַגְּרָמָא ייָשָׁב אָמְרָה ייָשָׁב אָמְרָה ייָשָׁב):

In tractate Bava Kamma (6a) there are two opinions as to what this is. According to Shmuel, it is a place where rainwater pools, while according to Rabbi Yoḥanan it is a canal. Most commentators hold in accordance with the latter opinion.

**BACKGROUND**

Sea squill – אַרְסָא: Sea squill, Urginea maritima, of the family, Asparagaceae, is a plant with a large bulb that produces green leaves in the winter and dries up completely during the summer. At the end of the summer it grows a large inflorescence with white flowers. The leaves and bulb of the plant contain poisons and are not consumed by animals, though medicines used to be produced from the dried bulbs. Its roots are very long and its bulb is generally planted deep in the earth so that it is difficult to remove completely. Because of its tall, straight form that returns annually, sea squill was used to demarcate boundaries between fields, as described by the Gemara, in both ancient times and even in some Arab villages in the modern era.

Pe’a – פּוּאָה: The Torah states that it is prohibited for a farmer to harvest the produce in the corner of his field (Leviticus 19:9 and 23:22). He must allow the poor to collect this produce themselves. By Torah law, fields, vineyards, and olive groves are included in this mitzva (Tosafot). The Sages decreed that the area of the corner must be at least one-sixtieth of the field. Tractate Pe’a is devoted to the details of this mitzva.
and a public road\textsuperscript{10} that is at least sixteen cubits wide; and a private road that is four cubits wide; and a public trail; and a permanent private trail\textsuperscript{11} that is used whether in the summer or in the rainy season, i.e., winter. Rav Asi and Ravin disagree with regard to whether Rabbi Yohanan held that a boundary or sea squill also serves to subdivide a field for the purpose of \textit{pe'a}.

The Gemara further clarifies: What is the \textit{halakha} of ritual impurity\textsuperscript{12} that is affected by determining whether an area is one or two fields? As we learned in a mishna (\textit{Teharot} 65b): With regard to one who enters into a valley during the rainy season,\textsuperscript{13} i.e., winter, when people generally do not enter this area, and therefore for the purpose of this \textit{halakha} it is considered a private domain, and there is a principle that in a case of uncertainty concerning whether one contracted ritual impurity in a private domain he is ritually impure; and there was ritual impurity in such and such a field, and he said: I know I walked to that place, i.e., I walked in the valley, but I do not know whether I entered that place where the ritual impurity was or whether I did not enter; Rabbi Eliezer deems him pure\textsuperscript{14} and the Rabbis deem him impure.

Rabbi Eliezer deems him pure, as Rabbi Eliezer would say: Concerning uncertainty with regard to entry, i.e., it is uncertain whether he entered the area where the ritual impurity is located, he is ritually pure. But if he certainly entered the area where the ritual impurity is located and the uncertainty is with regard to contact with ritual impurity, he is ritually impure. It is with regard to this \textit{halakha} that Rabin said in the name of Rabbi Yohanan that a boundary or sea squill defines these fields as distinct areas.

\begin{itemize}
  \item A public road – A public road is one that is sixteen cubits wide. The Rambam explains that the difference between a public road and a public trail is that a public trail, while open to the public, is less than sixteen cubits wide. The Rashbam explains that the difference is that animals and wagon travel on a road but not on a trail.
  \item A permanent private trail, etc. – In the opinion of some early commentators, a public trail must also be used in all seasons in order for it to serve to subdivide a field. The version of the mishna found in the Jerusalem Talmud also indicates that this is the \textit{halakha}.
  \item What is the \textit{halakha} of ritual impurity, etc. – According to the understanding of the Rashbam as well as that of the Rie, the Gemara’s discussion is relevant only according to the ruling of Rabbi Eliezer in the quoted mishna, since according to his opinion, if a boundary or sea squill creates a separation between different areas, one who is uncertain as to whether he entered an area whose boundaries are demarcated in this way would be ritually pure. According to the opinion of the Rabbis, the valley is considered a single area regardless of how many fields are in it, and in any case of uncertainty with regard to impurity, the item would be deemed impure.
  \item The Ramah explains that this discussion is relevant according to the opinion of the Rabbis as well, as even according to their opinion, as long as the ritually impure item is on one side of the boundary or sea squill and one knows that he did not enter that section of the property, he would be deemed pure according to the opinion of Rav in the name of Rabbi Yohanan. This also appears to be the Ramah’s ruling (see Meiri and Lehman Mishne).
\end{itemize}
Rava says: They serve as a barrier between fields even with regard to the matter of Shabbat, as it is taught in a baraita: With regard to one who carried out half of a dried fig from a private domain into the public domain and placed it there, and then returned and carried out another half of a dried fig, if it was done within one lapse of awareness, i.e., he did not remember in the interim that this act is prohibited or that it was Shabbat, the two acts are considered as one, and since the two items together equal the size of a dried fig, he is liable to bring a sin-offering. But if it was done within two lapses of awareness, i.e., after he carried out the first half of a dried fig he remembered that this act is prohibited or that it was Shabbat, but subsequently forgot again and carried out the second half of a dried fig, he is exempt.

The baraita continues. Rabbi Yosei says: If it was done within one lapse of awareness, and in one domain, i.e., he carried half the dried fig into the same public domain each time, he is liable, but if it was in two domains, i.e., he carried the item into two separate public domains, he is exempt.

And Rabba says in explanation of Rabbi Yosei’s opinion: And this division of the public domain applies only where there is a property where one would incur liability to bring a sin-offering if one unintentionally carried out of it or into it, i.e., a private domain, between the two sections. But if there was only a karmelit, i.e., an area that is not defined as either a private domain or public domain and to and from which the prohibition against carrying is only of rabbinic origin, it does not divide the public domain. Abaye says: Even a karmelit divides the public domain into separate sections, but a beam [pisela] does not. Rava says: Even a beam divides the public domain, since it is no less than a boundary or sea squill, which do serve as a barrier between fields.
A domain of Shabbat is like a domain of bills of divorce – Rav says: With regard to bills of divorce, the halakha is that if a husband gives his field to his wife so that he may transfer a bill of divorce to her by placing it there, and the bill of divorce lands not on the ground but on a beam in that field, she is not divorced, as the beam constitutes an independent domain (see Gitin 71a). According to the opinion of Rava, concerning the halakhot of Shabbat, a beam is also significant with regard to dividing a property. If there was no boundary, etc. – Rabbi Yoĥanan says:

Almost all of the commentators explain that this question pertains to Rabbi Yoĥanan’s statement that a boundary or sea squill serve to demarcate the area of a field with regard to how much of it is acquired when it had previously been ownerless. This leads the Gemara to inquire what the halakha would be if there is no demarcation. This explanation is problematic, as the answer to this question seems to have been given by Rav Pappa himself (55b), who ruled that one who hoes a field that has no boundaries acquires land in the measure of a furrow that is plowed by oxen.

This difficulty has been resolved in several ways. Some explain that the Gemara is recording a dispute with regard to this question; earlier, Rav Pappa was conveying Rav’s opinion, while here he expresses the opinion of Rabbi Yoĥanan (Rashbam; Rashba). According to the opinion of the majority of the early commentators, there is no dispute. They explain that the Gemara here is discussing a field with trees, e.g., a vineyard or an orchard, while there it is discussing a field of grain (Rabbeinu Hananel, also cited by the Rashbam; Rann; see Rif). Others explain that here the Gemara is discussing a field that is irrigated from a well, where there the Gemara is discussing a field that is irrigated by rainwater (Rabbi Yitzḥak Karkusha, citing Rabbeinu Hananel; Rashba; R; Rann).

The Gemara asks: What are the circumstances where it is called by his name? Rav Pappa said: Where it is called by his name? Rava said: Where it is called: The place that is irrigated by irrigated by rainwater (Rabbi Yitzḥak Karkusha, citing Rabbeinu Hananel; Rashba; R; Rann).

The Gemara returns to discuss the acquisition of a field that belonged to a convert who died without heirs. The Gemara asks: If there was no boundary and there was no sea squill, what are the limits to the acquisition? Rabbi Marinus explains in the name of Rabbi Yoĥanan: Any area that is called by his name.

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The Gemara teaches a related statement. And Rav Yehuda says that Rav says: It is the growth by which Joshua established the boundaries of Eretz Yisrael for the Jews.

The Gemara asks: To exclude what area? The Gemara answers: To exclude the lands of the Kenite, Kenizzite, and Kadmonite, as God had promised to Abraham at the Covenant between the Pieces: “To your offspring have I given this land…to…the Kenite, and the Kenizzite, and the Kadmonite” (Genesis 15:18–19). These areas are not obligated in tithe. What are these three areas? It is taught in a baraita that Rabbi Meir says: They are Naftuĥa, Arva’a, and Shalma’a. Rabbi Yehuda says: They are Mount Seir, Ammon, and Moab. Rabbi Shimon says: They are Ardisēkis, Asya, and Aspamya.

The Gemara notes: And Rava follows his own line of reasoning, as Rav says: The definition of a domain for the purpose of Shabbat is like the definition of a domain for the purpose of bills of divorce. Just as a beam is defined as a distinct domain for the purpose of bills of divorce, so too it is considered a distinct domain for the purpose of Shabbat.

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MISHNA If there were two witnesses testifying on his behalf, etc. – יְהֵן בִּשְׁפַּלְתָּן שָׁלֹשֶׁת עֵדֻיִּים וְהֵן עֵדוּת אַחַת לוֹ; וְלֹא חֲצִי דָּבָר. לֹא תַעֲשֵׁה בַּשְּׁנִיָּה, וּשְׂנַיִם בַּשְּׁלִישִׁית.

HALAKHA There were two witnesses testifying on his behalf, etc. – יְהֵן בִּשְׁפַּלְתָּן שָׁלֹשֶׁת עֵדֻיִּים, וַתַּעֲשֵׁה בַּשְּׁנִיָּה, וּשְׂנַיִם בַּשְּׁלִישִׁית. payment of the value of the field to the owner is divided among them.

If the testimony was given by three brothers, etc. – יְהֵן בִּשְׁפַּלְתָּן שָׁלֹשֶׁת עֵדֻיִּים, וַתַּעֲשֵׁה בַּשְּׁנִיָּה, וּשְׂנַיִם בַּשְּׁלִישִׁית. payment of the value of the field to the owner is divided among them.

GEMARA The Gemara notes: The mishna is not in accordance with the opinion of Rabbi Akiva, as it is taught in a baraita (Tosefta, 2:10) that Rabbi Yosei said: When Abba Halafta, Rabbi Yosei’s father, went to Rabbi Yoḥanan ben Nuri to study Torah, and some say: When Rabbi Yoḥanan ben Nuri went to Abba Halafta to study Torah, he said to him: What is the halakha if there is one who worked and profited from a field in the presence of two witnesses during the first year, then in the presence of two other witnesses during the second year, and finally in the presence of two other witnesses during the third year? He said to him: This is sufficient for establishing the presumption of ownership.

The latter said to him: I say this as well, but Rabbi Akiva disagrees with regard to this matter, as Rabbi Akiva would say that since the verse states: “At the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established” (Deuteronomy 19:15), one can derive that testimony is accepted only with regard to a complete matter, and not with regard to half of a matter. In this mishna, although presumptive ownership requires testimony that the property had been worked and profited from for three years, testimony is accepted from each pair of witnesses with regard to one year. Consequently, the ruling of the mishna does not accord with the opinion of Rabbi Akiva.
The Gemara asks: And with regard to the Rabbis, who accept the testimony of each of the three pairs of witnesses, what do they do with this derivation of: A complete matter, and not half of a matter, i.e., what type of testimony is disqualified based on this derivation? If we say that it serves to exclude a case where two witnesses testify that a young woman has two pubic hairs and has therefore reached maturity, where one says she has one hair on her back and one says she has one hair on her lower abdomen, i.e., they are testifying to two different pubic hairs, and in this case the Rabbis say this testimony is not accepted, since they each testify with regard to only half of the matter, that is difficult. But this is both half of a matter and half of a testimony, as there is only one witness with regard to each pubic hair. This testimony would not be valid even without the derivation.

Rather, in the opinion of the Rabbis the derivation serves to exclude a case where two witnesses say she has one hair on her back and two witnesses say she has one hair on her lower abdomen. In this case, each group of witnesses gives full testimony with regard to half of a matter, i.e., one pubic hair, as both hairs must be present concurrently in order for her to assume the status of an adult. By contrast, in the case of the mishna, the years are by definition not concurrent. Therefore, the Rabbis rule that testimony with regard to one year is accepted.

In a related matter, Rav Yehuda says: If two witnesses testify that one had worked and profited from a field for three years, where one witness says he consumed wheat from the field, and one says he consumed barley from it, this is sufficient for establishing the presumption of ownership. Rav Nahman objects to this ruling: If that is so, then if one witness says he worked and profited from the field during the first, third, and fifth years; and one witness says he worked and profited from it during the second, fourth, and sixth years, would you also say that this is sufficient for establishing the presumption of ownership? What is the difference between testifying about different crops and testifying about different years?

Rav Yehuda said to him: How can these cases be compared? There, i.e., in your example, with regard to the year about which one Master, i.e., witness, is testifying, the other Master is not testifying about it, while here, both are testifying with regard to one year. What is there to say, that there is a contradiction in their testimonies between wheat and barley? It does not enter people's minds to note this distinction. Two witnesses did, however, testify that he worked and profited from the field for three years.

The mishna teaches that if the testimony was given by three brothers, each of whom testified about one year, and another, unrelated individual joined with each of the brothers as the second witness, these are three distinct testimonies and they are accepted by the court. But they are one testimony for the purpose of rendering them as conspiring witnesses.

HALAKHA

One witness says he has one hair on her back, etc. – Rav: A certain individual worked and profited from a field for the duration of three years, and that he consumed wheat, and a second witness also testifies that this individual worked and profited from the field for the duration of three years but says he consumed barley, their testimonies are combined with regard to presumptive ownership, since people are not generally careful about differentiating between wheat and barley. If one witness testified that a certain individual worked and profited from a field during the first, third, and fifth years, while the other witness testified that he worked and profited from the field during the second, fourth, and sixth years, their testimonies are not combined with regard to presumptive ownership, and the field must be returned along with the value of the produce of the six years (Rambam Sefer Mishpatim, Hilkhok Tumen Veilatan 15:2; Shulhan Arukh, Hoshen Mishpat 14:5, and see Sima there).
If one would stand, etc. – Rav Ashi said to him: Are these cases comparable? There, the property less one-quarter, i.e., three-quarters of the property in question, is not removed from the possession of the prior owner based upon the mouth, i.e., the testimony, of brothers. Each brother provides only half of the testimony for each year about which he testifies. Here, the property less one-quarter is removed from the possession of the debtor detailed in the document based upon the mouth of brothers. One brother attests to his own signature, which constitutes half of the testimony, while the other signature is authenticated by the testimony of the other brother and another individual. It follows that three-quarters of the testimony is given by brothers, and it is therefore invalid.

Ravina thought to say that this case is the same as the halakha in the mishna, which states that if testimony was given by three brothers, each of whom testify about one year, and another, unrelated individual joined with each of the brothers as the second witness, these are considered to be three distinct testimonies. Similarly, in this case, one brother attests to his own signature, while the other brother attests to the signature of the deceased witness.

MISHNA These are uses of property that have the means to establish the presumption of ownership, and these are uses of property that do not have the means to establish the presumption of ownership: If one would stand an animal in a courtyard; or if one would place an oven, a millstone, or a stove there; or if one raises chickens in a courtyard, or places his fertilizer in a courtyard, these actions are not sufficient to establish the presumption of ownership. But if one constructed a partition in his field without his approval, since the partition is permanent. Likewise he would be particular if someone were using his field as a repository for fertilizer. One is also particular about chickens being brought into a house, even without changing the physical structure of the house, as chickens dirty a house (Nimmukei Yosef).

GEMARA The Gemara asks: What is different in the first clause, where having an animal stand in a courtyard is insufficient to establish the presumption of ownership, and what is different in the latter clause, where constructing a partition is sufficient to establish the presumption of ownership?
Any act which if one were to perform it on the property of a convert he would acquire it – *

This is not limited to ownerless property; it also includes the property of another if he intends to transfer ownership and if the act of acquisition is performed in his presence (Rashi; Ri Migash). Ulla is articulating a principle that states that the presumption of ownership of a property is established in the same manner that property is acquired, i.e., by performing an act that physically affects the property being acquired. Therefore, having an animal stand on the property is not an act of acquisition.

The Ri Migash, cited in the first note in the mishna, would agree that according to the explanation of Ulla the mishna is discussing establishing the presumption of ownership, but since Ulla's opinion is rejected, the mishna is ultimately interpreted as referring to the right to enjoy a specific use of the property.

But there is plowing, etc. – This is not limited to ownerless property; it also includes the property of another if he dies without heirs he would acquire property of a convert. Any act which if one were to perform it on the property of a convert who died without heirs he would acquire that property, that same act is sufficient for him to acquire the property of another if he performed it over the course of three years, provided it is accompanied by the claim that the property had been purchased. Conversely, any act that if one were to perform it on the property of a convert who died without heirs he would not acquire that property, that same act is sufficient for him to acquire the property of another. Taking possession of ownerless property requires an act to be done with regard to the property itself, such as constructing a partition, but merely having an animal stand there is not sufficient. Therefore, it does not establish the presumption of ownership.

Rav Sheshet objects to this explanation: And is this an established principle? But there is plowing, which, if performed on the property of a convert who died without heirs one acquires it, but if performed on the property of another one does not acquire it. And additionally, there is consumption of produce for the duration of three years, which, if performed on the property of another one acquires it by establishing the presumption of ownership, but if performed on the property of a convert who died without heirs one does not acquire it. These cases contradict Ulla's claim that the modes of acquisition are analogous.

Rather, Rav Nahman said that Rabba bar Avuh said:

Here we are dealing with a courtyard belonging to partners, where they are not particular with regard to the mere placing of items in the courtyard, but are particular with regard to the construction of a partition. The presumption of ownership is established only where the lack of a protest indicates that the prior owner concedes that the property is no longer his. The co-owner's silence in the face of his partner using the courtyard for a temporary purpose does not indicate a concession, but silence in the face of one who constructed a partition is a concession.

The Gemara asks: And are they not particular with regard to the mere placing of items? But didn't we learn in a mishna (Nedarim 43b): Partners who through vows prohibited themselves from deriving benefit from one another are forbidden to enter into a courtyard jointly owned by them, since each one has a portion in it, and it would be considered a violation of one's vow if one were to benefit from any part of the other's property? This indicates that partners are particular even with regard to passage through the field; all the more so are they particular with regard to placing animals or vessels in the field.
Rather, Rav Nahman said that Rabba bar Avuh said: Here we are dealing with a fenced-in yard located behind a group of houses that is used to store items not in regular use, where they are not particular with regard to the mere placing of items but are particular with regard to the construction of a partition.

Rav Pappa said: This and that, i.e., the rulings of the mishna in tractate Nedarim as well as the rulings of the mishna here, are stated with regard to a courtyard belonging to partners, and the reason for the difference in the rulings is that there are those who are particular with regard to the other partner placing items in or passing through the courtyard, and there are those who are not particular. Therefore, in the mishna here, which issues a ruling concerning monetary matters, the halakha is to be lenient, and it is assumed that the partner is not particular about placing items in the courtyard, and the presumption of ownership is established. In the mishna in tractate Nedarim, which issues a ruling concerning ritual matters, the halakha is to be stringent, to prevent one from violating a vow.

Ravina said: Actually, partners are not particular about placing items in the courtyard, and in accordance with whose opinion is this mishna in tractate Nedarim? It is in accordance with the opinion of Rabbi Eliezer, as it is taught in a baraita that Rabbi Eliezer says: Even negligible benefits ordinarily waived are forbidden in the case of one prohibited by a vow from deriving benefit from another. In other words, one prohibited by a vow may not derive any benefit from the other, even a benefit that people commonly are not particular about and allow others to enjoy without first receiving permission. Therefore, although people are ordinarily not particular about others passing through their property, according to the opinion of Rabbi Eliezer, one who is prohibited by a vow from deriving benefit from his partner is prohibited from walking on the property.

Rabbi Yoĥanan says in the name of Rabbi Bena’a: Partners may prevent each other from using their courtyard for any purpose except for washing laundry. This is because it is not the way of Jewish women to be degraded over washing laundry by laundering their clothing in a public area. Therefore, they must be allowed to launder in the courtyard.

In connection with the matter of laundering being washed in public, the Gemara quotes the homiletic interpretation of a verse: “He that walks righteously, and speaks uprightly; he that despises the gain of oppression, that shakes his hands from holding of bribes, that stops his ears from hearing of blood, and shuts his eyes from looking upon evil” (Isaiah 33:15). Rabbi Hyya bar Abba says: This is referring to one who does not gaze at women while they are washing laundry while they are standing over the laundry, as it was common for them to stand in the water and raise the hems of their garments while laundering their clothing.

The Gemara clarifies: What are the circumstances? If it is referring to a case where there is another way by which the one walking could reach his destination, then one who walks past the women, consequently placing himself in a situation where he will be tempted to gaze at them, is wicked. Alternatively, if it is referring to a case where there is no other way by which he can reach his destination, then he is a victim of circumstance, so why is he required to shut his eyes? The Gemara explains: Actually, it is referring to a case where there is no other way by which he can reach his destination, and even so, he is required to compel himself to avoid gazing at the women.

With a fenced-in yard located behind a group of houses – לְעוֹלָם לָא שֶׁעוֹמְדוֹת עַל הַכְּבִיסָה: Those living in the courtyard are particular that items not be placed in a yard in front of their houses, as this can interfere with their ability to exit and enter. They are not particular about temporary use of the yard behind the houses, even though they too are jointly owned by those living in the courtyard. The Riva holds that according to this explanation of the mishna, there is no difference between property owned by partners and property owned by an individual.

Concerning monetary matters the halakha is to be lenient – אֲמַר רַבִּי יוֹחָנָן מִשּׁוּם רַבָּה בַּר אַבָּא: In other words, with regard to property rights it can be assumed that the other individual is not particular and therefore did not warn him to stop utilizing the area. Consequently, the one who was using the area has not acquired the rights to it. The Rashbam explains that the leniency is the assumption that there is a right to utilize the property and not be considered as one who borrows without the owner’s approval, who has the status of a robber. The Rashash explains the leniency as follows: The property remains in the possession of the partner who contested the rights of the one who placed the items in the field.

Excerpt for laundry – קְדֻשַּׁת פִּינָקְלִית: The Sages instituted that for reasons of modesty, laundry should be washed in the courtyard and not in a public place such as a river. In the Jerusalem Talmud (Bava Batra 13): the scope of this ruling is limited.

HALAKHA

Excerpt for laundry – קְדֻשַּׁת פִּינָקְלִית: One partner may not prevent another from washing laundry in the courtyard, even if residents of that place do not ordinarily wash laundry in their courtyards, but in the river (Sim). This applies only if a woman is washing the laundry. If the laundry is being washed within four cubits of the house, and if the water does not flow into the other partner’s portion. A partner can certainly be prevented from washing laundry in the portion of the other partner. This is in accordance with the ruling of the Gemara here, as well as in the Jerusalem Talmud (Shulhan Arukh, Hoshen Muvpat 16:15).

This is referring to one who does not gaze at women – לְעוֹלָם לָא שֶׁعقְרָר וְאָמַר רַבָּה בַּר אַבָּא: It is prohibited to gaze at women while they are washing laundry (Rambam Sefer Ketuzot, Hilkhot Issurei Bia 212:1; Shulhan Arukh, Even HaEzer 211).

PERSONALITIES

Rabbi Bena’a – רב בֶּנָא: Rabbi Bena’a was a tanna of the final generation of tanna'im. It appears that he was born and educated, as well as taught Torah and served as a judge, outside of Eretz Yisrael. He later ascended to Eretz Yisrael and settled in Tiberias, where he established a study hall. One of the students who transmitted his rulings is the great amorah Rabbi Yoĥanan. His statements in the areas of halakha and aggada are found in the Talmud and halakhic midrashim. In the Jerusalem Talmud he is called Rabbi Benaya.
The Gemara quotes additional matters that Rabbi Yohanan learned from Rabbi Bena: Rabbi Yohanan asked Rabbi Bena: How should the garment of a Torah scholar worn under his clothes be fashioned? He replied: He can wear any garment long enough that his flesh is not visible from beneath it. Rabbi Yohanan asked: How should the cloak of a Torah scholar be fashioned? He replied: He can wear any garment long enough that a handbreadth of his garment worn under his clothes is not visible from beneath it. Rabbi Yohanan asked: How should the table of a Torah scholar appear? He replied: Two-thirds of the table is covered with a cloth, and one-third is uncovered, and upon that third are dishes and vegetables. And its ring, used to hang the table, should be positioned on the outside, not on the side that faces the one who is eating.

The Gemara asks: But isn’t it taught in a baraita that its ring should be positioned on the inside? The Gemara answers: This is not difficult. This baraita, which states that its ring should be positioned on the outside, is referring to a case where there is a child who may play with the ring and overturn the table, while that baraita, which states that its ring should be positioned on the inside, is referring to a case where there is no child present.

And if you wish, say instead that both this and that refer to a case where there is no child present, and this is not difficult: This baraita, which states that its ring should be positioned on the inside, is referring to a case where there is an attendant who may jump into the ring, while that baraita, which states that its ring should be positioned on the outside, is referring to a case where there is no attendant.

The Gemara asks: But isn’t it taught in a baraita that the table of a Torah scholar, but the table of an ignoramus is similar...

The garment of a Torah scholar must be clothed in garments that are pleasant and clean. He should not wear garments that are exceedingly extravagant, nor should he wear the clothing of a poor person. He may not wear sheer garments (Rambam Sefer HaMadda, Hilkhot Deot 59).

The table of a Torah scholar must be covered with a cloth over two-thirds of its surface, one-third on each side. The middle third should be left uncovered, and the vessels for eating and serving should be placed there. With regard to the ring that is used to hang the table, if there is a child in the house, the ring should be positioned on the inside. If there is an attendant, then during the day meal the ring should be positioned on the inside so that the attendant does not jump into it, while during the day meal it can be positioned on the outside. This is in accordance with all the answers of the Gemara (Tur, Orah Hayyim 161).

His flesh is not visible from beneath it — Some explain that the two-thirds closest to the diner should be covered with a cloth, upon which the bread is placed and upon which he wipes his hands, and the uncovered section is reserved for vegetables or vessels that might soil the cloth (Rashbam). Others explain that the perimeter of the table is covered with a cloth and in the center is an uncovered area where dishes are placed (Rashi, Rabbeinu Barukh).

Two-thirds of a cloth...: A Torah scholar must wear a garment that reaches to his feet so that none of his skin is exposed. The Rashbam and Rabbeinu Barukh explain that his garment should not be so sheer that his skin may be seen through the material. This is also the Rambam’s understanding, and he rules accordingly.

A table of a Torah scholar: The table described here is designed for one user, as was common practice in talmudic times (Arukh).
They are similar to two suns. — Rabbi Johanan commented: The idea that the heels of Adam the first man are comparable to the sun can be understood as a metaphor. While some philosophers suggested that the world has existed forever, the Jewish belief is that God created the world ex nihilo and continues to maintain it. This belief is supported by the observation of the movement of the celestial bodies, which, the Sages believed, can be explained only if there is a divine force driving that movement.

According to Rabbi Johanan, a parallel proof is the Torah’s description of God’s creation of Adam from the dust of the earth. Such a singular birth serves as evidence of God’s creation of humankind and of the world in general. His gazing at the heels of Adam, the first man, and noting that they shine like the sun, means that Rabbi Johanan understood that just as the sun shining in the sky serves as evidence of God as Creator, so Adam’s very existence serves to prove that God created the world (Midrash Shlomo).

A cluttered (balus) storehouse — Rabbi: The Rashbam explains that this refers to a storehouse filled with a wide variety of items. A similar explanation is given by Ibn Janah, citing Rav Sherira Gaon. Other commentaries have an alternative text that reads balum, meaning closed, rather than balus. Accordingly, it refers to a storehouse that is seldom used, and many items are stored there.

He encountered Eliezer, etc. — Emmanuel: Many of the early commentators offer allegorical or mystical, rather than literal, interpretations of this passage. In the opinion of some geonim as well as the Rambam (esotericism 313), this incident occurred in a dream.

Upon the likeness of My image — Rabbi: The Rashbam explains that this refers to Jacob our forefather, whose beauty is said to be a semblance of that of Adam the first man. Rabbi Sheriff Meir HaGola explains that this refers to Abraham our forefather, who was a semblance of Adam the first man.

Nothing except sandals — Rabbi: The Rashbam explains that sandals are worn during the rainy season. Accordingly, during the dry season, a Torah scholar keeps beneath his bed only the sandals that he will need during the rainy season. Rashbi, in his commentary to tractate Sukko (2a), gives the opposite explanation: Shoes are worn during the rainy season and sandals during the summer. Therefore, the only item beneath the bed of a Torah scholar is seasonally appropriate footwear.

Cluttered (balus) storehouse — Rabbi: Scholars have suggested various sources for this word, although no suggestion is entirely clear. Its meaning is hodgepodge, or items mixed without order (Rav Sherira Gaon).
Rumming through the graves of the dead — Gate [abbula]: Since the individual in question was a magus, it is plausible he was exhuming corpses for religious reasons. According to Persian religious beliefs, corpses defile the earth and are consequently not to be buried in the ground. Although he was acting without governmental sanction, which would be granted at a later point in history, he persisted in his actions multiple times.

Magus (angusha) — אֲגֻמֶשֶׁא: Deriving from an Old Iranian word magus is a name for Zoroastrian priests. Magi were viewed by some outsiders as magicians, and due to this the word is also used as a general title for a sorcerer.

Quilts (bistarkei) — בִּסְתַּרְּקֵי: Apparently from the Middle Iranian bistarak, meaning a bedding or cover.

Slandered [akhlu kuretza] — אֲחוּלֵו קָוֹרֶטּא: This phrase is found in the book of Daniel (3:8), and in the Aramaic translations of the Torah it serves as the translation of talebearer or informer.

Water skin (zarnuka) — זַרְנָעָה: This may be related to the Arabic زَرْنُقَاط, meaning spray or stream of water. In rabbinic parlance it refers to a leather canteen used for water.

Gate (abbula) — אַבָּבּוּ: If the meaning of this word is gate-of-the-city, it may be compared with the Greek ἀββᾶ, embolos, which, among other things, means gate, or the structure in which a gate is located. It was also stated that the beauty of Rav Kahana is a semblance of the beauty of Rav. The beauty of Rav is a semblance of the beauty of Rabbi Abbahu. The beauty of Rabbi Abbahu is a semblance of the beauty of Jacob our forefather. The beauty of Jacob our forefather is a semblance of the beauty of Adam the first man.

On the topic of burial coves, the Gemara relates that there was a certain magus [angusha] who was rummaging through the graves of the dead. When he arrived at the burial cove of Rav Tovi bar Mattana, Rav Tovi grabbed him by his beard and would not release him. Abaye came and said to Rav Tovi: I beg of you to release him. The magus came again in another year, and Rav Tovi grabbed him by his beard. Abaye came and requested that he release him, but Rav Tovi did not release him, until Abaye brought a scissors and cut his beard.

The Gemara relates additional incidents involving Rabbi Bena’a:

There was a certain individual who said to his family before he died: A barrel of earth to one of my sons, a barrel of bones to one of my sons, and a barrel of wads of wool to one of my sons. They did not know what he was saying to them. They came before Rabbi Bena’a for guidance. Rabbi Bena’a said to them: Do you have land that your father left as an inheritance? They said to him: Yes. He asked: Do you have livestock that your father left as an inheritance? They said: Yes. He asked: Do you have quilts [bistarkei] that your father left as an inheritance? They said: Yes. He said to them: If so, this is what he said to you, i.e., he meant that he is bequeathing land to one son, livestock to the second, and quilts to the third.

There was a certain man who heard his wife saying to her daughter: Why do you not act clandestinely when you engage in forbidden sexual intercourse? That woman has, i.e., I have, ten sons, and I have only one from your father, and no one knows. So too, you must be careful so that no one will discover your illicit behavior. Having overheard that only one son was his, when that man was dying he said to his family: All of my property is left to one son.

They did not know to which of them he intended to leave his property. They came before Rabbi Bena’a for guidance, and he said to the sons: Go strike your father’s grave, until he rises and reveals to you to which of you he left his property. They all went, but that one who was his son did not go. Rabbi Bena’a said to them: All of the property belongs to this son who did not go. The other brothers were angry. They went and slandered [akhlu kuretza] Rabbi Bena’a in the king’s house. They said: There is one man among the Jews who removes money from people without witnesses and without any evidence. The king’s guards brought Rabbi Bena’a and imprisoned him.

The wife of Rabbi Bena’a went and said to the guards: I had one servant. They cut off his head, and skinned him and ate his flesh, and they fill him with water and give their friends to drink from him, and they have not paid me his value nor have they rented him.

They did not know what she was saying to them. They said: Let us bring the wise man of the Jews, and let him say what she meant. They called Rabbi Bena’a, and he said to them: She spoke to you of a water skin [zarnuka]. In other words, she was referring to a goat she owned that was slaughtered, its meat eaten, and its skin made into a water skin that could be filled with drinking water. They said: Since he is so wise, let him sit at the gate where the judges congregate and render judgment.

Rabbi Bena’a saw that it was written upon the gate [be’abbula]: Any judge who is summoned to judgment is not considered a judge, as judges must be above reproach. He said to them: If that is so, then if a person comes from elsewhere
And money is lawfully taken from him, etc. – קבץ אできます. The reasoning behind this is that a judge who is found to be liable has unlawfully been in possession of another individual’s property, and therefore there is a suspicion that his desire for money will lead him to accept bribes (Rashbam).

Anpak, anbag, etc. – אנפק, אנבג. The Rashbam explains that these are different names of measures, and the inscription at the entrance to Cappadocia stated that they are all of the same volume, which is identical to the quarter-log measure. Others explain that anpak and anbag were medicinal compounds, and the inscription stated that the appropriate dosage of these is the measure antal, which is a quarter of a log (Rabbeinu Gemhosh Meor HaGola; Tosafot).

A spout – התקן. The majority of the commentaries explain, in accordance with the opinion of the Rashbam, that this refers to a spout that is connected to the edge of the roof and can be moved from place to place, from which water drains from the roof is deposited at a distance from the house. A gutter pipe is shaped like a pipe cut in half lengthwise or a flat board and is fixed permanently along the roof and is connected to the spout. Some say that it was built on an angle (Shabetai Halutz, citing Rav Sela-Daya Gaon and Tosafot). The Rema writes that some say that this privilege is established by a nusah, and others, the mishna is discussing an acquired privilege that was established in another’s property, its owner has no means to establish an acquired privilege for its use, but he does have the means to establish an acquired privilege with regard to its place, as the Gemara will explain. With regard to a gutter pipe that traverses the length of the roof, one does have the means to establish an acquired privilege for its use.

With regard to an Egyptian ladder, etc. – ויבא בא also saw that it was written there: At the head of all death am I, blood, i.e., people die from an excess of blood; at the head of all life am I, wine, i.e., wine is what gives life. He said to them: If that is so, in the case of someone who falls from a roof and dies, or someone who falls from a palm tree and dies, was it blood that killed him? And furthermore, concerning someone who is on the way to death, can they give him a drink of wine and he will live? Rather, this is what should be written: At the head of all illness am I, blood; at the head of all healing am I, wine. When they heard this, they wrote this addendum to the original inscription: But the elders of the Jews say: At the head of all illness am I, blood; at the head of all healing am I, wine. In a place where there is no wine, herbs are required there as medicines.

Having related that incident, the Gemara notes that at the entrance of Kapotekiyya it was written: Anpak, anbag, antal, which are all names for the same measurement. And what is antal? It is the quarter-log of the Torah.

**BACKGROUND**

Kapotekiyya – קפיטיקיยะ. This refers to the Cappadocia region of Asia Minor, where there was an ancient Jewish community dating back to the Second Temple period.

Quarter-log – רבעית. A unit of liquid measurement. In Hebrew, it means literally one-quarter. Unless indicated otherwise, one-quarter refers to one-quarter of a log. The log is a talmudic measurement of volume equal to six egg-bulks, which is equivalent to approximately 346 ml according to the standard method of Rabbi Hayyim Nale for converting talmudic measurements. A quarter-log measures approximately 86.5 ml.

**LANGUAGE**

Anpak, anbag – אנפק, אנבג. The origin of these words is unclear. Some say that they are related to the Armenian empak, meaning drinking vessel. It appears that anpak and anbag have the same root, where empak is an older form of the word and anbag a newer form.

**HALAKHA**

A spout – התקן. If one desires to build a pipe that will drain water from his roof into another’s courtyard, or if one desires to install a permanent gutter, the owner of the field can prevent him from doing so. If he did not prevent it, the owner of the gutter has established an acquired privilege to keep it there. The Rema writes that some say that this privilege is established only over the course of three years of use (Rambam: Sefer Kinyan, Hilchos Shechemin 8:3; Shulhan Arukh, Hoshen Mishpat 153:5).
According to the opinion of the Rashbam as well as the Ritva, the שֶׁאִם רוֹצֶה לִבְנוֹת וכופ

And money is lawfully taken from him, etc. – הַמַּרְזֵב אֵין לוֹ חֲזָ

so he will have the means to see into his neighbor’s property. This is why the size of the window is relevant (Ri Migash).

As if he wishes to build beneath it – אַנְ׳ אַנְבָּג

The owner of a field has the right to build beneath a spout, and the owner of the gutter pipe may not prevent him from doing so. The owner of the field may not insist that the spout be moved or shortened, since the holakha is in accordance with the opinion of Rav Yirmeya bar Abba and not in accordance with the opinion of Shmuel or Rabbi Hanina (Gra, citing Rish). This applies only if the owner of the spout has a reason for not wanting the spout to be moved. The Tur comments that if he will not incur any loss from the change, he is compelled to acquiesce, to avoid conduct characteristic of Sodom, i.e., refusing to allow others to benefit, even when that benefit comes at no cost (Rambam Sefer Kinyan, Hilkhot Shekhenim 8:5; Shulhan Arukh, Hoshen Mischpat 153:8).

With regard to an Egyptian window,⁶⁰ one has no means to establish an acquired privilege for its use; but with regard to a Tyrian window, one does have the means to establish an acquired privilege for its use. What is the defining feature of an Egyptian window? It is any window that is so small that a person’s head is not able to fit inside it. Rabbi Yehuda says: If a window has a frame, even though a person’s head is not able to fit inside it, one does have the means to establish an acquired privilege for its use.

**NOTES**

⁶⁰ Egyptian window – קַלוֹן. With regard to a window, some explain that the acquired privilege is the right to use it despite the fact that by doing so he will have the means to see into his neighbor’s property. This is why the size of the window is relevant (Ri Migash). Others explain that a large window is somewhat permanent. Therefore, the neighbor would protest, as the presence of the window could prevent him from building across from it in the future, due to the claim that such a building would block the light from entering the window (see Ri Migash).

One does not have an acquired privilege for its use with regard to one side, etc. – שֶׁאִם בָּא לְעַל קַלוֹן אֵין לוֹ חֲזָ

This means that the owner of the field below may move the spout from place to place on the side of the house where it is located. He may not move it to a different side of the house (Rabbeinu Hananel; Rashbam; see Tosafot). Rabbeinu Gershom Meor HaGola explains that if the spout is left draining into only one side of the field, this indicates that use of the spout is not up to the discretion of its owner, and therefore he has no acquired privilege. If he periodically moves it from one side to another, this indicates that its use is up to his discretion, and he has an acquired privilege.

Some explain that since the position of the spout depends upon the angle of the gutter pipe, or of the roof itself, the owner of the field cannot tell the owner of the spout to move it to another side, as this would require structural changes to the house (Sefer Hattur; citing Rav Sh’adya Gaon).

Each year, the owner of the field below may move the spout from place to place on the side of the house where it is located. This is called a movah (see Gra). Some say that the acquired privilege is in effect immediately, or, according to some, after thirty days, through use in this manner. According to the opinion of the Rashbam, the owner of the spout does not own the airspace beneath the spout, and the owner of the field can prevent him from doing so. The owner of the field may not insist that the spout be moved or shortened, since the holakha is in accordance with the opinion of Rav Yirmeya bar Abba and not in accordance with the opinion of Shmuel or Rabbi Hanina (Gra, citing Rish). This applies only if the owner of the spout has a reason for not wanting the spout to be moved. The Tur comments that if he will not incur any loss from the change, he is compelled to acquiesce, to avoid conduct characteristic of Sodom, i.e., refusing to allow others to benefit, even when that benefit comes at no cost (Rambam Sefer Kinyan, Hilkhot Shekhenim 8:5; Shulhan Arukh, Hoshen Mischpat 153:8).

The Gemara asks: What is the meaning of the mishna’s statement: With regard to a spout, its owner has no means to establish an acquired privilege for its use, but he does have the means to establish an acquired privilege with regard to its place? Rav Yehuda said that Shmuel said: This is what it is saying: Concerning a spout, its owner has no means to establish an acquired privilege for its use with regard to one side, i.e., the owner of the field below has the right to move the spout from one place to another on one side of the roof, but he does have the means to establish an acquired privilege concerning its place with regard to two sides, i.e., the owner of the field below does not have the right to move it to another side of the roof.

Rabbi Hanina said there is a different explanation: With regard to a spout, its owner has no means to establish an acquired privilege for its size, as if it was long, the owner of the field below may shorten it, but one does have the means to establish an acquired privilege with regard to its place, as if the owner of the field below comes to remove it entirely, he may not remove it.

Ray Yirmeya bar Abba said there is a different explanation: With regard to a spout, its owner has no means to establish an acquired privilege for its use, as if the owner of the field below wishes to build⁶¹ beneath it,⁶¹ he may build, and the owner of the spout may not prevent him from doing so; but one does have the means to establish an acquired privilege with regard to its place, as if the owner of the field below comes to remove it entirely, he may not remove it.

As if he wishes to build, etc. – שֶׁאִם בָּא לְעַל קַלוֹן בַּר רָבָּה.

In other words, the owner of the spout does not own the airspace beneath the spout, and the owner of the field may do as he pleases beneath the spout.

As if he comes to remove it, etc. – שֶׁאִם בָּא לְעַל קַלוֹן בַּר רָבָּה.

If the owner of the field desires to build in a manner that would require the removal of the spout, he may not do so. The Rav’avad explains that according to the opinion of Ray Yirmeya, the owner of the field may not effect any change to the spout, whether moving it or shortening it.

Some early commentators explain that there is a dispute between these three amoraic opinions, and these commentaries disagree with regard to the halakhic ruling. Rabbeinu Hananel holds in accordance with the opinion of Rabbi Hanina, who was Shmuel’s teacher, while the Rav’avad rules in accordance with the opinion of Ray Yirmeya, who is the most stringent with regard to acquired privilege. By contrast, the Rif holds there is no dispute, and each Opinion explains a different aspect of the acquired privilege. This opinion is indicated in the Rambam’s rulings as well.

It appears the Rambam understood the whole discussion differently. In his opinion, the focus of the discussion is not the rights of the owner of the field to change the position of the spout but the right of the owner of the spout to change its position. This will affect the manner in which the water reaches the field. The discussion is with regard to the acquired privilege that the owner of the field has to use the drainage water.
We learned in the mishna: With regard to a gutter pipe, one does have the means to establish an acquired privilege for its use. Granted, according to the one who says those first two explanations, i.e., Shmuel and Rabbi Hanina, it is well. The distinction between the *halakha* with regard to a spout and that of a gutter pipe is clear: Since the gutter pipe is fixed in place, there is an acquired privilege, and it may not be moved or shortened.

But according to Rav Yirmeya bar Abba, the one who says that the mishna means: If the owner of the field wishes to build beneath it he may build, what difference does it make to the owner of the gutter pipe if the owner of the field builds beneath it? Why would he have the right to prevent it?

The Gemara answers: Here we are dealing with a gutter pipe that is made of stone and is built into the walls of the building, in a case where the owner of the gutter pipe said to the owner of the field: It is not amenable to me that you build beneath my gutter pipe, as my walls will weaken as a result.

Rav Yehuda says that Shmuel says: With regard to a pipe from which water is draining into another’s courtyard and the owner of the roof comes to seal his drainage pipe, the owner of the courtyard can prevent him from doing so. As the owner of the field can say to him: Just as you have acquired my courtyard for the purpose of throwing your water into it, I have also acquired the water of your roof, and since I wish to use it, you may not seal the pipe.

It was stated that there is a dispute with regard to this issue, as Rabbi Oshaya says: The owner of the courtyard can prevent the owner of the roof from sealing the pipe, while Rabbi Hama, Rabbi Oshaya’s father, says: He cannot prevent it. Rabbi Oshaya went and asked Rabbi Hama’s father, Rabbi Bisa. Rabbi Bisa said to them: He can prevent it. Rami bar Hama read the verse about him: “And if a man prevail against him that is alone, two shall withstand him; and a threefold cord is not quickly broken” (Ecclesiastes 4:12), saying that this applies to Rabbi Oshaya, son of Rabbi Hama, son of Rabbi Bisa, three generations of Torah scholars in one family who knew one another and conversed with each other with regard to matters of *halakha*.

The mishna teaches that with regard to an Egyptian ladder, which is small and portable, one has no means to establish an acquired privilege for its use. The Gemara asks: What is an Egyptian ladder like? The members of the school of Rabbi Yannai say: It is any ladder that does not have four rungs.

The mishna teaches that with regard to an Egyptian window, one has no means to establish an acquired privilege for its use. The Gemara asks: What is different with regard to an Egyptian ladder, that the mishna does not explain what it is, and what is different with regard to an Egyptian window, that the mishna does explain what it is? The Gemara answers: It was necessary for the mishna to state the definition of an Egyptian window according to the unattributed opinion of the mishna because it wants to cite the dissenting opinion of Rabbi Yehuda in the latter clause.

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**HALAKHA**

A pipe from which water is draining – (Perek III, Daf 59b) With regard to a pipe from which water from one individual’s roof is draining into another’s courtyard, if the owner of the pipe wished to seal it, the owner of the field may prevent him from doing so, since just as the owner of the pipe has an acquired privilege to drain the water, so does the owner of the courtyard have an acquired privilege to the water that is drained. This is in accordance with the opinion of Rabbi Bisa and his grandson Rabbi Oshaya (Rambam *Sefer Kinyan*, *Hilkhot Shekhenim* 8:5; *Shulhan Arukh*, *Hoshen M Stella* 153a).
Lower than four cubits, etc. – רבי זיאה אמר: לא עליך באחת ע觳יתא: There is a dispute among the early commentators with regard to the explanation of this passage. According to Rabbeinu Hananel, the Rashbam, Rabbi Avraham Av Beit Din, and the Rakav, the passage refers exclusively to a Tyrannus window, which enables one to see out of it with ease due to its large size. Therefore, its addition disturbs the neighbors if it is lower than four cubits from the ground. The neighbor may therefore protest its construction at the outset. As such, if it was constructed, it may be assumed that it was built with the neighbor’s permission.

By contrast, the Ri Migash, Rabbeinu Tam, the Ramah, and Rabbeinu Yona explain that this refers to any window, even an Egyptian window, which, despite its smaller size, still enables one to see out of it. Therefore, its owner can claim an acquired privilege with regard to its use. According to this opinion, an acquired privilege may be established with regard to a Tyrannus window even if it is situated at a height above four cubits.

Conduct characteristic of Sodom – שדום פנימא: A window built more than four cubits from the ground is higher than a person’s height, and one cannot see into a neighbor’s courtyard from it. Therefore, the neighbor’s attempt to prevent its construction is considered to be conduct characteristic of Sodom, as he prevents others from deriving benefit even when he suffers no loss.

With regard to windows, Rabbi Zeira says: If one built a large window at a height that is lower than four cubits from the ground, he has the means to establish an acquired privilege for its use, and therefore, his neighbor can protest the initial construction of the window. If one built a large window at a height that is above four cubits from the ground, he has no means to establish an acquired privilege for its use, and therefore his neighbor cannot protest its construction. And Rabbi Ile’a says: Even if it is built at a height that is above four cubits from the ground, he has no means to establish an acquired privilege for its use, but nevertheless, his neighbor can protest its construction.

The Gemara asks: Shall we say that they disagree with regard to whether there is coercion concerning conduct characteristic of Sodom? Perhaps their dispute is with regard to a circumstance where one will not suffer any loss while another gains some benefit, and the former desires to prevent the latter from gaining the benefit, if the former is coerced into not being evil without reason and consequently allows the latter to derive the benefit, counter to the behavior of the residents of Sodom. One Sage, Rabbi Zeira, holds that there is coercion, and therefore the neighbor who does not suffer any damage from a high window cannot protest, and one Sage, Rabbi Ile’a, holds that there is no coercion.

The Gemara rejects this: No, everyone agrees that there is coercion concerning conduct characteristic of Sodom, and it is different here, as according to the opinion of Rabbi Ile’a this is not conduct characteristic of Sodom, as the neighbor can say to the one who constructed the window: There are times when you place a bench beneath yourself, and you stand and see into my home. Therefore, I can protest. The Gemara relates that there was a certain individual who came before Rabbi Ami and presented this precise scenario. Rabbi Ami sent him before Rabbi Abba bar Memel to ask for a ruling. Rabbi Abba bar Memel said to him: Act in accordance with the opinion of Rabbi Ile’a.

Since the mishna cited a dispute with regard to the conditions under which an owner has acquired the privilege to use a window, the Gemara teaches that Shmuel says: And if a window was built for the purpose of enabling light to enter a dark room, then the owner of the window has the means to establish an acquired privilege for its use, whatever size it is, not only if it is a large window. And if the neighbor did not protest its construction, he cannot subsequently force the owner of the window to seal it.

MISHNA

The Rema, citing the Rashba, writes that the determination as to whether a window was built to enable light to enter his house is dependent upon the discretion of the judges (Rambam Sefer Kinyan, Hilkhot Shekhenim 7:6; Shulhan Arukh, Hoshen Mishpat 154:10).

HALAKHA

Even above four cubits – אֲסֵר אָמּוֹת מֵאַרְבַּע אַמּוֹת: Even above four cubits, even an Egyptian window, which, despite its smaller size, still enables one to see out of it. Therefore, its owner can claim an acquired privilege with regard to its use, and the owner of the courtyard may build there, even if it is very small, as long as the neighbor does not object.

A projection…as far as a handbreadth – אִדָּא תַחְתָּא שָׁה: If one built a projection the width of at least one handbreadth that protrudes into the airspace of another’s courtyard, he has established an acquired right to use of the projection (see Sm). And the owner of the courtyard may not build a structure that renders the projection useless. If the projection does not measure one handbreadth, its owner has not established an acquired right to its use, and the owner of the courtyard may build there, even if it renders the projection useless (Rambam Sefer Kinyan, Hilkhot Shekhenim 8:2; Shulhan Arukh, Hoshen Mishpat 153:3).
Established an acquired privilege one handbreadth wide by four handbreadths long — שְׁמֵיהוּ הֶזֵּי: שְׁמֵיהוּ הֶזֵּי. The Rashbam and others explain that the length refers to the distance that the projection extends into the airspace of the courtyard, while the width refers to the distance that it extends along the wall. According to this explanation, the meaning of the Gemara is as follows: The fact that the owner of the courtyard has granted the owner of the projection the acquired privilege to allow his projection to protrude four handbreadths into the courtyard indicates that he has given him the right to utilize a significant area of the courtyard, i.e., an area of four by four.

Rabbeinu Gershon Meor HaGola explains these terms in a different manner: If the owner of the projection has an acquired privilege to use a projection that protrudes one handbreadth into the airspace of the courtyard, and it runs a length of four handbreadths along the wall, he may extend the projection of one handbreadth wide along the full length of the wall. This appears to be the understanding in the Jerusalem Talmud as well, although the language there is unclear. Some commentators reject this understanding entirely, asking why there should be a right to extend the projection at all. They explain that the meaning of the Gemara is that the owner of the projection can prevent the owner of the courtyard from building within four handbreadths in any direction of the projection (Rif; Ritva). See the Rambam for another explanation.

There may be times when you are frightened — Two amora'im taught that the owner of the courtyard truly suspects that the owner of the roof can look into the yard at any time, and if caught, has the excuse that he turned to look because he was frightened (Rashbam).

GEMARA Rabbi Asi says that Rabbi Mani says, and some say that Rabbi Ya'akov says that Rabbi Mani says: If one established an acquired privilege with regard to a projection of a handbreadth, he has established an acquired privilege with regard to four handbreadths. If one established an acquired privilege with regard to one handbreadth, the owner of the courtyard cannot protest its construction. If it protrudes less than a handbreadth, the owner of the house has no means to establish an acquired privilege for its use, and the owner of the courtyard cannot protest its construction.

The mishna teaches that if the projection protrudes less than a handbreadth, the owner of the house has no means to establish an acquired privilege for its use, and the owner of the courtyard cannot protest. Rav Huna says: They taught only that the owner of the roof cannot protest the actions of the owner of the courtyard, i.e., he may not demand that the owner of the courtyard refrain from construction that interferes with the former’s use of the projection. But the owner of the courtyard can protest the actions of the owner of the roof, and demand that the latter not build a projection of any size, even less than a handbreadth. He can also demand that the owner of the roof not use an existing projection, since it leads to damage caused by sight. And Rav Yehuda says: Even the owner of the courtyard cannot protest the actions of the owner of the roof.

The Gemara suggests: Shall we say that they disagree with regard to damage caused by sight? As the Sage, Rav Huna, holds that it is considered to be damage, and therefore the owner of the courtyard can protest, since the owner of the roof has the means to see into the other’s courtyard when using this projection, and one Sage, Rav Yehuda, holds that it is not considered to be damage.

The Gemara rejects this: No, everyone agrees that damage caused by sight is considered to be damage. And Rav Yehuda holds it is different here, as the owner of the roof can say to the owner of the courtyard: The projection is not suitable for use, since it is too small for me to stand upon and look into the courtyard. For what purpose is it suitable? To hang items on it, and nothing more. I will turn my face away and hang items on it without looking into your courtyard.

And the other amora, Rav Huna, holds that the owner of the courtyard can say to the owner of the roof: There may be times when you are frightened due to the height of the projection, and you will look into my courtyard while using it.

HALAKHA

Established an acquired privilege one handbreadth wide by four handbreadths long — חֲזִי בְּאָמִים שְׁבֵּנָא: חֲזִי בְּאָמִים שְׁבֵּנָא. If the owner of a roof added a projection that protrudes into another’s courtyard to a depth of one handbreadth and a width of four handbreadths, or four handbreadths deep and one handbreadth wide (Tur), and the owner of the courtyard did not protest, the owner of the roof has an acquired privilege to the area of the projection and may extend the projection to four by four. If the width of the projection is greater than four handbreadths, he may still extend it to a depth of only four handbreadths (Rema, citing Tur and Rif). Additionally, due to his acquired privilege to the area of the projection, the owner of the roof may prevent the owner of the courtyard from building beneath the projection, unless the latter leaves a space of ten handbreadths beneath it (Rambam, Sefer Kinyan, Hilkhot Shekhenim 8:3; Shulhan Arukh, Hoshen Mitzvot 153:4).

But the owner of the courtyard — אִם כְּאָם רַבִּי יִשָּׁעַל: The owner of a courtyard can prevent the owner of a wall from building a projection that protrudes into the property of the former. This is in accordance with the opinion of Rav Huna (Rambam, Sefer Kinyan, Hilkhot Shekhenim 8:3; Shulhan Arukh, Hoshen Mitzvot 153:3).
A person may not open his windows into a courtyard belonging to partners – אֵין בְּשַׁבֵּעַ תַּחְתָּן לָא דְּאָמַר לַחֲצַר הֲוָה נְךָּ חַלִּלוֹתֵיכָּי. It is prohibited for one to open a window into another’s courtyard. Similarly, it is prohibited for him to open a window into a courtyard that he owns with others without the approval of the other partners. If he did open a window and the other partners protest, he must seal it. This is in accordance with the opinion of Rabbi Hiyya that will be cited at the end of the daf (Rambam Sefer Kinyan, Hilkhos Shekhenim 5:6; Shu’han Arukh, Hoshen Mishpat 154:3).

Purchased a house in another courtyard – בְּחָצֵר אַחֶרֶת. If one resident of a courtyard purchases a house in an adjacent courtyard, he may not open an entrance from it into the co-owned courtyard. Additionally, if one built a loft above his house he may not open an entrance from it into the courtyard. According to a responsion of the Rif, while he may not open an entrance from the new structure into the courtyard, he may open an entrance from it into his own house, on the condition that he close off the entrance from the new house into the adjacent courtyard. Some hold that it is prohibited for him to open an entrance even into his existing house (Rambam Sefer Kinyan, Hilkhos Shekhenim 5:3; Shu’han Arukh, Hoshen Mishpat 154:3, and in the comment of Rema).

The Rashbam offers two explanations of the meaning of this phrase. According to the Rashbam, this mishna teaches that one may not extend a projection of one handbreadth wide along the courtyard, since despite the fact that he is not adding an entrance wall, he may extend the projection of one handbreadth wide along the courtyard. As the following mishna teaches that one may not add to the number of residents in the courtyard. If one built a loft on top of his house, he may not open it into a courtyard belonging to partners. If he built a loft on top of his house, and open it into his house, not directly into the courtyard.

NOTE

Purchased a house in another courtyard – בְּחָצֵר אַחֶרֶת. The Rida and Rabbenu Yona note that it would be superfluous for the mishna to state this ruling. As the following mishna teaches that one may not add an entrance to a house that already opens into this courtyard, all the more so one may not open an entrance to a house that does not open into the courtyard at all. They explain that the mishna means that one may not create an opening that will allow people to pass from the new house that is not in the courtyard into his old house that is in the courtyard, since despite the fact that he is not adding an entrance into the courtyard, he is still adding residents, and thereby increasing traffic in the courtyard.

Built a loft, etc. – בְּחָצֵר בַּיִת בְּחָצֵר אַחֶרֶת. According to the Rashbam, this halakha is similar to the previous one: Although the loft is built above a house that is in the courtyard, the owner may not construct an entrance from it into the courtyard. Other early commentaries explain that the mishna means this loft may not open into the house, since this would add to the number of residents in the courtyard. The Ra’avad explains, as does the Meiri, that this halakha is a continuation of the previous one: One who purchased a house in another courtyard and added a loft to it may not build an entrance from it into the courtyard belonging to partners, since this might lead residents of one courtyard to walk into the other courtyard. Although one could not walk directly through the house into the courtyard belonging to partners, and it is highly inconvenient to climb up to the loft and then descend to the other courtyard, one may still not open this entrance.

Now I will need to conceal myself from you even in the house – וְנִי מְסַסְתָּא יְגַע וּסְתוֹם קַנּוָה. The Rashbam offers two explanations of the meaning of this phrase. According to the first explanation it means: I must conceal myself even if you are in my house. In other words, the neighbor’s complaint is that previously he could be seen only if he was in the courtyard. Even if the owner of the window stood in his doorway, he still could not see into the neighbor’s house, since, as the mishna (60a) teaches, one may not build an entrance opposite another entrance. Now this window enables its owner to see into his neighbor’s home. According to the second explanation it means: Even when you are in your house, I will be required to conceal myself in the courtyard. That is, until now the neighbor had to conduct himself modestly only when both parties were in the courtyard. Now that a window has been built, he does not know when its owner will look through it and he must therefore conduct himself modestly even when the neighbor is in his house. Rabbi Gershon Meor HaGola and Tosafot also interpret the phrase in accordance with this second explanation.

MISHNA

A person may not open his windows, i.e., build an opening in a wall to use as a window, into a courtyard belonging to partners, i.e., a courtyard in which he is a partner. If he purchased a house in another, adjacent courtyard, he may not open the house into a courtyard belonging to partners. If he built a loft on top of his house, he may not open it into a courtyard belonging to partners. If he built a loft on top of his house, and open it into his house, not directly into the courtyard.

GEMARA

With regard to the mishna’s ruling that one may not open a window into a courtyard that he co-owns, the Gemara asks: Why did the mishna specifically render it prohibited for one to open a window into a courtyard belonging to partners? One may not open a window into another’s courtyard either, as it will lead to damage caused by sight.

The Gemara replies that the mishna is speaking utilizing the style of: It is not necessary, as follows: It is not necessary to say that it is not permitted for one to open a window into another’s courtyard, where he is certainly not allowed to look; but where one wants to open a window into a courtyard belonging to partners, where the owner of the window can say to the other partner: Ultimately, since you need to conceal yourself from me and conduct yourself modestly in the courtyard where I too am a partner and have the right to be present, why does it bother you if I open a window into there? Therefore, the mishna teaches us that the partner may say to him: Until now I needed to conceal myself from you only when we were both in the courtyard. Now I will need to conceal myself from you even in the house, as you can see into my house from your window.

The Sages taught in a baraita: There was an incident involving a person who opened his windows into a courtyard belonging to partners and came before Rabbi Yishmael bar Rabbi Yosei, who said to him: You have established an acquired privilege, my son; you have established an acquired privilege, and you may not be prevented from using the windows. And he came before Rabbi Hiyya, who said to him: You tired and opened the windows; you must toil and seal them, as the partners have the right to prevent you from using these windows.

Rav Nahman said:
And to seal, i.e., if one sealed another’s window in his presence, there is an acquired privilege established immediately to keep the window sealed, as it is not common behavior for a person to have his source of light sealed in his presence and remain silent. The fact that he did not immediately protest indicates that the one who sealed the window had the legal right to do so unilaterally, or that the owner of the window agreed.

§ The mishna teaches that if one purchased a house in another, adjacent courtyard, he may not open the house into a courtyard belonging to partners. The Gemara explains: What is the reason for this? Because by adding residents to the courtyard it increases their traffic, and the residents of the courtyard do not wish to be disturbed by additional people passing through.

The Gemara questions this. But say the last clause of the mishna: Rather, if he desired to build a loft, he may build a room within his house, or he may build a loft above his house, and have it open into his house, not directly into the courtyard. But if he does so, isn’t there still a concern that it increases the traffic? Rav Huna said as an explanation: What does the mishna mean when it says that he may build a room? It means that he may divide an existing room in two. And what is the loft to which the mishna is referring? It is an internal story created by dividing an existing space into two stories.

MISHNA A person may not open an entrance opposite another entrance or a window opposite another window toward a courtyard belonging to partners, so as to ensure that the residents will enjoy a measure of privacy. If there was a small entrance he may not enlarge it. If there was one entrance he may not fashion it into two. But one may open an entrance opposite another entrance or a window opposite another window toward the public domain. Similarly, if there was a small entrance he may enlarge it, and if there was one entrance he may fashion it into two.

GEMARA The Gemara asks: From where are these matters, i.e., that one may not open an entrance opposite another entrance, or a window opposite another window, derived? Rabbi Yoḥanan says that the verse states: “And Balaam lifted up his eyes, and he saw Israel dwelling tribe by tribe; and the spirit of God came upon him” (Numbers 24:3). The Gemara explains: What was it that Balaam saw that so inspired him? He saw that the entrances of their tents were not aligned with each other, ensuring that each family enjoyed a measure of privacy. And he said: If this is the case, these people are worthy of having the Divine Presence rest on them.

And to seal — בֵּית דִּוּר. This refers to a case where a neighbor sealed an existing window, even one that had been in use for three years, whether by dismantling the frame or by building some obstruction (Rashbam).

There is an acquired privilege established immediately — תְּחֶנּוּ וְתַּח. That is, the neighbors have an acquired privilege to keep this window sealed (Rashbam). The Ramah notes that this applies only if the window was sealed in the presence of its owner. Otherwise, it must be ascertained that the window has been sealed for a three-year period.

There is a dispute among the early commentaries as to whether the acquired privilege to have the window stay sealed must be accompanied by a claim, e.g., that the right to have the window was sold. According to a responsa of the Rashba, this acquired privilege does not take effect unless it is accompanied by a claim.

What does it mean that he may build a room, etc. — וּמוֹרֵד יֵשָּׂא. It is prohibited for him to add a room, but it is permitted for him to subdivide an existing room, even if this results in more people moving into the house (Rashbam). Similarly, Rabbeinu Gershon Meor HaGola explains that since he did not build an addition onto the building to enable more people to move in, it is analogous to a case where the family of a home-owner grows, and therefore the other residents of the courtyard cannot protest. According to these explanations, it follows that one cannot add to the building at all. See also Rabbeinu Yona, citing Rabbi Avraham Av BeDin.

The Ramah writes, as does Rabbeinu Yona, that these subdivisions are permitted because they are meant for storage, not residence. According to their opinion, if the original room is large enough to accommodate the residents it is prohibited to divide the room. Others, citing the Rif, write that the primary consideration is that the new room or loft will have no dedicated entrance. This indicates that it was not intended to be residential, as one does not want the new residents to constantly walk through his home (Rambam, Rashba, citing Rif; Rambam, Ran).

The Meiri, citing the Ra’avad, writes that this refers to a house that opens into an adjacent courtyard. Since he is making a division within the house, there is no cause for concern that residents of that courtyard will pass through the house into the other courtyard. He adds that while there is a general assumption that residents are particular not to have increased traffic in their courtyard, there are instances when they actually desire it. Therefore, judges must rule based on the specific circumstances of each case.

HALAKHA

And to seal there is an acquired privilege established immediately — בֵּית דִּוּר. If one had an acquired privilege to use a window and another individual built in front of the window or next to it, or closed off the window entirely, and the owner of the window did not protest, the latter may not appeal to have the structure removed or the window reopened. The Rema, citing the Rashba, writes that if the owner of the window has proof of ownership, such as a document, the one who sealed the window must present a claim justifying his action, e.g., that the window had been sold to him, or that its owner had relinquished ownership, and then the sealing of the window is proof of the claim.

If the owner of the window has no proof beyond his acquired privilege, the one who sealed it is not required to present a claim, as he can claim that the acquired privilege was established mistakenly. If the owner of the window sealed it himself, he has not waived his rights unless he dismantles its frame (Rambam Sefer Kinyan, Hilkhot Shekhenim 7:7; Shulhan Arukh, Hoshen Mishpat 154:12).

What does it mean that he may build a room, etc. — וּמוֹרֵד יֵשָּׂא. It is permitted for one to build a second story or add a room to his house when they open into the house; all the more so may he divide one room into two or build a loft within the house, in accordance with the opinion of Rav Huna (Rambam Sefer Kinyan, Hilkhot Shekhenim 5:8; Shulhan Arukh, Hoshen Mishpat 154:1).

An entrance opposite another entrance — תְּחֶנּוּ וְתַּח. It is prohibited for one partner in a courtyard to open an entrance facing another entrance, or a window facing another window. Rather, the entrance or window should be opened some distance to the side. With regard to a house facing the public domain, since passersby can see into the windows and entrances, it is permitted for one to open an entrance opposite another entrance or a window opposite another window, as long as it is not higher than four cubits from the ground. Nevertheless, one should not build the entrance to a store opposite the entrance to or window of a private house; since while other people are worthy of having the Divine Presence rest on them, it is not common behavior for a person to have his source of light sealed in his presence and remain silent.
I can conceal myself from you with one entrance – if you open the entrance. He could conceal himself when the entrance was closed or when he was not opposite the entrance. When there are two entrances, one of which generally remains open, he can be seen from different angles (Rashbam).

The courtly retains its presumptive status – לֵיהּ אֲמַר לֵיהּ רָבָא, מָצֵי אָמַר לֵיהּ הּ דְּאָמַר לֵיהּ. A claim is advanced on behalf of the purchaser that it can be assumed that the prior owner drew back into his property by moving one of his walls, and these projections were built legally.

HALAKHA One may not form an empty space – לֵיהּ אֲמַר לֵיהּ רָבָא, מָצֵי אָמַר לֵיהּ הּ דְּאָמַר לֵיהּ. A claim is advanced on behalf of the purchaser that it can be assumed that the prior owner drew back into his property by moving one of his walls, and these projections were built legally.

One may not extend projections – וַהֲרֵי זוֹ לְפָנָיָּם אֲמַרְלָא: One may not extend projections or balconies into the public domain, unless they are mere extensions of the property by moving his wall, and then he may build the projection to the end of his property line. (Rambam Sefer Nezikin, Hilkhot Nizkei Mamon 13:25; Shulhan Arukh, Hoshen Mishpat 417:2).

Purchased a courtyard, etc. – בַּר אַרְבָּעֵי לָא לִישַׁוְּיֵיהּ תְּרֵי בְּנֵי תַּרְתֵּי: One who purchased a courtyard that had projections or balconies protruding from its outer wall has an acquired privilege to maintain them (Rambam Sefer Nezikin, Hilkhot Nizkei Mamon 13:24; Shulhan Arukh, Hoshen Mishpat 417:2).

Mishna One may not form an empty space beneath the public domain by digging pits, ditches, or caves. Rabbi Eliezer deems it permitted for one to do so, provided that he places a covering strong enough that a wagon laden with stones would be able to tread on it without breaking it, therefore ensuring that the empty space will not cause any damage to those in the public domain. One may not extend projections or balconies into the public domain. Rather, if he desired to build one he may draw back into his property by moving his wall, and extend the projection to the end of his property line. If one purchased a courtyard in which there are projections and balconies extending into the public domain, this courtly retains its presumptive status, i.e., the owner has the acquired privilege of their use, and the court does not demand their removal.

Gemara The Gemara asks: Rabbi Eliezer’s opinion that if the covering of the space is strong enough to support a wagon laden with stones then it is permitted to dig out the empty space, is eminently reasonable; but what do the Rabbis hold? The Gemara answers: There are times when the cover erodes over time, and he is not aware, thereby potentially causing damage to those in the public domain.

The mishna teaches that one may not extend projections or balconies into the public domain. The Gemara relates: Rabbi Ami had a projection that protruded into an alleyway, and a certain man also had a projection that protruded into the public domain, and the general public was preventing the man from leaving it there, as it interfered with traffic. He came before Rabbi Ami, who said to him: Go sever your projection.
The man said to him: But the Master also has a similar projection. Rabbi Ami said to him: It is different, as mine protrudes into an alleyway, where a limited number of people live, and the residents of the alleyway waive their right to protest to me. Yours protrudes into the public domain, which does not belong to any specific individuals. Who can waive their right to protest to you?

The Gemara relates: Rabbi Yannai had a tree that was leaning into the public domain. There was a certain man who also had a tree that was leaning into the public domain, and the general public was preventing him from leaving it there, insisting he cut it down, as required by the mishna (17b). He came before Rabbi Yannai, who said to him:

Go now, and come tomorrow. At night, Rabbi Yannai sent and had someone cut down that tree that belonged to him.

The next day, that man came before Rabbi Yannai, who said to him: Go, cut down your tree. The man said to him: But the Master also has a similar projection. The Gemara replies: At the outset, he held that the general public is amenable to having the tree there, as they sit in its shade. Once he saw that they were preventing someone else who owned a tree from keeping his, he understood that it was only out of respect that they did not object to his tree being there. Therefore sent someone to cut it down. The Gemara asks: But why did he tell the man to return the next day? Let him say to him: Go cut down your tree, and then I will cut mine down. The Gemara answers: Because of the statement of Reish Lakish, who said: The verse states: “Gather yourselves together and gather [hitkosheshu vakoshu]” (Zephaniah 2:1), and this can be explained homiletically to mean: Adorn [keshet] yourself and afterward adorn others, i.e., act properly before requiring others to do so.

The mishna teaches that one may not extend projections or balconies into the public domain. Rather, if he desired to build one he may draw back into his property by moving his wall, and extend the projection to the end of his property line. A dilemma was raised before the Sages: If one drew back into his property but did not extend the projection at that time, what is the halakha concerning whether he may return and extend it at a later date? Rabbi Yoḥanan says: If one drew back into his property, he may extend it even later, and Reish Lakish says: If one drew back into his property but did not build the projection at that time, he may not extend it later.

The Gemara presents an alternative version of the dispute: Rabbi Ya’akov said to Rabbi Yirmeya bar Tablisha: I will explain the matter to you. To later extend a projection, everyone agrees that he may extend it, since he is adding within his own property. Where they disagree is with regard to whether he may return the walls to their prior place. And with regard to this disagreement the opposite was stated: Rabbi Yoḥanan says he may not return the walls to their prior place, and Reish Lakish says he may return them.
HALAKHA

If the wall fell he may return and build it – (Kidushin 417:3).

Paint [mefayyehin] – (Tosefta 5:12; Shulhan Arukh, Orach Hayyim 560:1).

One may not plaster, etc. – (Oraĥ Ĥayyim 560:1).

If one purchased a courtyard that was plastered – (Rambam Sefer Nezikin, Hilkhot Terumah 7:1).

If one purchased a courtyard that was plastered and balconies and they fell, he may rebuild it, in accordance with the opinion of Rav Huna (Rambam Sefer Nezikin, Hilkhot Terumah 7:1; Shulhan Arukh, Orach Hayyim 560:1).

One may not plaster, etc. – (Oraĥ Ĥayyim 560:1).

Paint – (Oraĥ Ĥayyim 560:1).

White cement or rough. White cement is therefore coarse or hardened plaster.

First fruits – (Deuteronomy 26:1–11) and is discussed in great detail in tractate Bikkurim, in both the Mishna and the Jerusalem Talmud. This mitza involves the bringing of a small amount of first fruits, one-sixtieth of the harvest. The first fruits must be brought from the seven types of fruit for which Eretz Yisrael is praised, all the seven types of fruit belong to the priest.

The Temple is stated in the Torah (Deuteronomy 26:1–11) and is discussed in great detail in tractate Bikkurim, in both the Mishna and the Jerusalem Talmud. This mitza involves the bringing of a small amount of first fruits, one-sixtieth of the harvest. The first fruits must be brought from the seven types of fruit for which Eretz Yisrael is praised, all the seven types of fruit belong to the priest.

The Gemara discusses related matters. The Sages taught in a baraita (Tosefta, Sota 15:9): A person may not plaster his house with plaster, but if he mixed sand or straw into the plaster, which dulls its luster, it is permitted. Rabbi Yehuda says: If he mixed sand into it, it is white cement [terakesis], which is of a higher quality than standard plaster, and it is prohibited, but if he mixed in straw, it is permitted.

The Gemara raises an objection based on that which is taught in a baraita (Tosefta 9:17): One may not plaster, one may not tile, and one may not paint [mefayyehin] images in the present, as a sign of mourning for the destruction of the Temple. But if one purchased a courtyard that was plastered, tiled, or painted with images, this courtyard retains its presumptive status, allowing the owner to use the projections. Rav Huna says: If the wall of the courtyard fell, he may return and build it as it was, including the projections or balconies.

The Gemara answers: A case of forbidden matters is different, i.e., in the case of the baraita, he may not rebuild it because it is prohibited for him to do so. In this mishna, the issue is encroachment upon the rights of others, and once he had an acquired privilege to use the projections or balconies, he maintains that right.

S

With regard to the ruling of the above-quoted baraita, the Sages taught (Tosefta, Sota 15:9): A person may not plaster his house with plaster, but if he mixed sand or straw into the plaster, which dulls its luster, it is permitted. Rabbi Yehuda says: If he mixed sand into it, it is white cement [terakesis], which is of a higher quality than standard plaster, and it is prohibited, but if he mixed in straw, it is permitted.

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Having mentioned the prohibition against plastering, which is a sign of mourning over the destruction of the Temple, the Gemara discusses related matters. The Sages taught in a baraita (Tosefta, Sota 15:11): When the Temple was destroyed a second time, there was an increase in the number of ascetics among the Jews, whose practice was to not eat meat and to not drink wine. Rabbi Yehoshua joined them to discuss their practice. He said to them: My children, for what reason do you not eat meat and do you not drink wine? They said to him: Shall we eat meat, from which offerings are sacrificed upon the altar, and now the altar has ceased to exist? Shall we drink wine, which is poured as a libation upon the altar, and now the altar has ceased to exist?

Rabbi Yehoshua said to them: If so, we will not eat bread either, since the meal-offerings that were offered upon the altar have ceased. They replied: You are correct. It is possible to subsist with produce. He said to them: We will not eat produce either, since the bringing of the first fruits have ceased. They replied: You are correct. We will no longer eat the produce of the seven species from which the first fruits were brought, as it is possible to subsist with other produce. He said to them: If so, we will not drink water, since the water libation has ceased. They were silent, as they realized that they could not survive without water.

NOTES

Paint [mefayyehin] – (Tosefta 5:12; Shulhan Arukh, Orach Hayyim 560:1).

White cement or rough. White cement is therefore coarse or hardened plaster.

First fruits – (Deuteronomy 26:1–11) and is discussed in great detail in tractate Bikkurim, in both the Mishna and the Jerusalem Talmud. This mitza involves the bringing of a small amount of first fruits, one-sixtieth of the harvest. The first fruits must be brought from the seven types of fruit for which Eretz Yisrael is praised, all the seven types of fruit belong to the priest.

BACKGROUND

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Rabbi Yehoshua said to them: If so, we will not eat bread either, since the meal-offerings that were offered upon the altar have ceased. They replied: You are correct. It is possible to subsist with produce. He said to them: We will not eat produce either, since the bringing of the first fruits have ceased. They replied: You are correct. We will no longer eat the produce of the seven species from which the first fruits were brought, as it is possible to subsist with other produce. He said to them: If so, we will not drink water, since the water libation has ceased. They were silent, as they realized that they could not survive without water.
Rabbi Yehoshua said to them: My children, come, and I will tell you how we should act. To not mourn at all is impossible, as the decree was already issued and the Temple has been destroyed. But to mourn excessively as you are doing is also impossible, as the Sages do not issue a decree upon the public unless a majority of the public is able to abide by it, as it is written: “You are cursed with the curse, yet you rob Me, even this whole nation” (Malachi 3:9), indicating that the prophet rebukes the people for neglecting observances only if they were accepted by the whole nation.

Rabbi Yehoshua continues: Rather, this is what the Sages said: A person may plaster his house with plaster, but he must leave over a small amount in it without plaster to remember the destruction of the Temple. The Gemara interjects: And how much is a small amount? Rav Yosef said: One cubit by one cubit. Rav Hisda said: This should be opposite the entrance, so that it is visible to all.

Rabbi Yehoshua continues: The Sages said that a person may prepare all that he needs for a meal, but he must leave out a small item to remember the destruction of the Temple. The Gemara interjects: What is this small item? Rav Pappa said: Something akin to small, fried fish.

Rabbi Yehoshua continues: The Sages said that a woman may engage in all of her cosmetic treatments, but she must leave out a small item to remember the destruction of the Temple. The Gemara interjects: What is the meaning of: Above my highest joy? Rav Yitzĥak says: This is referring to the burnt ashes that are customarily placed on the head of bridegrooms at the time of their wedding celebrations, to remember the destruction of the Temple. Rav Pappa said to Abaye: Where are they placed? Abaye replied: On the place where phylacteries are placed, as it is stated: “To appoint to them that mourn in Zion, to give to them a garland in place of ashes” (Isaiah 61:3). Since phylacteries are referred to as a garland (see Ezekiel 24:17), it may be inferred from this verse that the ashes were placed in the same place as the phylacteries.

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**Notes**

**Small fried fish** – אברות ברויא: The wording of the Shulhan Arukh when quoting this halakha indicates that the Gemara means: Even a type of food that is not very significant, and one need not eliminate specifically a significant food from his meal. The Meiri writes that the eliminated dish must be one whose absence is noteworthy.

**HALAKHA**

**But must leave out a small item** – אברות ברויא ממקם: In commemoration of the destruction of the Temple, it was instituted that when one prepares a meal including guests he should leave out a small item, and allow that place on the table to remain without the appropriate dish (Rambam Sefer Zemanim, Hilkhos Taanit 5:13; Shulhan Arukh, Orach Hayim 560:2).

A woman may engage in all of her cosmetic treatments, etc. – אברות ברויא: In commemoration of the destruction of the Temple, a woman who engages in cosmetic treatments should not treat some small area (Rambam Sefer Zemanim, Hilkhos Taanit 5:13; Shulhan Arukh, Orach Hayim 560:2).

**Burnt ashes** – כל יצחי: At a wedding, the bridegroom places burnt ashes on his head in the place where phylacteries are worn, in commemoration of the destruction of the Temple. For the same reason, along with other mourning practices a glass is broken at the wedding ceremony (Rambam Sefer Zemanim, Hilkhos Taanit 5:13; Shulhan Arukh, Even HaEzer 653, and in the comment of Rema). And anyone who mourns – אברות ברויא: Anyone who mourns over the destruction of Jerusalem will merit to see its joy, but one who eats and drinks on the Ninth of Av will not merit to see its joy (Shulhan Arukh, Orach Hayim 554:25).
HALAKHA

Do not issue a decree upon the public unless... (אֵין גּוֹזְרִין גְּזֵרָה עַל עַצְמֵנוּ שֶׁלֹּא לִישָּׂא אִשָּׁה קְשָׁם מִן הַהַיָּיוֹת הַכְּשִׁימוֹת מִן הַתוֹרָה וּמִצְוָתָה), similar to the contemporary custom... (Shulḥan Arukh, Hilkhot Nizkei Mamon 9:11).

The majority of the commentaries explain that this refers to circumcision, which takes place on the eighth day, i.e., one week, after the birth of a son. Some explain that it refers to a festive meal that was held at the end of the seventh day after the birth, which is similar to the contemporary custom to hold a vigil with a meal and Torah study on the night before a child's circumcision.

The first week of a son... (Sefer Nezikin 13:24; Hilkhot Ta'anit 5:13; Hilkhot Nizkei Mamon 5:13). The majority of the commentaries explain that this refers to circumcision, which occurs on the eighth day after the birth. Some explain that it refers to the celebration of a firstborn son, which is mentioned in several places in the Torah (Exodus 13:2, Numbers 3:11–13, 34:4–5). Following the plague of the firstborn, the Torah proclaims that a woman's firstborn son is holy to God. The boy's father must therefore redeem the son from a priest for a fixed sum of five coins. One whose father is a Levite or a priest, or one whose mother is the daughter of a Levite or a priest, is not subject to this mitzva. One who is born by cesarean section after his mother had suffered a miscarriage is also not subject to this mitzva.

Then Yishmael ben Elisha advocate the nullification of the mitzva by Torah law? Some commentators explain that this refers to the redemption of the firstborn, while others explain that it refers to a celebration held on the day of the baby's birth (Arba'ah Minim), similar to the contemporary custom to hold a small celebration on the first Shabbat after the birth.

And it will turn out that the descendants of Abraham our forefather will cease... (Torat Hayyim). Tosafot ask: Even if fulfilling the mitzva of circumcision is not possible, how can Rabbi Yishmael ben Elisha advocate the nullification of the mitzva by Torah law by instructing people to be passive? Some explain that this is based on the fact that the Sages have the authority to nullify a mitzva by Torah law by instructing people to be passive (Torat Hayyim). Tosafot answer that it is possible to tell people to have only one son and one daughter, which fulfills the mitzva by Torah law but would eventually lead to a dwindling of the population.

And from the day that the wicked kingdom, i.e., Rome, spread, who decree evil and harsh decrees upon us, and nullify Torah study and the performance of mitzvot for us, and do not allow us to enter the celebration of the first week of a son, i.e., circumcision, and some say: To enter the celebration of the salvation of a firstborn son; rather by right we should each decree upon ourselves not to marry a woman and not to produce offspring, and it will turn out that the descendants of Abraham our forefather will cease to exist on their own, rather than being forced into a situation where there are sons who are not circumcised.

But concerning a situation such as this, the following principle is applied: Leave the Jews alone and do not impose decrees by which they cannot abide. It is better that they be unwitting sinners, who do not know that what they are doing is improper considering the circumstances, and not be intentional wrongdoers, who marry and procreate despite knowing that they should not.

NOTES

To the salvation of a firstborn son... (Sefer Shoftim 13:2). Some commentators explain that this refers to the redemption of the firstborn, while others explain that it refers to a celebration held on the day of the baby's birth (Arba'ah Minim), similar to the contemporary custom to hold a small celebration on the first Shabbat after the birth. And it will turn out that the descendants of Abraham our forefather will cease... (Tosefta, Sota 15:10) that Rabbi Yishmael ben Elisha said: From the day that the Temple was destroyed, by right, we should decree upon ourselves not to eat meat and not to drink wine, but the Sages do not issue a decree upon the public unless a majority of the public is able to abide by it.

It is taught in a baraita... that Rabbi Yishmael ben Elisha said: From the day that the Temple was destroyed, by right, we should decree upon ourselves not to eat meat and not to drink wine, but the Sages do not issue a decree upon the public unless a majority of the public is able to abide by it.
This chapter dealt both with establishing the presumption of ownership by means of profiting from a property and the act of acquisition of real estate, clarifying many details of the pertinent halakhot. It clarified that in and of itself, working on and profiting from a property, thereby establishing the presumption of ownership, does not render one an owner, but rather can be used to prove ownership in a case where one is not expected to retain other evidence such as documentation. For this reason, possession that is not accompanied by a claim as to how one became the owner is disregarded.

The presumption of ownership is established by means of profiting from a property in the normal manner, as an owner would. Absent this, the lack of protest on the part of the prior owner is inconclusive. In addition, there must be no special relationship between the possessor and the prior owner of the property that would serve to explain the prior owner's failure to protest. Examples of such relationships include sharecropping arrangements and various familial bonds.

The requisite duration for presumptive ownership varies according to the type of property. Many types of fields require a standard three-year period. Orchards require harvesting the fruit three times. Movable property is generally considered as belonging to whoever is in possession of it at any given time, with the exception of livestock and slaves, as they can move from place to place of their own volition.

In order to challenge the ownership of one in possession of his property, one must present in court proof of prior ownership. If he is unable to do so, for example due to constraints of distance, he may lodge a protest in the presence of two witnesses. The owner is required to lodge a protest during each three-year period in order to prevent the possessor from establishing the presumption of ownership. If the owner is able to demonstrate that there were extenuating circumstances preventing him from knowing that another was in possession of his property, a protest may be lodged even after three years have passed.

One can also establish an acquired privilege with respect to usage rights of the property of another. These acquired privileges can be established in a much briefer period of time.

The means by which one can acquire real estate through an act of acquisition was also clarified in this chapter. An act of acquisition is accomplished by causing a change in the property, for example, by improving it or by altering its boundaries and entrances. Using the property without transforming it is not considered to be an act of acquisition.

In the process of clarifying these central issues, the question of how a court should rule in a case of uncertainty was also touched upon. Various means of resolving uncertainty were mentioned, among them assignation of the burden of proof, judicial discretion, and various forms of compromise.
This chapter discusses the interpretation of sales agreements and contracts relating to various types of landed properties. When a buyer and seller draw up a detailed agreement defining all the particulars of a transaction, it is clear what exactly is being sold and what is not. Since this is a monetary matter, the parties are entitled to introduce stipulations and conditions as they wish.

The chapter examines sales that are formulated in general terms, and it discusses how to interpret the wording of general sales agreements for the sale of different types of real estate.

As the Gemara phrases it, the central question is as follows: When one sells property, does he sell it generously or sparingly? In other words, should a sales agreement be interpreted in a way that expands the rights of the buyer or in a manner that restricts them as much as possible? This issue gives rise to secondary questions, e.g., whether there is a difference with regard to this matter in the case of a sale and in the case of a gift, and whether land that was consecrated using general wording is treated in yet another manner.

Many questions arise with regard to the details of these issues. Some of the questions relate to the limits of what is being sold. When one sells a house, does the sale include rooms that open into the house? When one sells a field but fails to define its boundaries in their entirety, what is included in the sale? What rights, if any, does the buyer have to the land underneath the property he purchases or the airspace above it?

Another topic of discussion relates to the items found in the property being sold. When one sells a house, are all or only some of its accompaniments included in the sale? Does the sale include the furniture and other items located in the house at that time? With regard to the sale of buildings that serve a particular purpose, such as an olive press or a bathhouse, which accompaniments are considered an integral part of the building and are therefore included in the sale, and which are not? Does the sale of a courtyard include all of the houses and the accompaniments in that courtyard? With regard to the sale of a field or a vineyard, does the sale include the utensils and equipment needed to cultivate it? Does such a sale also include any buildings or trees located in the field or vineyard?

This chapter’s primary concern is the detailed clarification of these issues.
MISHNA
One who sells a house without specifying what is included in the sale has not sold the gallery, an extension built above or alongside the main building, and this is so even if the gallery is attached to the house and opens into it. Nor has he sold the roof when it has a parapet ten handbreadths high, as such a roof is considered a separate entity and is therefore not included in the sale of the house. Rabbi Yehuda says: If the parapet has the form of a doorway, that is, if it consists of two upright posts with a beam crossing over them, then even if the parapet is not ten handbreadths high, the roof is not sold together with the house, unless it is specifically included in the sale.

GEMARA
What is a gallery? Here in Babylonia they interpreted this as referring to an attic (apta). Rav Yosef said: It is a windowed structure (bidka halila) attached to the main building. The Gemara notes that according to the one who says that an attic is not sold together with a house, all the more so is a windowed structure attached to the house not sold together with a house, as it is certainly considered a separate entity and not part of the main building. But according to the one who says that a gallery is a windowed structure attached to the house, it is only such a structure that is not included in the sale of the house, but an attic is sold together with a house.

Rav Yosef taught: A small structure attached to a building has three names in the Bible: Gallery (yatiza), side chamber (tzela), and cell (ta). Such a structure is called a gallery, as it is written: “The bottommost gallery (hayayatzia) was five cubits wide” (1 Kings 6:6). It is also called a side chamber, as it is written: “And the side chambers (vehatzelot) were one over another, thirty-three times” (Ezekiel 41:6). Additionally, it is called a cell, as it is written: “And the cell (vehata) was one reed long, and one reed wide; and the space between the cells was five cubits” (Ezekiel 40:7). And if you wish, say instead that it can be seen that a small structure attached to a building is called a cell from here, as was taught in the mishna (Middot 4:7): “The wall of the Sanctuary was six cubits wide, and the cell (vehata) in back of it was six cubits wide, and the wall of the cell was five cubits wide.”

Nor has he sold the room – only from inside the house, it is still considered a separate entity. According to Rabbeinu Gershon, this room is not used as full-time living quarters, but only for storage or sleeping. Other early commentators understand that, unlike a gallery, this room is not structurally part of the house; rather, it stands on its own behind the house (Rabbeinu Yona; Ritva).

When it has a parapet – only from inside the house, it is still considered a separate entity. Additionally, since the roof is surrounded by a significant parapet, it is deemed a significant place in itself. The Ritva understands that, according to the Jerusalem Talmud, the reference here is to a roof that is covered and enclosed by partitions.

If the parapet has the form of a doorway – only from inside the house, it is still considered a separate entity. The Ritva interprets this as a roof with a parapet on three of its sides, and a doorway on its fourth side.

An attic – Some commentators interpret this word to mean some sort of attic, based on other indications, upon its use above (60a). Others explain that it is referring to an ordinary room that is especially tall (Rabbeinu Hananel, citing one of the gemolin; Rabbeinu Gershon). Some suggest that it means a small structure built upon projections inside the house or over the entrance to the house (Ri Migash). The Rif and others interpret it as an upper story built on the roof, which can be accessed only via the roof. Rabbeinu Barukh explains that it is a low structure inside the house, while the Rashbam describes it as a low structure built outside, adjacent to the wall of the house.

Windowed structure (bidka halila) – Especially high. The Rif interprets this as a room built within the outer wall of the house. There were structures with walls that were fashioned of two partitions (see Middot 4:3–7), so that a small room could be contained between the inner and outer partition. He also suggests that it is a structure built around its outer wall. Rabbeinu Barukh describes it as a room protruding from the house’s external wall. Similarly, Rabbeinu Gershon explains it as a corridor built in front of the house. The Rashbam also interprets it as a low structure alongside the house, but adds that it has many windows. Each of these explanations assumes a different meaning for the word halila.
When it has an area of at least four by four cubits — אָרְבַּע אַמּוֹת — אִין, אִי לָא — לָא?

The Rashbam explains, as does the Jerusalem Talmud, that since the gallery is a significant place of four by four cubits, the seller does not include it in the sale of his house. According to the Rambam, four cubits in width suffices to make the place significant. In the Jerusalem Talmud, Rabbi Hiyya bar Abba states that the gallery must be covered and enclosed with partitions (see Ritva). The Ramban holds that the same is true for a room that is behind the house, but the Rashba disputes this.

Gallery — בִּדְאָא חֲלִילָה

The Rashbam understands that people use a gallery in a manner similar to the way they use a house. This is true even if it is a windowed structure, as it is used as a place to rest (Nimmuke Yosef). This is not the case with regard to a room behind the house, which is used solely for storage. Other early commentators understand that a gallery is structurally part of the house and does not stand on its own separate land, whereas a room behind the house is built as a separate structure on its own land (Rabbeinu Barukh; Rabbeinu Yona).

Background

Cistern (דּוּת) — מֵעַתָּה: This word appears in ancient Aramaic, Arabic, and in other sources in the form of hadut. It refers to a place built for gathering water or produce. A pit and a cistern serve the same purpose, but a pit is dug into the ground or rock, whereas a cistern is a stone structure built above the ground.

NOTES

Most commentaries interpret this word to mean a corridor built in front of the house. The Rashbam also interprets it as a place built for gathering water or produce. A pit and a cistern serve the same purpose, but a pit is dug into the ground or rock, whereas a cistern is a stone structure built above the ground.

SECTION

The mishnah teaches that one who sells a house without specifying what is included in the sale has not sold the gallery, nor has he sold the room behind the house, even if it is accessible only from it. The Gemara asks: Now that the mishna taught that a gallery is not sold along with the house, is it necessary to teach that a room behind the house is not included in such a sale?

HALAKHA

Even if the seller delineated — Both the boundaries of the house for the buyer in the bill of sale by listing places outside the room, e.g., noting the houses that border the property being sold. Even though this might suggest that the room is included in the sale, the mishna teaches that it is not.

Delineated the boundaries for him outside — מְרוּי לָא מְרוּי: This means that the seller describes the boundaries of the house he is selling by noting the houses or courtyards upon which it borders. This account encompasses the entire external structure of the house, including the room that is located behind the house. Nevertheless, since the room is distinguished from the house in the way that it is used (Rashbam), or with regard to the land upon which it stands, it is assumed that the seller did not mean to include it in the sale, but simply delineated the boundaries in a broad manner.

NOTES

Relating to the mishna’s statement that a gallery is not included in the sale of a house, Mar Zutra said: And that is the halakha only when the gallery has an area of at least four by four cubits. Ravina said to Mar Zutra: According to your opinion, that you say a gallery is not excluded from the sale of a house unless it is at least four by four cubits in size, there is a difficulty. As if that is so, then with regard to the exclusion of a pit or a cistern from the sale of a house, about which we learned in a mishna (64a): One who sells a house has sold neither the pit nor the cistern, even if he writes for the buyer in the bill of sale that he is selling him the depth and the height of the house; so too, should we say that only if they have an area of at least four by four cubits, yes, they are excluded from the sale of the house, but if not, no, they are not excluded? This is difficult, as a pit is not four cubits wide, and consequently, it would never be excluded.

Mar Zutra responded: How can these cases be compared? There, in that mishna, this, the excavations, have a discrete use, to store water, and they cannot possibly be used as living quarters, and that, the house, has a discrete use, to serve as living quarters, and so they are considered separate entities even if the excavation is not four cubits wide. But here, in the case of a gallery, both this, the gallery, and that, the house, have the same use, and so if the gallery is at least four by four cubits it is deemed significant and considered a separate entity, but if it is not four by four cubits, it is not deemed significant in its own right, but simply another part of the house.
Large building – תַּלְמִידִית הָמִית. The Rashbam explains that this large building is a central structure, like a grand entrance hall, which leads to the various residences that open from it. Rabbeinu Gershon describes it as a large structure, such as a building containing many different residences (see ob). Rabbeinu Barukh writes that the reference here is to a large building, or palace that contains various units, e.g., store-rooms, washrooms, and the like.

Has enlarged upon the boundaries for him – בְּרֵיחַ הָרְשָׁבֵי. Recording a property’s boundaries in a deed of sale can be understood in two ways. It can be understood as a record of the precise boundaries of the property being sold. This is particularly important when there is no clear boundary between the property being sold and the adjacent property. Alternatively, it can be understood as a sort of address, through which the identity of the property can be established. When understood in this manner, the address might not be defined in a precise manner, rather, the property is identified as being located within a general area. This is somewhat similar to noting a street name and building number in our time, without recording the precise apartment. Rav Nahman established the criteria for determining in which sense the boundaries of a property are being delineated. When the seller inserts the clause: I have not withheld anything for myself in this sale, he is recording the precise boundaries of the property, but when he omits this clause, he is simply giving an address-type definition of the property, without specifying its exact boundaries.

HALAKHA

One who sells a residence to another in a large building – הַמּוֹכֵר בַּיִת. One who sells a residence in a large building, even if he delineates for the buyer the external boundaries of the large building, and even if some of the people in that place refer to a large building as a residence, has, nevertheless, sold only the residence. The large building referred to here is one used not for living quarters, but only to access the smaller houses attached to it, and the seller stood in one of those houses and said to the buyer: I am selling you this residence (שָׂדֶה). Had the seller intended to sell the entire building, he would have written in the bill of sale: And I have not withheld anything for myself in this sale, but if he did not write this clause, conclude from it that the seller withheld something for himself and did not mean to sell everything located within the delineated boundaries.

And in a similar fashion, Rav Nahman says that Rabba bar Avuh says: With regard to one who sells a field to another in a large expanse of fields, even if he delineates for him the external boundaries of the large expanse of fields he did not sell him the entire expanse of fields; rather, he enlarged upon the boundaries for him. That is, the seller did not mean to delineate the precise borders of what was being sold; rather, he delineated the boundaries in a broad manner, giving the general location of the particular field he was selling.

The Gemara asks: What are the circumstances of the case? If we say that this is referring to a place where they call a residence a residence, and a building they call a building, and they always differentiate between the two terms, it is obvious that he did not intend to sell him the entire building but merely enlarged upon the boundaries for him, as he sold him a residence and did not sell him a large building. Rather, explain that this is referring to a place where they also call a building a residence. But in that case, why not say that the seller sold him the entire building, since he delineated the external boundaries of the large building?

The Gemara answers: No, Rav Nahman’s ruling is necessary in a place where most of the people call a residence a residence, and a building they call a building, but there are also some people who call a building a residence. Lest you say that since the seller delineated the building’s external boundaries, this indicates that he meant to sell him the entire building, Rav Nahman teaches us that this is not so. As, if the seller intended to sell him the entire building, he would have written in the bill of sale: And I have not withheld anything for myself in this sale, but if he did not write this clause, conclude from it that the seller withheld something for himself and did not mean to sell everything located within the delineated boundaries.

And in a similar fashion, Rav Nahman says that Rabba bar Avuh says: With regard to one who sells a field to another in a large expanse of fields, even if he delineates for him the external boundaries of the large expanse of fields he did not sell him the entire expanse of fields; rather, he enlarged upon the boundaries for him. That is, the seller did not mean to delineate the precise borders of what was being sold; rather, he delineated the boundaries in a broad manner, giving the general location of the particular field he was selling.

The Gemara asks: What are the circumstances of the case? If we say that this is referring to a place where they call a field a field, and an expanse of fields an expanse of fields, and always differentiate between the two terms, it is obvious he did not intend to sell him the entire expanse of fields, as he sold him a field and did not sell him an expanse of fields. Rather, explain that this is referring to a place where they also call an expanse of fields a field. But in that case, why not say that the seller sold him the entire expanse of fields, since he delineated the external boundaries of the expanse of fields?

The Gemara answers: No, Rav Nahman’s ruling is necessary in a place where there are some people who call a field a field, and an expanse of fields they call an expanse of fields, but there are also some people who call an expanse of fields a field. Lest you say that since the seller delineated the expanse’s external boundaries, this indicates that he meant to sell him the entire expanse, Rav Nahman teaches us that this is not so. As, if the seller intended to sell him the entire expanse, he would have written for him in the bill of sale: And I have not withheld anything for myself in this sale, but since he did not write this clause for him, conclude from it that the seller withheld something for himself and did not mean to sell everything located within the delineated boundaries.

LANGUAGE

Building (בִּיו) – בִּיו. This word has a parallel in Assyrian meaning fortress. In biblical and rabbinic Hebrew, it has several interconnected meanings. Here the word means large building.
One who sells...must write for him - (halakha)

He said to him he was selling him one plot of land: (notes)

Orchards (bustanei) - (language)

Rav Mari, son of the daughter of Shmuel - (personalities)
And if he said to him: I am selling you my property, it means that he is selling him even his houses and his Canaanite slaves.

The Gemara continues its examination of the concept of delineating boundaries in a wide manner, and considers the following case: If in the bill of sale the seller delineated one boundary line on one side of the field long, and the other boundary line on the opposite side of the field he delineated short, Rav said: The buyer acquires only a width of land corresponding to the short border, as it is assumed that the short boundary line delineates the actual size of the field that was sold to him, while the long boundary line was merely intended to point to the field under discussion. That is to say, the seller delineated the boundaries in a broad manner, but did not intend to include everything found within those boundaries in the sale.

Rav Kahana and Rav Asi said to Rav: But let him also acquire the triangular plot bounded by the diagonal line connecting the end of the short border and the end of the long border. Rav was silent and did not respond.

And Rav concedes that where there is a boundary line defined by the fields of Reuven and Shimon on one side of the field being sold, and a boundary line defined by the fields of Levi and Yehuda on the other side, and in the bill of sale the seller describes the field being sold as bordered by the fields of Reuven and Shimon on one side but mentions only the field of Levi on the other side, since had he intended to sell only half the field, he should have written for the buyer in the bill of sale that the field is bordered by the field of Reuven on the one side, which is opposite that of Levi on the other, or by the field of Shimon on the other side, which is opposite that of Yehuda on the other, but he did not write that for him, one can conclude from it that he is telling him that he is selling him not only the area between the fields of Reuven and Levi, but also the triangular plot bounded by the diagonal line connecting the end of Shimon's field to the end of Levi's field.

The Gemara continues: If the field being sold is bounded by the fields of Reuven on the east and the west, and it is bounded by the fields of Shimon on the north and the south, it is not enough to designate the field for the buyer as the field between the fields of Reuven and Shimon, but it is necessary to write for him in the bill of sale that the field is bounded by the fields of Reuven on two sides, and it is bounded by the fields of Shimon on two sides. Otherwise, all that the buyer acquires is a triangular plot bounded by one of Reuven's fields and one of Shimon's fields, and the boundary is the diagonal line connecting the end of Reuven's field to the end of Shimon's field.

A dilemma was raised before the Sages: If the seller defined only the corners of the field being sold, what is the halakha? Does this mean that he is selling him only the corners of the field or the entire field marked by those corners? A second dilemma was also raised: If he defined the boundaries of the field in a shape resembling the Greek letter gamma, or the English letter L, noting the boundaries on two adjacent sides that meet at a right angle, what is the halakha? Does this mean that he is selling him the entire field, or only the triangular plot marked by those boundaries and the diagonal line running from the end of one to the end of the other?

**NOTES**

That of Reuven opposite that of Levi – אֲמַרֲךּ לֶהוּ יְמֵשֵׁךְ – אֶפְשָׁל בִּימְנוֹ. The Bah 

explains that two versions of the text are combined here, and in practice, a single expression would have sufficed; either that the field is bordered by the field of Reuven on the one side opposite that of Levi on the other, or by that of Shimon on the one side opposite that of Yehuda on the other (see Rashbam).
In an alternating fashion – סבど: If one who sells a field to another mentions only some of the fields bordering each side of the field being sold, the buyer acquires only the portion specifically mentioned to him by the seller, and this is subject to the discretion of the judges. In any event, he receives no less than an area that suffices to sow nine kav of seed (Rambam Sefer Kinyan, Hilkhot Mekhira 21:16; Shulhan Arukh, Hoshen Mishpat 219:4).

If the seller delineated for the buyer the field’s first boundary, its second boundary, and its third boundary – מֶצֶר רִאשׁוֹן וּמֶצֶר שֵׁנִי וּמֶצֶר שְׁלִישִׁי: If one sells a field to another, specifying only three of its boundaries, and its fourth boundary is included within the area defined by the adjacent boundaries, there is no row of trees on it, and it is not an area fit for sowing nine kav of seed, the buyer acquires the land up to the fourth boundary as well. If the fourth boundary is not included within the area defined by the adjacent boundaries, there is a row of trees on it, or it is an area fit for sowing nine kav, the buyer does not acquire the land adjacent to it. If it is included within the area defined by the adjacent borders, and there is a row of trees on it or it is an area fit for sowing nine kav; or if it is not included within that area but also is without a row of trees, and it is not fit for sowing nine kav, such a case is decided according to the discretion of the judges, who issue a ruling based upon their assessment of the situation (Rambam Sefer Kinyan, Hilkhot Mekhira 21:5; Shulhan Arukh, Hoshen Mishpat 219:2, and Shakh and Beur HaGra there).

The Gemara raises a similar dilemma. If, in the bill of sale, the seller delineated for the buyer the field’s first boundary, its second boundary, and its third boundary, but he did not delineate its fourth boundary at all, Rav says: The buyer acquires the entire field, except for the one furrow along which the fourth boundary runs, which is usually differentiated in some way from the field itself. And Shmuel says: The buyer acquires even the furrow along which the fourth boundary runs. And Rav Asi says: He acquires only the width of one furrow along the entire perimeter of the three boundaries specified by the seller.

The Gemara explains Rav Asi’s opinion: He holds in accordance with the opinion of Rav, who said that by failing to delineate the fourth boundary, the seller withheld some part of the field, i.e., one furrow, for himself. But Rav Asi takes this further and says that since he withheld some part of the field for himself at the fourth boundary, he withheld also some portion of the entire field, and therefore the buyer acquires only that which is adjacent to the specified boundaries.

Rava said: The halakha is that the buyer acquires the entire field except for the one furrow along which the fourth boundary runs, in accordance with the opinion of Rav. And we said this only in a case where the fourth boundary is not included within the space between two adjacent boundaries, but rather juts out beyond them. But when it is included within the space delineated by the other boundaries, the buyer acquires it as well.

The Rashbam explains that the field being sold was bounded on each side by two fields belonging to different neighbors, and the seller specified the name of only one neighbor on each side. Perhaps in doing so he wished merely to designate the boundaries of the field, and he intended to sell the entire property. Alternatively, he may have intended to sell only those areas adjacent to the neighboring fields specifically mentioned. Others understand that there were five fields bordering each side of the field being sold, and the seller omitted the names of the owners of the second and fourth fields on each side. According to this, the seller may have intended to sell only the strip of land adjacent to each of the specified fields (Rabbeinu Barukh, Ramah).

A third dilemma was also raised before the Sages: If the seller defined the boundaries of the property he is selling in an alternating fashion, mentioning only some of the fields bordering each side of the field being sold, while omitting others, what is the halakha? No resolution was found for these questions, and these dilemmas shall stand unresolved.

Notes:

In an alternating fashion – סבど: The Rashbam explains that the field being sold was bounded on each side by two fields belonging to different neighbors, and the seller specified the name of only one neighbor on each side. Perhaps in doing so he wished merely to designate the boundaries of the field, and he intended to sell the entire property. Alternatively, he may have intended to sell only those areas adjacent to the neighboring fields specifically mentioned. Others understand that there were five fields bordering each side of the field being sold, and the seller omitted the names of the owners of the second and fourth fields on each side. According to this, the seller may have intended to sell only the strip of land adjacent to each of the specified fields (Rabbeinu Barukh, Ramah).

But he did not delineate its fourth boundary at all – מֶצֶר רְבִיעִי לֹא מָצַר לו: The Rambam and the majority of the early commentators explain that an included boundary is one that is entirely contained within the area defined by the two adjacent boundaries, and therefore, it may be assumed that it was not excluded from the sale of the field. Consequently, a boundary that is not included is referring to a case where the two adjacent boundaries delineate the area sold, but they do not encompass the boundary itself. Others explain an included boundary as one whose structure and form indicate that it is part of the field, while a boundary that is not included is one different in nature from the field itself, e.g., it is on a different level than the field, either above or below it, even if it is entirely contained within the area delineated by the adjacent boundaries (Rabbeinu Gershom).
Rava adds: And even when it is not included in that space, we said that the buyer does not acquire it only in a case where there is a row of trees on it, or it is an area fit for sowing nine kav\(^9\) of seed. But where there is no row of trees on it, and it is not an area fit for sowing nine kav of seed, the buyer acquires it along with the rest of the field. By inference one derives from here that when the fourth boundary is included within the space delineated by the two adjacent boundaries, even if there is a row of trees on it and it is an area fit for sowing nine kav, the buyer acquires it.

There are those who say that Rava's ruling and the conclusion drawn from it are as follows: Rava said: The halakha is that the buyer acquires the entire field, and he acquires even the furrow along which the fourth boundary runs, in accordance with the opinion of Shmuel. And we said this only in a case where the fourth boundary is included within the space delineated by the two adjacent boundaries. But when it is not included within those boundaries, the buyer does not acquire it.

Rava adds: And even when it is included within the adjoining boundaries, we said that the buyer acquires it only in a case where there is no row of trees on it, and it is not an area fit for sowing nine kav of seed. But where there is a row of trees on it, or it is an area fit for sowing nine kav of seed, the buyer does not acquire it. By inference one derives from here that when the fourth boundary is not included within the two adjacent boundaries, even if there is no row of trees on it and it is not an area fit for sowing nine kav of seed, the buyer does not acquire it.

We conclude according to both versions of the statement of Rava that even if the seller withheld something for himself along the fourth boundary, he did not withhold anything at all in the field itself. And we also conclude according to both versions that where the fourth boundary is included within the space defined by the two adjacent boundaries, and there is no row of trees on it and it is not an area fit for sowing nine kav of seed, the buyer acquires it. And furthermore, we conclude according to both versions that if the fourth boundary is not included within the two adjacent boundaries, and there is a row of trees on it, or it is an area fit for sowing nine kav of seed, the buyer does not acquire it.

If the fourth boundary is included within the two adjacent boundaries, and there is a row of trees on it or it is fit for sowing nine kav of seed, or if the fourth boundary is not included within the two adjacent boundaries, and there is no row of trees on it nor is it fit for sowing nine kav, the ruling in these cases was stated in this direction, that the land adjacent to the fourth boundary is acquired by the buyer, and it was stated in that direction, that this land is not acquired by the buyer, depending upon which version of Rava's statement is accepted. Since there is no clear ruling in these cases, the decision is left to the discretion of the judges, who must rule in accordance with what appears to them to be the intention of the seller.

Rabba said: If one owns a field in partnership with another, and he says to a third person: I am selling you the half that I have in this land; he means to sell him half of that field, i.e., his entire share. If he says to the buyer: I am selling you half of the land that I have, he means to sell him one-quarter of that field, i.e., half of his share. Abaye said to him: What is different about this wording and what is different about that wording, that you rule differently in the two cases? Rabba was silent, offering no reply.

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\(9\) kav: This is the smallest area that can be called a field. It is explained earlier in this tractate (1a) that the co-owners of a field cannot compel one another to divide their jointly owned field between them unless it is at least the size of area fit for sowing nine kav of seed, which is the equivalent of about 900 sq m.

The discretion (shuda) of the judges — Aramaic word shuda derives from a root meaning to cast or throw. In the context of a court decision it means discretion, which is like casting one's opinion in a certain direction, indicating that the judges should assess the seller's intentions and rule according to that assessment (Rashbam). This means evaluating whether the seller was favorably inclined toward the buyer, or whether there are other indications that he sold the property in a generous manner (Rabbeinu Gershom); or judging how much land was included in the sale by the price paid (Rabbeinu Yona). Even though some commentaries generally interpret following the discretion of the judges as allowing the judges to make a completely arbitrary decision (see 35a), here, since the uncertainty relates to the meaning of the words used in the transaction and not the substance of the claims, all agree that the judges should simply assess the seller's intentions (Rabbeinu Yona).
Abaye said: I had assumed that since he was silent, he must have accepted my opinion and retracted his statement; but that is not so. As on another occasion I saw certain bills of sale⁵ that issued from my Master’s house, that is, they were issued under the auspices of my master Rabba, in which it was written: The half that I have in this land, and it was clear from another clause in the bill that half of the field was being sold. And there was another bill of sale in which it was written: Half of the land that I have, and it was clear from another clause in the bill that one-quarter of the field was being sold.

And Rabba also said: If one sold land to another and delineated boundaries on three sides of the field, and with regard to the fourth side he wrote in the bill of sale: The boundary of the field is the land through which the field is halved, he has sold him half of the field. If he writes with regard to the fourth boundary: The boundary of the field is the land from which a plot can be set apart, he has sold him only an area fit for sowing nine kav of seed, as that is the minimum size of a plot of land defined as a field.

Abaye said to him: What is different about this wording, and what is different about that wording, that you rule differently in the two cases? Rabba was silent, and did not respond. The Sages understood from this silence that Abaye understood that Rabba retracted his ruling and conceded that in both this case and that case, the buyer acquires half of the field.

But that is not so, as Rav Yeimar bar Shelemya said: The matter was explained to me by Abaye, as follows: Whether the seller writes with regard to the fourth boundary: The boundary of the field is the land through which the field is halved,⁶ or he writes: The boundary of the field is the land through which a plot can be set apart, if he said to the buyer: These are its boundaries,⁷ he has sold him half of the field. But if he did not say to the buyer: These are its boundaries, he has sold him only an area fit for sowing nine kav of seed.

§ The Gemara raises a question about a similar case: It is obvious that if one said: So and so should share in my property, he means to give him half of the property. If he said: Give so and so a portion of my property, what is the halakha? What portion of the property must he give him?

These are its boundaries. The Rashbam understands that when the seller delineates the borders and adds: And these are its boundaries, this additional phrase indicates that he wishes to give more, and therefore the buyer receives half of the field. If he does not add such a phrase, the buyer receives only a minimal portion, fit for sowing nine kav of seed. The Rida, like Rabbeinu Barukh, has a version of the text which reads: If the seller designates its boundaries, he has sold him half of the field, but if he does not designate its boundaries, he has sold him only an area fit for sowing nine kav of seed. The Rida explains that this means that if he designates boundaries that delineate half of the field, it is clear that he is selling half of the field; but if he does not do so, he means to sell only a small portion.

Most commentators understand that this case does not involve additional wording or special boundary designation. They explain that if the seller records the boundaries of the field, this indicates that he is delineating the entire field so that half of it can be given to the buyer. If he does not record the boundaries, it is assumed that he is selling only a small portion of the field, and therefore recording the boundaries is unnecessary, as the size of the field is irrelevant (Ri Migash; Rabbeinu Gershom; Rambam).

He saw bills of sale from Rabba’s court that recorded the testimony of witnesses that the seller said: I am selling the half that I have in this land, and the conclusion of the document was that the seller sold his entire portion, which was half of the field (Rashbam). Tosafot explain that he saw that Rabba’s court would transfer ownership of the seller’s entire portion to the buyer when he used this wording. The Ran writes that Abaye saw that when the seller used these words, the court would instruct the witnesses to record in the document that he is selling half of the field, from which he deduced that the witnesses need not always follow the exact wording of the claimant as long as they record the essence of what they saw and heard in a clear manner.

The boundary is the land through which the field is halved. In a case where one sells the western portion of his field but withholds the eastern portion for himself, and he designates the boundary of the area he is selling on the west side, but as for the boundary on the east side he writes: The boundary is the land through which the field is halved; or: The boundary is the land through which a plot can be detached, then if he writes explicitly: These are its boundaries, the buyer acquires one-half of the field. If he does not write this explicitly, the buyer acquires only an area fit for sowing nine kav of seed (Rambam).

If one sells a field to another, specifying only three of its boundaries, the buyer acquires only a strip of land adjacent to each of the specified fields (Rabbeinu Barukh; Ramah).

And the fourth field on each side. According to this, the seller specified the name of only one of the judges – the one who heard in a clear manner.

The Rashbam explains that the Aramaic word צהא derives from a root meaning to cast or throw. In the context of a bill of sale recorded in the Rabbinic courts, this indicates that he is delineating the entire field so that half of it can be given to the buyer. If he does not say to the buyer: These are its boundaries, and it was clear from another clause in the bill that half of the field was being sold.

I saw certain bills of sale – ריבא בת 것이다: The Aramaic phrase ריבא בת 것이다 indicates that the complaint was filed in the Rabbinic court of Rabbi Abaye (Rashi). The phrase is halakhet mekhila: The phrase המיחל is recorded in a halakhic text when the witness recites a statement that the seller said: I am selling the half that I have in this land. If this statement is recorded in the bill of sale, the boundary is the land through which the field is halved. If the witness recites a statement that the seller says: I am selling the half that I have in this land, but this statement is not recorded in the bill of sale, the boundary is the land from which a plot can be set apart. The phrase is different than the phrase שמו של ריבא בת 것이다: This phrase is used when the witness suddenly remembers that the seller said: I am selling the half that I have in this land, but this statement is not recorded in the bill of sale. In this case, the boundary is the land from which a plot can be set apart.
The Gemara now considers another case in which the seller withholds something for himself in a sale. The Sages taught in a baraita: With regard to a Levite who sold a field to an Israelite and said to him: I am selling you this field on the condition that the first tithe from the produce growing in the field, which must be given to a Levite, is mine, and it will be given to me every year and not to any other Levite, the first tithe is his. And if he said: I am selling you the field on the condition that the tithe will be given to me and to my sons, then if he dies, the buyer must give the tithe to his sons.

The Gemara challenges the halakha taught in the baraita: Why should the seller ever have a right to the tithe after he has sold the field? After all, a person cannot transfer ownership of an object that has not yet come into the world. How, then, can the seller acquire a portion of the produce that does not yet exist? The Gemara answers that since the seller said to the buyer: I am selling you this field on the condition that the first tithe is mine, it is as if he withheld the site where the tithe is grown for himself when he sold the field, and that site already exists.

Reish Lakish said: That is to say that with regard to one who sells a house to another and says to him: I am selling you this house on the condition that the upper story (deyota) is mine, the upper story is his.

Give so-and-so a portion of my cistern – Ravina bar Kisi said: Come and hear a proof concerning the halakha in this case, as it is taught in a baraita: With regard to one who says: Give and hear a proof concerning the halakha in this case, as it is taught in a baraita: With regard to one who says: Give so-and-so a portion of my cistern for his water needs, Sumakhos says: He must give him not less than one-quarter of the water in the cistern. If he qualifies his words and says: Give so-and-so a portion of my cistern’s water for his barrel, he must give him not less than one-eighth of the water. If he says: Give him a portion for his pot, he must give him not less than one-twelfth of the water. And if he says: Give him for his cup, he must give him not less than one-sixteenth of the water. In any event, this baraita indicates that the不合格 phrase: Give so-and-so a portion, should be understood to mean: Give him one-quarter.

The upper story (deyota) – The Rashbam explains that the option to withhold the right to the first tithe applies not only to a Levite, but to anyone who sells a field. This right allows the seller to choose the Levite who is to receive the tithe each year. The reason the Gemara mentions a Levite is that if he is the seller, he has a personal interest in withholding the right to the first tithe, as he can take it for himself.

The upper story (deyota) – The Rashbam explains that deyota here refers to a roof with a parapet ten handbreadths high, which constitutes a second story and which, by halakha, is not included in the sale of the house. Therefore, the owner’s stipulation with regard to it cannot be intended to preserve his right to the roof but must grant him additional rights. Rabbeinu Tam and the Rambam, among others, understand the word deyota to mean a row. The reference here is to the upper row of stones of the house’s walls, protruding somewhat above the level of the roof. The owner reserves for himself the right to place items on that row of stones even though they may place an added burden on the structure of the house. The Rid combines parts of each interpretation and explains that this deyota is a story that has not yet been built. The Ramah, in a totally different fashion, says that the deyota is a small attic that is included in the sale of the house.
With regard to what halakha did Reish Lakish say this? In any case the upper story is his, as when he sold the house, it was only the lower story that he sold to the buyer. Rav Zevid says: He said this to teach the halakha that if the seller wishes to extend from the upper story projections over the courtyard, which was included in the sale, he may extend them. Rav Pappa says: He said this to teach the halakha that if this upper story collapses and the seller wishes to build an upper story on top of it to replace it, he may build it.

The Gemara asks: Granted, according to Rav Zevid, this explanation is consistent with that which Reish Lakish teaches, which begins with: That is to say. As according to Rav Zevid, Reish Lakish infers from the ruling of the baraita about tithes that even though the seller of the house did not explicitly withhold anything for himself, the court interprets his use of his superfluous stipulation as an indication that he wished to withhold for himself the space over the courtyard for the projections. But according to Rav Pappa, what did Reish Lakish mean when he said his statement that begins with the phrase: That is to say? The seller’s right to rebuild the upper story after it collapses is not derived from the superfluous stipulation that he attached to the transaction, and it is not inferred from the baraita. The Gemara concludes: Indeed, Rav Pappa’s interpretation is difficult, as it does not account for the wording of Reish Lakish’s statement.

That if he wishes to extend projections – justified by the baraita. The Rashbam explains, in accordance with the conclusion of the continuing discussion, that the seller reserves for himself the right to build projections from the upper story over the courtyard, which was also sold to the buyer. Many early commentators disagree with this explanation, as the Gemara does not state that the buyer bought the courtyard as well, and therefore it must have remained in the seller’s possession, obviating the need for him to reserve for himself the right to use its airspace. Rabbeinu Yona, who agrees with the Rashbam, explains that presumably the courtyard was sold along with the house, as that is the usual occurrence. The other early commentators raise additional difficulties with including the courtyard in the sale. Some explain that the seller reserves for himself the right to build such projections and build a balcony upon them, even though this will block the light and darken the ground floor (Rid).

That if he wishes to extend projections – justification of the baraita. According to Rav Zevid’s explanation, the seller’s superfluous phrase withholds for himself an area in the courtyard that he sold, just as was said with regard to the baraita, that with the seller’s superfluous phrase, he withholds for himself the site of the tithe. But according to Rav Pappa’s explanation, there would be no need for Reish Lakish’s statement, as the seller’s superfluous phrase simply reserves the additional right to rebuild the upper story, and attaining additional rights through a superfluous phrase is already taught in a mishna (Rashbam). The R“ Miqash understands the question in an almost opposite way. He assumes that Rav Pappa holds that the seller’s superfluous phrase grants him the right to build another story above the house after he sells it, even if the house itself has collapsed, not just the right to rebuild an existing upper story. The Gemara therefore asks: According to Rav Zevid, just as the seller withholding tithes does not retain actual ownership of the land, but only a right to receive the tithes, so too, the seller of a house does not withhold actual ownership, but only the rights to the upper story for the sake of supporting projections. According to Rav Pappa, by contrast, the seller retains absolute ownership of the airspace above the house, which is not parallel to withholding tithes in the baraita.
The Gemara discusses what is included in the wording of various contracts. Rav Dimi from Neharde’a said: Concerning this one who sells a house to another and wants to sell the entire property, even if he writes for the buyer in the bill of sale: I am selling you the depth and the height of the house, he must also write for him: Acquire for yourself the property from the depth of the earth up to the height of the sky. What is the reason for this addition? The reason is that the buyer does not acquire the depth and the height of the property without explicit specification, and therefore, unless the matter has been explicitly stipulated, the buyer may not dig under the house or build above it. The words: The depth and the height, effect the acquisition of the depth and the height of the house for the buyer, allowing him to dig below or build above the house. And the additional phrase: From the depth of the earth up to the height of the sky, effects the acquisition of the pit and the cistern and the tunnels associated with the house.

The Gemara proposes: Let us say that the mishna (64a) supports Rav Dimi’s opinion: One who sells a house has sold neither the pit nor the cistern, even if he writes for the buyer in the bill of sale that he is selling him the depth and the height of the house. As it enters your mind to say that the buyer acquires the depth and the height of the house even without the specification that the depth and the height of the house are included in the sale, let the phrase the depth and the height effect the acquisition of the pit and the cistern and the tunnels, as he attached an additional stipulation to the transaction. The Gemara rejects this opinion: The mishna is referring to a case where the seller did not write these words for him.

The Gemara asks: But this line of reasoning is difficult, as the mishna explicitly teaches that the pit and the cistern are not sold even if the seller writes for the buyer that he is selling him the depth of the height of the house. The Gemara answers that this is what the mishna is saying: Even though the seller did not write these words for him in the bill of sale, for the purpose of acquiring the depth and the height of the house, it is considered as if he wrote them, as it is assumed that they were omitted by accident. By contrast, for the purpose of acquiring the pit and the cistern and the tunnels, if the seller explicitly wrote for him the words the depth and the height, the buyer acquires them, but if he did not write that phrase in the bill of sale, the buyer does not acquire them. No proof can be derived from this mishna.

The Gemara now considers a different mishna. Come and hear what was taught in the mishna (61a): One who sells his house without explicitly stating what is included in the sale has not sold the roof along with the house when it has a parapet ten handbreadths high, as such a roof is considered a separate entity and is not included in the sale of the house.

**BACKGROUND**

Tunnels – חדרי מים: People used to dig cellars beneath their houses, which were structurally not part of those houses. They served as hideouts in times of danger or as storage rooms to conceal valuable items.

**NOTES**

He must also write for him – חדרי מים: The early commentators disagree whether the seller must write for the buyer both phrases or only the second one. Those who say he must write both phrases maintain that it is the excess of superfluous phrases that secure the rights for the buyer, and therefore, both phrases must be written to guarantee those rights (Rid, Rashbam). Those who say that he need write only that the buyer should acquire for himself from the depth of the earth up to the height of the sky understand that the buyer acquires the additional rights because of the inclusive nature of this formulation (Rabbeinu Yona and Rashba).

And from the depth of the earth effects – де’ות נסקא: This is because the phrase: The depth and the height, relates to use of the ground floor or the roof or the house itself, but it does not relate to an existing pit or cistern, nor does it refer to a roof with a ten-handbreadth-high parapet, all of which are significant in and of themselves (Ri Migash). The phrase: From the depths of the earth up to the height of the sky, does transfer ownership of those items. According to the Rashbam, the phrase the depth and the height suffices to transfer the ownership of a roof with a ten-handbreadth-high parapet, since a roof falls into the same category as a house, but it does not transfer the ownership of a pit or a cistern, which are used differently than the rest of the house. This is why the Gemara does not include the roof in the list of items requiring the phrase from the depths of the earth up to the height of the sky (Ramban).

**HALAKHA**

The depth and the height – де’ות נסקא: If one sells a house to another and does not write: I am selling you the depth and the height of the house, the buyer acquires only the house itself. This includes the roof, provided that it is not four cubits wide and does not have a parapet ten handbreadths in height (Rema). The buyer may not dig beneath the house nor build above it, while the seller may do so as long as this will not damage or overburden the walls of the house. Others say that the seller may not dig beneath the house lest he damage it, but if the buyer digs pits or the like under the house, they belong to the seller (Tur, citing Ri Migash). If the seller writes: I am selling you the depth and the height of the house, the buyer acquires the airspace above the house and the ground below it, enabling him to build above the house and dig beneath it. He does not acquire any existing structure in the ground or above the top of the house, nor does he acquire a roof having a ten-handbreadth-high parapet and a width of four cubits (Rema, citing Ramban). If the seller adds: Acquire for yourself from the depth of the earth up to the height of the sky, the buyer acquires the pits beneath the ground, the structures above the house, and also the roof, even if it has a ten-handbreadth-high parapet and is four cubits wide (Rema, citing Ramban). If the seller adds that phrase, he need not write: I am selling you the depth and the height of the house (Rambam Sefer Kinyan, Hilchat Mehkira 24:15; Shulhan Arukh, Hoshen Mishpat 214:3–4, and in the comment of Rama).
And if it enters your mind to say that when a house is sold without specification, the buyer acquires the depth and the height of the house, then even when it has a parapet ten handbreadths high, what of it? Why shouldn’t the buyer acquire the roof? The Gemara answers: Since the parapet is ten handbreadths high, the roof is significant in its own right, and therefore, unless it is specifically included in the sale, the buyer does not acquire such a roof along with the house.

Ravina said to Rav Ashi: Come and hear another proof, as Reish Lakish says: That is to say that with regard to one who sells a house to another and says to him: I am selling you this house on the condition that the upper story is mine, the upper story is his. And in the Gemara’s examination of Reish Lakish’s statement, we said: With regard to what halakha did Reish Lakish say this? In any case the upper story is his, as when he sold the house it was only the lower story that he sold to the buyer. Rav Zevid says: He said this to teach the halakha that if the seller wishes to extend from the upper story projections over the courtyard, which was included in the sale, he may extend them. Rav Pappa says: He said this to teach the halakha that if this upper story collapses and the seller wishes to build an upper story on top of it to replace it, he may build it.

And if it enters your mind to say that when a house is sold without specification, the buyer does not acquire the depth and the height of a house, Rav Pappa’s statement is puzzling. As why do I need the seller to stipulate that he is selling the house on the condition that the upper story is his when in any event the space above the house remains in the seller’s possession? The Gemara answers: Stipulating that he is selling the house on the condition that the upper story is his benefits him in that if the upper story collapses, he may rebuild it. Without this stipulation the seller could not rebuild it, even if the sale did not include the depth and the height of the house.

**Mishna**

One who sells a house without specification has sold neither the pit nor the cistern [dut], even if he writes for the buyer in the bill of sale that he is selling him the depth and the height of the house, as anything that is not part of the house, like pits and cisterns, must be explicitly mentioned in the contract or else they remain in the seller’s possession. And therefore the seller must purchase for himself a path through the buyer’s domain to reach whatever remains his, because he has sold the area of the house along with the house itself, and he no longer has permission to walk there. This is the statement of Rabbi Akiva. And the Rabbis say: The seller need not purchase for himself a path through the buyer’s domain, as this is certainly included in what he has withheld for himself from the sale.

**Halakha**

Neither the pit nor the cistern: When a house is sold without specification, the buyer acquires the depth and the height of the house, then even when it has a parapet ten handbreadths high, what of it? Why shouldn’t the buyer acquire the roof? The Gemara answers: Since the parapet is ten handbreadths high, the roof is significant in its own right, and therefore, unless it is specifically included in the sale, the buyer does not acquire such a roof along with the house.
And Rabbi Akiva concedes that when the seller says to the buyer in the bill of sale: I am selling you this house apart from the pit and the cistern, he need not purchase for himself a path through the buyer's domain. Since the seller unnecessarily emphasized that the pit and the cistern are not included in the sale, he presumably intended to reserve for himself the right of access to them.

If the seller kept the house, but sold the pit and the cistern to another, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller's domain to reach what he has bought. But the Rabbis say: He must purchase for himself a path through the seller's domain.

GEMARA It is related that Ravina once sat and examined the matter and posed a difficulty: A pit is the same as a cistern. Why, then, was it necessary to mention both of them? Rava Tosa'a said to Ravina: Come and hear a solution to this question, as it is taught in a baraita: Both a pit and a cistern are dug out in the ground; the difference is only that a pit is constructed through digging alone, while a cistern is subsequently finished on the inside by building masonry walls. It is similarly related that Rav Ashi once sat and posed a difficulty: A pit is the same as a cistern. Mar Kashisha, son of Rav Hisda, said to Rav Ashi: Come and hear a solution to this question, as it is taught in a baraita: Both a pit and a cistern are dug in the ground, the difference is only that a pit is constructed through digging alone, while a cistern is subsequently finished on the inside by building masonry walls.

The mishna teaches: And the seller must purchase for himself a path through the buyer's domain; this is the statement of Rabbi Akiva. And the Rabbis say: The seller need not purchase such a path. What, is it not about this issue, which will immediately be explained, that Rabbi Akiva and the Rabbis disagree?

As Rabbi Akiva holds that one who sells, sells generously, so that whatever is not explicitly excluded from the sale is assumed to be sold, while the Rabbis hold that one who sells, sells sparingly, so that what is not explicitly included in the sale is assumed to be unsold. And perhaps that which is also stated generally: Rabbi Akiva conforms to his standard line of reasoning, as he says that one who sells, sells generously, is derived from here.

The Gemara rejects this opinion and asks: From where do you arrive at such a conclusion? Perhaps Rabbi Akiva and the Rabbis do not disagree whether, in principle, a person who sells, sells generously or sparingly, but rather their disagreement is limited to this specific case. As Rabbi Akiva holds that a person does not want to spend his money on the purchase of a house and then have others tread upon his property, and therefore he says that the seller must purchase for himself a path through the buyer's domain to reach his pit. And the Rabbis hold that a person does not want to receive money for the sale of his house and then have to fly through the air in order to reach his pit, and therefore they say that the seller presumably withheld for himself a path to his pit.

Rather, the proof is from the last clause of the mishna, which states: If the seller kept the house but sold the pit and the cistern to another, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller's domain. But the Rabbis say: He must purchase for himself a path through the seller's domain. The tandda'im seem to disagree as to whether a person who sells, sells generously or sparingly.

HALAKHA If he sold them to another –▽אֲמַר לֵיהּ רָבָא: If one sells a pit within his house to another, the buyer need not purchase for himself a path from the seller to access his pit; rather, he can simply enter the seller's house to use his pit. If there is another way to access his pit, the buyer may not access it via the seller's house. (Rema, citing Rashi.) This is in accordance with the opinion of Rabbi Akiva (Rambam Sefer Kinyan, Hilchos Mekhira 25:3; Shulhan Arukh, Hoshen Mishpat 214:2).

NOTES If he sold them to another –▽אֲמַר לֵיהּ רָבָא: This is not a continuation of the previous case, but rather a separate case in which a homeowner sells his pit to another. Rabbi Akiva says that in such a case, in addition to the pit the buyer also acquires access to the pit he bought. In his Commentary on the Mishna, the Rambam cites an additional interpretation that this is a case where the homeowner sells his house to one person and the pit to another. Rabbi Akiva Eiger notes that this contradicts the discussion of this mishna on 65a.

A pit is the same as a cistern –▽תַּחֲכָא הָרָא וְלֹא אֶת הַבּוֹר וְלֹא אֶת הַדּוּת: The Rashbam explains that since both a pit and a cistern are dug in the ground and both are intended for storing water, or on occasion other things, there appears to be no significant difference between them, and there is therefore no reason for mentioning both of them (see Rambam). While a cistern is finished by building masonry –▽רָבָא דָּוִד: According to most commentaries, both a pit and a cistern are dug in the ground, as explained previously, but the cistern is dug in loose or soft ground, and therefore the construction of masonry walls to strengthen and seal it. In his Commentary on the Mishna, the Rambam writes that a cistern is built above ground but has the same function as a pit. Some understand the Rambam as referring to a cistern built on a roof.

Perek IV DaT 64 Amud b

Sells generously –▽אֲמַר לֵיהּ רָבָא: Rabbi Akiva holds to the principle that one who sells, sells generously, with regard to all aspects of selling (Rashbam). This means that it is assumed that the seller does not withhold for himself any rights to the object he is selling. Moreover, when he sells something, he agrees to transfer ownership not only of the items that the sale agreement requires him to transfer, but also items that relate to the sale but are not mentioned explicitly. Rabbi Akiva applies this principle even in circumstances where it constrains the seller by leaving him without any rights, e.g., without a way to access his own property.

And others tread upon his property –▽לֹא אֶת הַבּוֹר וְלֹא אֶת הַדּוּת: This means that a buyer wishes to protect his privacy, and therefore would not ordinarily want anyone else to be entitled to pass through his domain once he has bought the property. The Rashbam explains that while this privilege actually depends upon the seller's intention at the time of the sale, with regard to whether or not he means to sell access to the property he excludes from the sale, the buyer's wishes are the foundation of the understandings with regard to the sale, and therefore falls upon the seller to state explicitly if he wishes to retain access to his property.

And fly through the air –▽רָבָא דָּוִד: One is not prepared to sell his house in such a way that he will be prevented from accessing his own property; therefore, it must be assumed that he did not intend to forgo this privilege.

בַּאֲוִירָאָה לֹא אֶת הַבּוֹר וְלֹא אֶת הַדּוּת. Because in this case, the difference is only in form. It is not that the pit is separate from the walls, but rather underneath it, or above it, according to which the proof offered here contradicts the opinion of Rabbi Akiva (see Rambam). If one sells a pit within his house to another, the pit does not acquire the roof, he may use the roof and even build above the pit. If he sold them to another –▽אֲמַר לֵיהּ רָבָא: If one sells a pit within his house to another, the buyer need not purchase for himself a path from the seller to access his pit; rather, he can simply enter the seller's house to use his pit. If there is another way to access his pit, the buyer may not access it via the seller's house. (Rema, citing Rashi.) This is in accordance with the opinion of Rabbi Akiva (Rambam Sefer Kinyan, Hilchos Mekhira 25:3; Shulhan Arukh, Hoshen Mishpat 214:2).

This is also stated generally: Rabbi Akiva conforms to his standard line of reasoning, as he says that one who sells, sells generously, is derived from here. As Rabbi Akiva holds that one who sells, sells generously, so that whatever is not explicitly excluded from the sale is assumed to be sold, while the Rabbis hold that one who sells, sells sparingly, so that what is not explicitly included in the sale is assumed to be unsold. And perhaps that which is also stated generally: Rabbi Akiva conforms to his standard line of reasoning, as he says that one who sells, sells generously, is derived from here.

The Gemara rejects this opinion and asks: From where do you arrive at such a conclusion? Perhaps Rabbi Akiva and the Rabbis do not disagree whether, in principle, a person who sells, sells generously or sparingly, but rather their disagreement is limited to this specific case. As Rabbi Akiva holds that a person does not want to spend his money on the purchase of a house and then have others tread upon his property, and therefore he says that the seller must purchase for himself a path through the buyer's domain to reach his pit. And the Rabbis hold that a person does not want to receive money for the sale of his house and then have to fly through the air in order to reach his pit, and therefore they say that the seller presumably withheld for himself a path to his pit.

Rather, the proof is from the last clause of the mishna, which states: If the seller kept the house but sold the pit and the cistern to another, Rabbi Akiva says: The buyer need not purchase for himself a path through the seller's domain. But the Rabbis say: He must purchase for himself a path through the seller's domain. The tandda'im seem to disagree as to whether a person who sells, sells generously or sparingly.

Bava Batra • Perek IV • 64b 297
The Gemara rejects this proof as well: Perhaps they disagree about the following: Rabbi Akiva holds that we follow the intention of the buyer, as we assume that he would not have bought the pit if he would have to fly through the air to get there. And the Rabbis hold that we follow the intention of the seller, as presumably he would not have sold the pit if the buyer had the right to tread upon the seller’s property to reach it.

Rather, the proof that these tanna’im disagree whether one who sells, sells generously or sparingly is from this mishna (71a), which teaches: One who sells a field, even if he states that he is selling everything in it to the buyer, has sold neither the cistern, nor the winepress, nor the dovecote, whether it is abandoned or utilized, as these items are not part of the field itself. And the seller must purchase for himself a path to the buyer’s domain to reach whatever remains his. This is the statement of Rabbi Akiva, and the Rabbis say: The seller need not purchase a path a path through the buyer’s domain.

The Gemara explains the proof: Why do I need this ruling as well, seeing that this case involving the sale of a field appears to be identical to that involving the sale of a house? Rather, is it not teaching us that Rabbi Akiva holds that one who sells, sells generously, and therefore the seller must purchase for himself a path to his property, while the Rabbis hold that one who sells, sells sparingly, and therefore the purchase of such a path is not necessary?

And, conversely, had the mishna taught us this halakha only with regard to a field, I would have said that the buyer is particular about people passing through his house, because he desires privacy there. And it is for this reason that Rabbi Akiva says that in the absence of an explicit stipulation, the seller must purchase for himself a path to the pit. But in the case of a field, which is exposed to all, say that the buyer is not concerned about privacy.

Rather, it is not teaching us – it is teaching us that this is so. This clause in the mishna is superfluous. If it teaches that Rabbi Akiva and the Rabbis disagree as to whether we follow the intentions of the buyer or of the seller, that was already taught by the parallel clause in the previous mishna; and if it teaches that their dispute applies both to a house and to a field, that was taught in the previous clause of this mishna. Clearly, then, this clause comes to teach that the disagreement between Rabbi Akiva and the Rabbis is not limited to a specific case, but rather it is a general dispute about whether a seller sells generously, with ramifications for a number of different matters.

And both are necessary: This argument is made according to the opinion of Rabbi Akiva, but it is also true, in inverse fashion, according to the opinion of the Rabbis. Had the mishna taught this halakha only with regard to a house, one might have said that the Rabbis permitted the seller to pass through it, because treading through it is not detrimental to the house, but in the case of a field they might agree with Rabbi Akiva. And, conversely, had the mishna taught this halakha only with regard to a field, one might have said that in the case of a house, where the buyer’s privacy is affected, even the Rabbis might not allow the seller access (Rashbam; Riva).

He desires privacy – What? A house is a private place by its very nature, and one does things there that he does not want the public to see. Therefore, there is an especially strong reason to say that one who buys a house does not want anyone else to have the right to pass through it.

Treading is detrimental to it – Rather, it is not teaching us – it is teaching us that this is so. This clause in the mishna is superfluous. If it teaches that Rabbi Akiva and the Rabbis disagree as to whether we follow the intentions of the buyer or of the seller, that was already taught by the parallel clause in the previous mishna; and if it teaches that their dispute applies both to a house and to a field, that was taught in the previous clause of this mishna. Clearly, then, this clause comes to teach that the disagreement between Rabbi Akiva and the Rabbis is not limited to a specific case, but rather it is a general dispute about whether a seller sells generously, with ramifications for a number of different matters.

The Gemara explains the proof: Why do I also need this, seeing as this case involving the sale of a pit or a winepress in a field is identical to that involving the sale of a house? Rather, is it not teaching us that Rabbi Akiva holds that one who sells, sells generously; while the Rabbis hold that one who sells, sells sparingly? The Gemara affirms: Conclude from the latter clauses of these mishnoyot that this is so.

It was stated that the amora’im disagree about how the halakha should be decided with regard to this issue. Rav Huna says that Rav says:

One who sells, sells generously – Anyone who sells, sells generously, and he does not withhold for himself any more than what he explicitly excludes from the sale. Therefore, even if, when selling a house, one withholds the pit within it for himself, he is, nevertheless, required to purchase a path from the buyer to access the pit, in accordance with the opinion of Rabbi Akiva (Rambam Sefer Kinyan, Hilchot Melekh Aretz 21:23; Shulhan Arukh, Hoshen Mishpat 154:28, 155:25, 216:4, and in the comments of Rema).
The halakha is in accordance with the statement of the Rabbis, while Rav Yirmeya bar Abba says that Shmuel says: the halakha is in accordance with the opinion of Rabbi Akiva. Rav Yirmeya bar Abba said to Rav Huna: But many times I said before Rav that the halakha is in accordance with the opinion of Rabbi Akiva, and never did he say anything to me, which indicates that he holds that the halakha is in accordance with the opinion of Rabbi Akiva and not that of the Rabbis. Rav Huna said to him: How did you teach the mishna before Rav? Rav Yirmeya bar Abba said to him: I taught it with the opposite attributions, that is to say, the opinion that is attributed in the mishna to Rabbi Akiva, I would teach in the name of the Rabbis. Rav Huna said to him: Due to that reason, he never said anything to you, as Rav agreed with the version that you attributed to Rabbi Akiva.

With regard to the opinions of Rav and Shmuel, Ravina said to Rav Ashi: Shall we say that Rav and Shmuel, in their opinions stated with regard to this matter, each follow their general lines of reasoning, as they appear to have disagreed about this same issue in another context as well?

As Rav Nahman says that Shmuel says: With regard to brothers who divided their estate between them, they do not have a right of way against each other, i.e., to walk through the other's property to reach his own, even though this is how the place was used in their father's lifetime; nor do they have the right of ladders against each other, i.e., the right to use a ladder in the other's property in order to get to his own; nor do they have the right of windows against each other, i.e., the right to prevent the other from building a wall facing their windows; nor do they have the right of a water channel against each other, i.e., the right to pass a water channel through the other's property.

Rav Nahman continues: And be careful with these rulings, since they are established halakhot. And Rav says: They do retain all of these privileges. Consequently, Rav and Shmuel appear to be following their general lines of reasoning here, as Shmuel holds that when the brothers, who are like sellers, divide their father's estate, they transfer property to each other generously without retaining privileges in each other's property, while Rav holds that they transfer the property sparingly.

The Gemara comments: Nevertheless, it was necessary to teach this disagreement in both cases, as the halakha in the one case cannot be derived from the halakha in the other. As had we been taught this dispute only in that case, of the brothers who divided their father's estate, I would have said that only in that case does Rav say that they retain all of the earlier privileges, because one brother can say to the other: I wish to live in this house just as my ancestors, who had all of those privileges, lived in it. Know that there is substance to this claim, as it is written: “Instead of your fathers shall be your sons” (Psalms 45:17). But in this case of an ordinary house sale, say that he concedes to Shmuel that a seller sells generously.

### NOTES

Brothers who divided

The Gemara's opinion here is that brothers who have divided their father's estate between them are like buyers. That is to say, it is as if each of them sold part of his inheritance to his brother, and it is not as if each of them, by virtue of his right of inheritance, simply clarified which portion had been designated for him from the outset.

### PERSONALITIES

Rav Yirmeya bar Abba: A first and second generation Babylonian amora, Rav Yirmeya bar Abba was one of the first Sages to study under Rav after Rav's arrival in Babylonia. As Rav Yirmeya bar Abba was already a scholar in his own right, he came to Rav primarily to learn the Torah of Eretz Yisrael. Rav Yirmeya bar Abba is among the most prominent promulgators of Rav's statements, and many Sages from both Babylonia and Eretz Yisrael studied with him. His son, son-in-law, and daughter's son were all Sages as well.

Rav Huna – אָבָא אָמַר: One of the great second-generation Babylonian amoraim, Rav Huna was most closely associated with his teacher, Rav. Rav Huna descended from the house of the Exilarchs. Despite his aristocratic lineage, he lived in abject poverty for many years. Later in life, he became wealthy and lived comfortably, and he distributed his wealth for the public good. Rav Huna was the greatest of Rav's students, to the extent that Shmuel, Rav's colleague, used to treat him deferentially and direct questions to him. After Rav's death, Rav Huna became the head of the yeshiva of Sura and filled that position for about forty years. His prominence in Torah and his loveliness of character helped make the yeshiva of Sura the preeminent center of Torah for many centuries. Because of Rav Huna's extensive Torah knowledge, the halakha is almost always ruled in accordance with his opinion in disputes with all of his colleagues and contemporaries. The only exception was in civil law, where the rulings were in accordance with the opinion of Rav Nahman. Rav Huna had many students, some of whom studied exclusively with him; moreover, Rav's younger students remained to study with Rav Huna, his disciple, after his death. Rav Huna's son, Rabbi bar Rav Huna, was one of the greatest Sages of the following generation.
They do not have a right of way against each other – אֵין לָהֶן דֶּרֶךְ זֶה עַל זֶה: This applies even according to the opinion of the Rabbis that one who sells, sells sparingly, as that principle applies only when the seller retains something for himself. Here, he withdraws from the property completely, and therefore, he transfers the same privileges to one property owner as he does to the other (Rashbam; Rid). According to the opinion of Rabbi Akiva, if at the outset the seller sold only the inner residence, therefore, he transfers the same privileges to one who withdraws from the property completely, and therefore, he transfers the same privileges to one – אֵין לָהֶן דֶּרֶךְ זֶה עַל זֶה. As for the ruling itself, Rav Nahman, who was a disciple of Shmuel, said to Rav Huna: Is the halakha in accordance with our opinion, or is the halakha in accordance with your opinion? Rav Huna said to him: The halakha is in accordance with your opinion, as you are near the gate of the Exilarch, where the judges are frequently found, and therefore you are more proficient in monetary law.

It was stated: If there are two residences, one situated behind the other, and the owner transferred ownership of the two of them, each one to a different person, by means of a sale, or if he transferred ownership of the two of them, each to a different person, as a gift, they do not have a right of way against each other. That is, the one who acquired the inner residence may not pass through the outer residence, since each of them received equal privileges from the previous owner. And all the more so is this the halakha if the outer residence was transferred by means of a gift, and the inner residence was transferred by means of a sale, as it may be assumed that a gift is made in a more generous manner than is a sale.

As for the case where the outer residence was transferred by means of a sale, and the inner residence was transferred by means of a gift, some Sages at first understood from here that they do not have a right of way against each other, that is, that the recipient of the inner residence may not pass through the outer residence.

But that is not so, as didn’t we learn in a mishna (7a): In what case is this statement, that these items are excluded, said? It is said with regard to one who sells a field, but with regard to one who gives it away as a gift, it is assumed that he gives all of it, including everything found in the field. Apparently, one who gives property as a gift gives it more generously than does one who sells it, as gifts are generally given to friends to whom one wishes to transfer as many privileges as possible. Here too, then, one who gives property as a gift gives it more generously than does one who sells it, and so the recipient of the inner residence acquires a right of way through the outer apartment.

Exilarch – הרקד: The Exilarch, who descended from the house of David, was recognized by the Jews as the heir to the scepter of Judah and entrusted with broad official powers. He served as the leader of the Jews of the Persian Empire and as their representative before the authorities, who regarded him as a scion of a royal dynasty. He enjoyed a lofty position within the Persian court, and there were periods during which he was even considered third in the royal hierarchy. The Exilarch was responsible for the collection of a major portion of the taxes paid by the Jewish community, and he was authorized to appoint leaders and judges who could impose corporal, and sometimes even capital, punishment.

Two residences, one behind the other – בָּתִּים זֶה לִשְׁנֵי בָתִּים אֲפִלּוּ מִצְוָה: If one simultaneously transfers the ownership of two residences, which are situated one behind the other, each to a different person, whether both as gifts or both via a sale, the new owners do not have a right of way against each other, as he gives or sells to each of them generously in an equal measure (Shulhan Arukh, Hilkhot Mekhira 214:9–10). Therefore, the owner of the inner residence must persuade the owner of the outer one to allow him access to his property. All the more so is this the case if the prior owner gave the outer residence as a gift while selling the inner one. If the prior owner gave the inner residence as a gift and sold the outer one, the recipient of the inner residence is automatically granted access through the outer one, as one who gives a gift gives it more generously than does one who makes a sale. This is the halakha only when the two transactions occurred simultaneously, but if the prior owner transferred ownership of the inner residence before transferring ownership of the outer one, the owner of the inner residence is granted access through the outer one even after it has been transferred to its new owner. Conversely, if the outer residence was transferred first, the owner of the inner residence is not granted access through the outer one (Rambam, Sefer Kinyan, Hilkhot Mekhira 25:4; Shulhan Arukh, Hoshen Mishpat 214:9–10).

Adjacent to the Exilarch’s home was a special rabbinical court appointed by him to deal with monetary and property matters. He had the authority to make certain appointments within the Jewish community throughout the empire, although he appears to have made these appointments in consultation with the heads of the great academies. The Talmud refers to the Exilarchs by the honorific title Mar before or after their name. The Exilarchs were devoted to the Torah, and some were significant scholars in their own right.
**MISHNA**

One who sells a house has, as part of the sale, sold also the door, but not the key.

He has sold the mortar that is fixed in the ground, but not the portable one. He has sold the immovable lower millstone (ḥaṭterebib), but not the portable upper stone (ḥakelet).

The funnel into which one pours the grain to be ground. And he has sold neither the oven nor the double stove, as they are deemed movable. When the seller says to the buyer: I am selling you it, and everything that is in it,

**HALAKHA**

One who sells a house — When one sells a house, all of the stationary objects that are part of the house are included in the sale. This includes the door, the door bolt attached to the wall, the lock installed in the door, the stationary lower millstone, and the stationary board at the entrance that are attached with clay. If they are attached with pegs, some say that they are not considered stationary (Rema). The seller has also sold the oven, the double stove, and the millstone, all of which are stationary, but he has not sold the key, even if it is set in the door, nor the portable mortar, nor the vessel into which the flour falls after milling, nor the window frames, nor the pieces of wood that are stationed beneath the legs of a bed. If the seller specified at the time of the sale that he is selling the house and all that it contains, then everything is included (Rambam, Sefer Kiniyot, Hilkhot Melahot 25:5; Shulhan Arukh, Hoshen Mishpat 214:1).

But not the key — Since it is portable and not an integral part of the house, the key is not included in the sale of the house. The Rambam notes that even though the key is constantly in the door, it is designated for supplementary protection of the house and therefore not sold along with the house. By contrast, the door, even though it swings on its hinges and may even be removed at times, is considered part of the walls of the house and is therefore included in the sale.

The lower millstone — While all the commentaries agree that this is the more stationary part of the mill, opinions vary as to its precise definition (see also 20b). Some of the ge’onim describe it as the lower millstone (Rav Hai Gaon), while certain early commentaries, including Rashbam, understand that it is the base upon which the millstone rests. According to the Rambam in his Commentary on the Mishna, it is made from wood. The diverse opinions depend in part upon the version of the text of the mishna that is accepted, and especially upon whether a millstone is mentioned later in the mishna, after the double stove, as it is in some versions of the text.

**NOTES**

**LOWER MILLSTONE** (ḥaṭterebib) — From the Greek ἄστεροβίλος, strobilos, which means a round or circular object. The shape of this part of the mill is understood as similar to the shape of a pinecone, which is also called ḫsterobib.

**UPPER MILLSTONE** (ḥakelet) — Apparently from the Greek κάλαθος, kalathos, which means basket, this word is used elsewhere to mean a woman’s basket. Here too, it is referring to a receptacle. Some suggest that the Greek word derives from a Semitic language, perhaps an abridged version of the word קָלָֽעַר, a wicker basket.

**BACKGROUND**

**OVEN** — Many ovens in the talmudic period were made of clay. Wood was burned inside the oven until it turned to ash. The ash was then swept away to make room for dough that had been rolled out flat and was then stuck to the walls or base of the heated oven.
Let us say that the mishna – רָאִיל מִבְּשָׂרָה. The Rashbam interprets the suggestion as relating to the mishna’s distinction between a stationary mortar and one that is portable. Tosafot and other early commentaries explain that the question is based upon the mishna’s statement that a key, even though it is one of the standard utensils in a house, is not sold along with the house.

The utensils of the vineyard – תּוֹסָף לְלֵימָא. This refers to the posts used to support the grapevines, as explained later (66a) and in the commentaries. According to Rabbi Meir, once these posts have been readied for this purpose, even if they have not yet been set in their designated places, they are included in the sale. The vineyard’s utensils, even though they are not attached to the ground, are stationed there permanently and never removed, and therefore they are included in the sale (Rabbeinu Gershon).

So too a key is fixed – רָאִיל מִבְּשָׂרָה. Rabbeinu Gershon and the Rashbam explain that the key is set in the door and never removed from it. Several of the early commentaries accept the explanation of the Ri Migash and say that initially the Gemara assumed that the key in question was not specific to this door, but fit many other doors as well; but in the end it concludes that it is in accordance with the opinion of Rabbi Meir, doesn’t he say in a baraita (7b): If one sold a vineyard, he has sold all of the utensils of the vineyard, including the movable ones? The same should be true for the sale of a house.

The Gemara suggests: Let us say that the mishna¹ that distinguishes between different types of household items is not in accordance with the opinion of Rabbi Meir. As if it is in accordance with the opinion of Rabbi Meir, doesn’t he say in a baraita (7b): If one sold a vineyard, he has sold all of the utensils of the vineyard, including the movable ones? The same should be true for the sale of a house.

The Gemara answers: You may even say that the mishna was taught in accordance with the opinion of Rabbi Meir, as a distinction can be made between the two cases. There, in the case of a vineyard, the reference is to utensils that are fixed² in the vineyard and never removed from it, and therefore they are included in the sale, while here, in the case of a house, the mishna is referring to utensils that are not fixed in the house, and therefore they are not part of the sale. The Gemara objects: But doesn’t the mishna teach the halakha governing a key in similar fashion to the halakha governing the door, indicating that just as a door is fixed in the house, so too, a key is fixed³ in the house? Rather, it is clear that the mishna is not in accordance with the opinion of Rabbi Meir.

The Sages taught in a baraita (Tosefta 3:1): One who sells a house has sold the door and the door bolt and the lock, but he has not sold the key. He has sold the mortar⁴ that was hollowed out of the ground⁵ but not the mortar that was fixed to the ground after its construction. He has sold the immovable lower millstone but not the portable upper stone. And he has sold neither the oven, nor the double stove, nor the hand mill. Rabbi Eliezer says: The principle is that any item attached to the ground is considered like the ground and included in the sale.

When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the house. Both in this case and in that case he did not sell the pit or the cistern or the gallery, as they are considered separate entities that are not at all part of the house.

¹ The mishna
² The mishna
³ The mishna
⁴ The mortar
⁵ The mortar
The Sages taught in a baraita: A duct that one hollowed out and afterward attached to the ground or to a building invalidates a ritual bath through the water it channels to the bath. The water in a ritual bath must be gathered directly from rain or a stream, not drawn with vessels. If one hollowed out a log and used it to channel water into the bath, this is considered drawn water, as he used a vessel. By contrast, if one attached it first and afterward hollowed it out, it does not invalidate the ritual bath. Before the log was hollowed out, it was already attached to and considered part of the ground, and therefore the act of hollowing it out does not turn it into a vessel. The Gemara asks: Whose opinion is this? It appears to be neither the opinion of Rabbi Eliezer, nor that of the Rabbis.

The Gemara clarifies the question: To which opinion of Rabbi Eliezer is this referring? If we say it is referring to the opinion of Rabbi Eliezer in the aforementioned baraita with regard to the sale of a house, that any item attached to the ground is considered part of the house and is sold along with it, there is a difficulty. As perhaps this is the reasoning employed in the dispute with regard to the sale of a house, that Rabbi Eliezer holds that one who sells, sells generously anything that is attached to the ground, while the Rabbis hold that one who sells, sells sparingly, selling only utensils that serve an intrinsic function in the house and nothing else, even if they are attached to the ground. But this teaches us nothing about the opinions of Rabbi Eliezer and the Rabbis with respect to a ritual bath.

But rather, the reference must be to the opinion of Rabbi Eliezer concerning a beehive. As we learned in a mishna (Shevi‘it 10:7): With regard to a beehive attached to the ground by clay, Rabbi Eliezer says: It is like land; and therefore one may write a document that prevents the Sabbatical Year from canceling an outstanding debt based upon it. Such a document cannot be written unless the borrower owns some land, and a beehive is considered like land for this purpose.

Duct – רֶכֶן: Some of the pipes referred to in talmudic literature are like modern-day pipes, hollow cylinders through which liquids flow. Others were open on top and similar to a gutter. Such pipes were produced by carving a deep groove in some solid material, such as wood, for the liquid to flow through. This explains how a pipe could be affixed to the ground before being hollowed out. According to Tosafot, the pipe referred to in the baraita had an additional indentation at some point, carved deeper than the bottom surface of the groove, for catching pebbles and other debris, so that they would not flow further along with the liquid.
It is not susceptible to ritual impurity in its place – שֶׁל נַחְתּוֹמִין. According to this explanation, the beehive ceases to be susceptible to ritual impurity when it becomes attached to the ground. Though it was initially a vessel, once it is attached to the ground it has the status of land, which is not susceptible to ritual impurity (Rishaban). The phrase in its place means that it is in this status as long as it is attached to the ground (Ritva).

One who removes honey from it on Shabbat – שֶׁל נַחְתּוֹמִין. According to this explanation, one who removes honey from a beehive is considered to be detaching something from the place where it grew. Since a beehive that is attached to the ground is considered like the ground, when one removes the honey from it, it is as if he were detaching it from the ground. This is considered prohibited labor on Shabbat, a subcategory of the primary category of harvesting. One who does so unintentionally on Shabbat is liable to bring a sin-offering.

Just as with regard to a forest – שֶׁל נַחְתּוֹמִין. According to this explanation, there is no general halakha here concerning vessels attached to the ground, but rather, this halakha applies specifically to a beehive. Since the verse likens honey to a forest, one who removes honey from a beehive on Shabbat is treated like one who detaches something from the ground in a forest (Rashbam). The analogy between honey and forest applies to all aspects of halakha relating to them, and not just removing honey from a beehive on Shabbat. Therefore, a beehive is considered attached to the ground like the trees of a forest with respect to all halakhot governing land (Ri Migash). The early commentaries disagree about whether this halakha applies to any beehive, even one that is not attached to ground, or only to a beehive that is actually attached to the ground.

Baker’s board – שֶׁל נַחְתּוֹמִין. Most commentaries explain that this is a wooden board on which the dough was kneaded or on which the loaves were arranged for baking (Rabbeinu Gershon). Others suggest that this was a board on which the baked loaves were set on display (Rishaban). In the case in the Gemara, the baker’s board was prepared for its purpose and then fixed to a wall. Since it was prepared for its purpose by human hands, it is a vessel, but, having no receptacle, it falls into the category of flat wooden vessels.

And such a beehive is not susceptible to ritual impurity as long as it is fixed in its place. And one who removes honey from it on Shabbat is liable to bring a sin-offering, as is likened to one who harvests produce attached to the ground.

But the Rabbis say: Such a beehive is not like land, and therefore one may not write a prosbol based upon it, and it is susceptible to ritual impurity even when it is fixed in its place, and one who removes honey from it on Shabbat is exempt from bringing a sin-offering. This missha suggests that Rabbi Eliezer holds that a vessel that was affixed to the ground is considered like land for all purposes. This contradicts the bara’aita that states that if one hollowed out a pipe and then affixed it to the ground, it is still considered a vessel, and water flowing through it is considered drawn water that invalidates a ritual bath. This indicates that the bara’aita was not taught in accordance with the opinion of Rabbi Eliezer.

The Gemara rejects this opinion, stating that there, in the misha, Rabbi Eliezer treats the beehive like land for the reason that Rabbi Elazar stated, and not because he holds that all vessels that are affixed to the ground are considered like land. As Rabbi Elazar stated: What is the reasoning for the statement of Rabbi Eliezer with regard to one who removes honey from a beehive? His rationale is as it is written: “And he put forth the end of the rod that was in his hand and dipped it in the honeycomb [y’arāt hadevash]” (1 Samuel 14:27).

Rabbi Eliezer understands that since the Hebrew words used here for honeycomb can also mean honey forest, the verse comes to teach that just as with regard to a forest, one who picks anything from a tree on Shabbat is liable to bring a sin-offering, so too, with regard to a beehive containing honey, one who removes honey from it on Shabbat is liable to bring a sin-offering, as the beehive is treated like land. Consequently, Rabbi Eliezer relies here on a special derivation, which does not necessarily apply to other vessels. Therefore, nothing can be learned from this about Rabbi Eliezer’s opinion with regard to the pipe in the bara’aita.

Rather, the reference with regard to the hollowed-out duct must be to the opinion of Rabbi Eliezer concerning a baker’s board on which he kneads the dough, as we learned in a misha (Kelim 15:2): With regard to a baker’s board [daf shel naḥtomin] that was affixed to the wall, Rabbi Eliezer renders it not susceptible to ritual impurity, while the Rabbis render it susceptible to ritual impurity. This seems to indicate that, according to Rabbi Eliezer, anything that is affixed to the ground or to something else that is affixed to the ground is treated like land, and therefore it cannot become ritually impure.
With regard to a board of metal – דב סְוֵנְא אֶלַּו בְּאֶטְלֶפַּה: According to all opinions, a metal vessel, even if it is flat, is susceptible to ritual impurity by Torah law. The dispute here relates to the effect of fixing the baker's metal board to the wall: Is the board, which is susceptible to impurity by Torah law, considered part of the wall, and therefore treated like the ground, which is not susceptible to impurity, or is it status as a vessel not capable of being nullified in this manner?
Drawn water...invalidates a deficient ritual bath by rabbinic law – מַחֲטֹן יְדוּקִית לְךָ. Some maintain that even if a ritual bath is filled entirely with drawn water, it is invalid only by rabbinic law (Rambam; Rabbeinu Yitzḥak of Dampierre; Gelonini). The Levush maintains that this is also the opinion of the Shulḥan Arukh. The Rema, citing Rabbi Shimshon of Saens and the Rosh, writes that only if less than half of the ritual bath’s minimum volume is completed by drawn water is it invalid by rabbinic law, but if half or more is completed by drawn water it is invalid by Torah law (Rambam Sefer Tahara, Hilkhot Mikvaot 4:1–2; Shulḥan Arukh, Yoreh De’ah 6:4), and in the comment of Rema, and see Taz on 1:79:10).

The Gemara answers: Actually, one can explain that the ḥara’ita is in accordance with the opinion of the Rabbis, 2 who deem the baker’s metal board susceptible to ritual impurity even when it is fixed to a wall, but the halakha governing drawn water added to a deficient ritual bath is different, because drawn water invalidates a deficient ritual bath only by rabbinic law, 3 and therefore the Rabbis were lenient.

The Gemara asks: If so, then even if one first hollowed out the duct and only afterward fixed it to the ground, water flowing through it should not invalidate the ritual bath as well. The Gemara answers: It is different there, where the duct was hollowed out before being affixed to the ground, as the duct had the status of a vessel 4 when it was still detached from the ground, and therefore the Rabbis were not willing to be lenient to such an extent and rule that water flowing through the duct does not invalidate a ritual bath.

§ Rav Yosef raises a dilemma: With regard to rainwater that was falling and the owner consciously desired that it should fall so that it would wash his lower millstones: Does that water make the seeds upon which it falls susceptible to ritual impurity? The Gemara answers: An answer to this question was not found; therefore, the dilemma stands unresolved.

As the ground...it falls on the ground, water, or another of the seven liquids specified in the mishna (Makkot 19a), has been put on them. The food must be exposed to the liquid willfully by the owner; that is, he must desire or at least be pleased that the food should become wet. Rav Yosef asks about a case where the owner wants the rain to fall on the millstones: Does that water make the seeds upon which it falls susceptible to ritual impurity?

The Gemara clarifies Rav Yosef’s question: Do not raise this dilemma according to the opinion of Rabbi Eliezer, who says: Anything attached to the ground has the same legal status as the ground. Since the lower millstones are attached to the ground, they therefore have the same legal status as the ground, and water that falls on the ground, even if it is pleasing to the owner, does not make food susceptible to ritual impurity. When should you raise this dilemma? Raise it according to the opinion of the Rabbis, who say: It does not have the same legal status as the ground. What is the halakha with respect to imparting susceptibility to ritual impurity? The Gemara concludes: An answer to this question was not found; therefore, the dilemma stands unresolved.

§ Rav Nehemya, son of Rav Yosef, sent a message to Rabba son of Rav Huna the Short at Neharde’a: When this woman bearing this letter comes before you,

Actually it is the opinion of the Rabbis – מַחֲטֹן יְדוּקִית לְךָ. The Gemara’s conclusion here is that the ḥara’ita about the hollowed-out duct can be explained in accordance with the opinion of the Rabbis about a baker’s metal board, and the apparent contradiction is resolved as follows: A baker’s metal board is susceptible to ritual impurity by Torah law, and therefore fixing it to a wall does not nullify that susceptibility; but drawn water invalidates a ritual bath only by rabbinic decree, and therefore the Rabbis are lenient with regard to water flowing into a ritual bath through a duct that was hollowed out only after it was attached to the ground (Rashbam).

It had the status of a vessel – מַחֲטֹן יְדוּקִית לְךָ. Since this duct was already hollowed out, it is considered a vessel, even if later it was attached to the ground. If water flowing through such a duct would not invalidate a ritual bath, this would negate the rabbinic decree relating to drawn water (Rashbam).

So that it would wash his lower millstones – מַחֲטֹן יְדוּקִית לְךָ. The Rashbam interprets this as a general question as to whether an item that was movable and was later attached to the ground is considered as attached or detached with regard to susceptibility to ritual impurity. Many early commentators maintain that the question is specifically about stationary millstone bases, as if it were a general question it should have been asked in a general manner, without mentioning millstone bases. They explain that the Gemara assumes that certain items that had been movable but were later attached to the ground, such as a wall, are treated like the ground with regard to susceptibility to ritual impurity, while others, like a baker’s metal board, are considered detached even if they were physically fixed to a wall or the like. Therefore, the question here is whether the Rabbis, who exclude even the stationary mortar from the sale of a house but include the stationary millstone base, consider the millstone base attached to the ground for the purpose of susceptibility to ritual impurity or whether they include the stationary millstone base in the sale of a house solely because the seller sells generously, but with regard to susceptibility to ritual impurity they consider it portable (Tosafot; Ri Migash; Hid).
One who sells a courtyard without specifying what is included in the sale has sold with it the houses, pits, ditches, and caves found in the courtyard, but he has not sold the movable property. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the courtyard, even the movable property. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that includes the movable property, he has not sold the bathhouse, nor has he sold the olive press that is in the courtyard, as each is an entity with a discrete purpose and not an integral part of the courtyard. Rabbi Eliezer says: One who sells a courtyard without specifying what is included in the sale has sold only the airspace, i.e., the open space, of the courtyard, but nothing found in the courtyard, not even the houses.

The Sages taught in a baraita (Tosefta, 3:1): One who sells a courtyard has sold with it the outer houses that can be accessed directly from the courtyard, and the inner houses that can be entered only via the outer houses, and the area of the sand fields [uveit halosait]. As for the stores, those that open into the courtyard are sold along with it; those that do not open into it, but rather open into the public domain, even if they are located in the courtyard, are not sold along with it; and those that open both into this courtyard and into that other public domain are grouped together with those that open into this courtyard alone, and both these and those are sold with it. Rabbi Eliezer says: One who sells a courtyard without specifying what is included in the sale has sold only the open space of the courtyard.

Notes:
- One-tenth of the estate is considered part of the dowry (Rabbeinu Gershom). This refers to movable property that is associated with the house, e.g., furniture and other items usually used in a house. This does not include movable property stored there, but not associated specifically with the house, e.g., merchandise or work tools (Rashbam).
- The reference here is to movable property that is associated with the house, e.g., furniture and other items usually used in a house. This does not include movable property stored there, but not associated specifically with the house, e.g., merchandise or work tools (Rashbam).
- movable property - מחסני ידים: The Sages taught that movable property, e.g., furniture and other items usually used in a house, is included in the sale. However, movable property stored there, but not associated specifically with the house, e.g., merchandise or work tools, is not included.
- A man dies leaving an unmarried daughter, and the court has no way to determine how much he would have given his daughter for her dowry, she is granted one-tenth of her father’s landed property. The Tur writes that the daughter’s dowry is also collected from immovable lower millstones (Rambam Sefer Nashim, Hilkhot Issurim 303:5; Tur, Even HaEzer 133; Shulhan Arukh, Even HaEzer 132).
- A daughter’s dowry can also be collected from the rent generated by property left by her father, in accordance with the opinion of Rav Ashi. This is the halakha only if the payment date has not arrived and the heirs have not collected the rent for the time that has passed. If the rental period has concluded and the money for rent has been collected, the dowry cannot be collected from that money (Rema, citing Tur). Nowadays, when the marriage contract payment and its stipulations are collected from movable property, a daughter’s dowry may also be collected from movable property (Rambam Sefer Nashim, Hilkhot Issurim 303; Shulhan Arukh, Even HaEzer 132-3, and in the comment of Rama).

Language:
- Sand fields (halosait): Some maintain that the source of this word is the Greek χαλίξ, meaning gravel stones. The word could have been altered after entering Aramaic, under the influence of the word for clay, חרס.
The Master said in the baraita: Stores that open both into this courtyard and into that public domain are sold along with the courtyard. The Gemara raises an objection: But didn't Rabbi Hyya teach a baraita that states that such stores are not sold with the courtyard? The Gemara answers that this is not difficult: This baraita, that teaches that the stores are sold along with the courtyard, is referring to a case where the majority of their use is from within, i.e., the stores are mainly accessed from within the courtyard, while that baraita of Rabbi Hyya, that teaches that the stores are not sold along with the courtyard, is referring to a case where the majority of their use is from without, i.e., the stores are accessed mainly from the public domain.

The mishna teaches, and it was similarly taught in the baraita, that Rabbi Eliezer says: One who sells a courtyard has sold only the airspace of the courtyard, and he has sold nothing found in the courtyard, not even the houses. To clarify the disagreement between the unattributed opinion in the mishna and Rabbi Eliezer, Rabba said: If the seller said to the buyer that he is selling him dirata, i.e., the place of residence, everyone agrees that he means to sell the houses and that they are also included in the sale. When they disagree, it is where he said to him that he is selling him hatzer, the Hebrew term for courtyard. One Sage, Rabbi Eliezer, holds that he means to sell only the garden, i.e., the space between the houses, and one Sage, the unattributed first opinion in the mishna, holds that he means to sell also the houses.

Some state a different version of this discussion, according to which Rabba says: If the seller says to the buyer that he is selling him dirata, everyone agrees that he means to sell also the houses and that they are included in the sale. When they disagree, it is where he said to him that he is selling him the hatzer, the Hebrew term for courtyard. One Sage, Rabbi Eliezer, holds that when he says hatzer, he means to sell him only the airspace, i.e., the open space of the courtyard itself, and one Sage, the unattributed first opinion in the mishna, holds that houses are also included in the sale, just as the courtyard of the Tabernacle included the Tabernacle itself.

§ And Rabba says that Rav Nahman says: If one sold another a sand field for glass making, and a pond for fishing or some other purpose, if the buyer took possession of the sand field in order to finalize the transaction, he has not acquired the pond and must therefore perform a separate act of acquisition for it. Conversely, if he took possession of the pond, he has not acquired the sand field. The Gemara asks: Is that so? But doesn’t Shmuel say: If one sold another ten fields in ten different regions, all in a single bill of sale, once he takes possession of one of them, he has acquired them all; and the two cases seem to be analogous.

The Gemara rejects the parallel: There, in the case of the ten fields, the land is all located in one geographic block, and it all has one use, i.e., to be farmed. The buyer, therefore, acquires all of the fields when he takes possession of one of them, even if they are not adjacent. But here, in the case of the sand field and the pond, this, the sand field, has a distinct use, i.e., to supply sand for glass making, and that, the pond, has a distinct use, i.e., for fishing. Therefore, taking possession of one of them does not effect a transfer of the other.

And some state a different version of the previous discussion.

NOTES

Pond - חָצְר: Some interpret this as a river or stream from which gold may be extracted (Rabbenu Hananel, Rashbam). The Rashbam suggests an alternative explanation that it is a place for fishing. The Rì Migash explains that this is a water hole in the courtyard. The Rambam explains this section of the Gemara as teaching about the sale of two fields, located in different types of terrain, to one person. In his opinion one field is in a valley, while the other field is in a mountainous area, if the buyer took possession of one field, he has not acquired the other.

took possession of the sand field - הצְּרוֹת מִשְּׁפְּר: One of the ways to effect acquisition of real estate is by taking physical possession of the property, as explained in the third chapter of this tractate. When a buyer performs an act that enhances the property, this is an act of acquisition, which finalizes the transfer of ownership. The issue here is whether an act of acquisition that is performed with one property can effect the acquisition of another property located in a different place, when the two properties are being sold together.
Rabba actually said that Rav Nahman said: If one sold another a sand field and a pond, and the buyer took possession of the sand field, he has also acquired the pond. The Gemara asks: This is obvious, as Shmuel says: If one sold ten fields to another in ten different regions, once he takes possession of one of them, he has acquired them all. The Gemara explains why Rav Nahman’s statement was nevertheless necessary: It is necessary lest you say that there, in the case of the ten fields, the land is all located in one geographic block with a single use, and therefore all the fields are acquired together. But here, in the case of the sand field and the pond, this, the sand field, has a distinct use, and that, the pond, has a distinct use, and therefore taking possession of one of them should not effect acquisition of the other. Therefore, Rav Nahman teaches us that if the buyer took possession of the sand field, he has acquired the pond as well.

### MISHNA

One who sells an olive press without specifying what is included in the sale has sold with it the yam and the memel and the betulot, the immovable elements of the olive press. But he has not sold with it the avirim and the galgal and the kora, the movable utensils of the olive press. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the olive press, even the movable utensils. Rabbi Eliezer says: One who sells an olive press has sold the kora as well, as it is the most fundamental element of the olive press.

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**HALAKHA**

If one took possession of the sand field he has acquired the pond. If one purchased ten fields from another and paid him in full, once he takes possession of one of the fields he has acquired them all, even if they are in ten different regions. The same applies to houses or a combination of fields and houses (Rema, citing Mimmukei Yeirei). This is the halakha even if they are not all used in the same manner, e.g., if one is on a mountaintop while another is in a valley, according to the Rambam’s interpretation of the terms used in the Gemara. The above is in accordance with the second version of Rav Nahman’s opinion. If the buyer did not pay in full, he has acquired property only in accordance with the amount he paid. If he received the fields as a gift, he acquires all of them by taking possession of one. Some (Rema, citing Rashi, see Smo) hold that even in the case of a gift, he acquires only those properties with regard to which he performs some act of possession (Rambam, Sefer Kinyan, Hilkhot Mekhira 119, Shutshan Arukh, Hoshen Mishpat 192:12).

One who sells an olive press — כּוֹרָה אֶת הַקּוּרָה: One who sells an olive press without specifying what is included in the sale has sold the large millstone that is attached to the ground upon which the olives are ground, the cedar posts that support the beam during the grinding, the vat, the containers for the ground olives, and the planks placed around the olives to prevent their dispersal (Rema, citing Tur), but he has not sold the upper millstone. If the seller says that he is selling the olive press and everything that is in it, the sale includes the upper millstone as well. But even if the seller uses the phrase: The olive press and everything that is in it, nevertheless, the pressing utensils, the wheel used to rotate the stone, and the beam are not included in the sale (Rambam, citing a different version of the text of the mishna and the baraita; Maggid Mishne). Some say that if the seller says that he is selling the olive press and everything that is in it, all of these components are included in the sale (Rema, citing Tur), in accordance with the standard version of the mishna, as opposed to the opinion provided in the baraita, but the sacks, whether they are made of leather or of wool, are not included in the sale (Rambam, Sefer Kinyan, Hilkhot Mekhira 257; Shutshan Arukh, Hoshen Mishpat 215:2).

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**NOTES**

Has sold the yam — מָכַר אֶת הָעֲבִירִים: According to one explanation of this and the following mishna, anything attached to the ground is included in the sale, while movable items are not included in the sale (Rashbam). According to another explanation, some of the items sold together with the olive press are movable, but they are included in the sale, either because they have no independent significance and are therefore subsumed under the general sale, or because they are used only in an olive press and are therefore assumed to be sold along with it (Rabbeinu Tam in Tosafot; Ramah). The Ramah adds that items that are essential for an olive press and cannot be borrowed from others even in exigent circumstances are included in the sale, while items that can be borrowed are not included in the sale, since the buyer can operate the olive press even without owning them.

The yam and the memel and the betulot — מָכַר אֶת הָעֲבִירִים וְאֶת הַגַּלְגַּל: The various terms used here are explained in the Gemara, but the meanings of these explanations are not always clear. Even the early commentators differed in their interpretations of these terms, both because they relied upon different sources and traditions, and because of differences in what was customary in their respective localities. It is also likely that in different places there were different ways of producing olive oil, and it is possible that the mishna and the baraita refer to different methods of oil production.
Avoda Zara 75a explains that it is a round stone, which is why it is called a lentil. According to all opinions this is a round object, which is why it is called a lentil in Aramaic, but its exact definition is disputed among the commentators. The Rashbam defines it as a large stone similar to a kneading trough, into which the olives are placed for pressing, and it is either attached to the ground or hollowed out of clay or stone. Rabbeinu Gershon interprets the word in a similar manner. This is like Rashi’s explanation (Avoda Zara 75a) that the lentil is the olive press itself. Some explain that this is a round stone, similar to a millstone, which has a receptacle where the olives were ground (Ri Migash; Rabban’s Commentary on the Mishna). Similarly, the Meiri (Avoda Zara 75a) explains that it is a round receptacle where the olives were placed before they were placed under the beam of the olive press. Others explain that these lentils are large clay balls placed upon the mounds of olives in order to weigh them down and extract their oil (Tosafot, citing Arukh; Ge’onim).

The crushers – כִּבְשֵׁי. According to all of the commentaries this refers to a utensil used to crush and mash the olives. The first interpretation presented by the Rashbam, citing Rabbeinu Hananel (see Arukh), is that this refers to a hollowed-out stone, similar to a mortar, into which the olives are placed to be crushed with a special wooden pestle. This is similar to one of the interpretations of the lentil in the previous note. A second interpretation mentioned by the Rashbam is that this refers to the wooden pestle itself. Similarly, the Meiri explains that this is a pestle for pounding the olives in the lentil before they are pressed by the beam. Others explain that this is the upper stone that grinds the olives in the lentil (Rabban’s Commentary on the Mishna; Ri Migash; and see Arukh).

Cedar posts – כְּלוֹנְסוֹת. Some of the early commentators explain that this term refers to the posts upon which the beam was placed when not in use. The Rashbam suggests that bars were passed through these posts, and the beam rested upon them. The Meiri proposes that these posts were a sort of track, upon which the beam was raised and lowered via a wheel or pulley. This word refers to a round and ring-shaped item. According to Rabbeinu Gershon, these are wooden blocks that were placed on top of the wooden panels.

Humrata – מַרְצוֹת. This refers to a utensil used to crush olives (Rashbam; Ri Migash). The Ramah integrates the two interpretations and describes it as a round stone, inside of which the wooden gear would rotate.

Boards (nesaron) – סְרָאֶה. There are several versions and interpretations of this term. The Rashbam explains that these are boards that are fixed in the ground to keep the olives from being dispersed, as opposed to the pressers, which are boards used to press down upon the olives. Rabbeinu Gershon suggests that these are actually identical to the pressers. These wooden objects can also be interpreted as ducts through which the oil flows into the vat (Meiri). Instead of nesaron, some versions read bet ha’arim, which in this context refers to the pit in which the oil is collected after it flows out of the olive press (Ri Migash). The Tosafot reads yetzarim, which the Rashbam understands as referring to the baskets that held the olives while they were being pressed.

Vats – קָלָוֹנָם. Some explain that this refers to the vat hollowed out of stone into which the oil would flow (Rabbeinu Barukh). Others say this refers to the vats in which the olives were brought to the press (Tosafot, citing Arukh; Rabbeinu Gershon). The Ri Migash explains that this term refers to the pit into which pressed wine would flow, and a similar pit formed part of an olive press. According to the Rashbam the term refers to the lentil, where the olives were placed for crushing.

Crushers – כִּבְשֵׁי. The majority of the early commentators maintain that this term refers to the menel mentioned in the mishna, a utensil used to crush olives (Rabban’s; Ri Migash). Rabbeinu Barukh and the Rashbam in Mishne Torah explain that it refers to trenches in which the pressed olives would be rinsed with water.

The lower millstone – מַרְצוֹת. This term refers to the lower stationary part of the millstone. The Ri Migash understands it to be identical to the lentil, where the olives were crushed. The Rashbam distinguishes between crushing and grinding olives and explains that the olives were pressed only after they were crushed in the lentil and then ground on the millstone. According to another interpretation, the Avoda describes a different process for extracting olive oil in which a millstone was used to press the olives (Meiri).
MISHNA One who sells a bathhouse⁴ without specifying what is included in the sale has not sold with it the boards⁵ that are placed on the floor, nor has he sold the basins⁶ or the curtains [rabbanianyot].⁷ When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the bathhouse. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the bathhouse, he has not sold the tanks of water, nor has he sold the storerooms for wood, as an explicit sales agreement is required for these matters.

GEMARA The Sages taught in a baraita (Tosefta, 3:3): One who sells a bathhouse without specifying what is included in the sale has sold with it the boards, and the storeroom for the basins, and the storeroom for the implements called yekamin,⁸ and the storeroom for the basins, and the storeroom for the curtains [vilaot],¹⁰ but he has not sold the boards themselves, nor the yekamin themselves, nor the basins themselves, nor the curtains themselves. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the bathhouse. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the bathhouse, he has not sold him the pools that supply him with water, whether not included in the sale if the seller says to the buyer: I am selling you the bathhouse, and everything that is in it, then all these components are included. In any case, the sale does not include the pools that supply water to the bathhouse or the storerooms for the firewood (Rambam Sefer Kinyan, Hilkhot Mekhira 259; Shulhan Arukh, Hoshen Midpat 215:3).

HALAKHA One who sells a bathhouse - מַ׳רַכְתָּא: This term refers to the lower part of the bathhouse, which was the area where the olives were crunched. Some versions read מַ׳רַכְתָּא. Others understand it as referring to an inner room that was so hot that its floor had to be covered with boards to enable people to walk there (Rabbeinu Barukh).

The storeroom for the implements called yekamin – הַבִּלָּנִיּוֹת: This is the room for storing the yekamin (Rashbam), which are explained in a later note. Some commentaries have a version of the text replacing yekamin with kamim, meaning those who stand or stay, and they interpret this room not as a storeroom, but as an external room, cooler than the internal ones, in which bathers spent most of their time in the bathhouse (Rabbeinu Barukh).

The storeroom for the basins – אֶחָד מֵאֵחָד: According to the alternative version of the text, this was called the bench storeroom. Alternatively, it is the room where people sat on benches and removed their clothes before bathing (Rabbeinu Barukh).

The storeroom for the curtains – חוּמְרָתָא: This is the room for storing curtains (Rashbam). Others explain that it is a room with curtains partitioning off sections for people to bath or clean themselves privately (Rabbeinu Barukh; Ri Migash).

NOTES

Boards – מַ׳רַכְתָּא: This term refers to boards that were placed on the floor of the bathhouse to protect the bather’s feet either from dirt or from the scorching heat, as the bathhouse was heated from beneath the floor (Rashbam; Rabbeinu Gershom). According to another explanation, these boards were used to cover the water in the pools to preserve its heat (Tosafot). The Ri Migash proposes that these boards served as benches, either to place utensils upon them or for the bathers to sit upon (Ri Migash).

Basins – בִּלָּנִיּוֹת: These are large basins that were used to carry the water for bathing (Rashbam). Some commentaries have a version of the text that replaces this word, meaning basins, with the similarly spelled word for benches, and they assume that they were seats for the bathers (Rambam’s Commentary on the Mishna; Rabbeinu Barukh).

Curtains [bilaniyot] – בִּלָּנִיּוֹת: Most commentaries have a version of the text that replaces this word with vilnoit, the standard term for curtains. In any case, the term refers to curtains hung for purposes of modesty. Others understand that it refers to towels that the bathers used to dry themselves (Rambam’s Commentary on the Mishna).

The storeroom for the boards – מַ׳רַכְתָּא: The most straightforward explanation is that this term refers to the room in which the bathhouse’s boards were stored (Rashbam). One commentator understands it as referring to an inner room that was so hot that its floor had to be covered with boards to enable people to walk there (Rabbeinu Barukh).

Curtains (bilaniyot) – בִּלָּנִיּוֹת: This apparently refers to curtains, deriving from the Greek word μήλος, bellos, meaning threshold. Some have suggested that it derives from the Latin balnearia, meaning, among other things, bathhouse accessories.

Yekamin – יָקָמִין: The correct reading and interpretation of this word is not clear. None of the suggested meanings give a clear indication of the source of the word. Some rely upon the textual version of the Tosefta, kamim, and assume that it derives from the Greek κῦμαρος, kominos, which means an oven or furnace. According to this, the reference here might be to a portable oven, and the room mentioned in the baraita would be the room where this oven is placed to heat the water, hot water being extensively used in the bathhouse.

Curtains [vilaot] – חֹומְרָתָא: From the Latin velum, although its Aramaic form may be derived from the Greek βηλός, bellos, meaning threshold, indicating a screen or a curtain.
The bathhouse and all of its accompaniments – The bathhouse and all of its accompaniments are sold together. When one sells a bathhouse, he has not sold the pools that supply its water, whether in the summer or in the rainy season, even if he writes in the bill of sale that he is selling the bathhouse and everything that is in it. If he states: I am selling you the bathhouse and all of its accompaniments, the pools are included in the sale even if they are external to the bathhouse. The Tur writes that this applies only if they are within the boundaries of the area sold, as defined by the seller, and only if he wrote: And these are its boundaries (Rambam Sefer Kinyan 25:8; Shulhan Arukh, Hoshen Mishpat 215:3).

The olive press and all of its accompaniments, and these are its boundaries – If one sells an olive press to another and there are stores outside of the press where olives or sesame seeds are spread out to dry, and the seller delineates the external boundaries of the area included in the sale, and says to the buyer: I am selling you the olive press and all of its accompaniments, the buyer has acquired those stores, provided that they are found within the specified boundaries. Otherwise, he acquires only that which is within the olive press itself, in accordance with the conclusion of Rav Ashi (Rambam Sefer Kinyan, Hilkhot Mekhira 25:8; Shulhan Arukh, Hoshen Mishpat 215:2).

One who sells a city – When one sells a city, then the houses, pits, ditches, caves, bathhouses, dovecotes, olive presses, and fields requiring irrigation that are within or adjacent to the city are included in the sale. But the sale does not include the movable property found in the city. If the seller writes for the buyer that he is selling the city and everything that is in it, the buyer acquires the movable property as well, including even the livestock and the Canaanite slaves (Rambam Sefer Kinyan, Hilkhot Mekhira 26:1; Shulhan Arukh, Hoshen Mishpat 215:4 and Sima there).

In the summer season – The Rashbam explains that the novelty here is that the pools are not included in the sale of the bathhouse even during the summer, when they contain little water and might be assumed to be insignificant and subsumed under the classification of the bathhouse itself. According to another explanation, the pools excluded from the sale are those that collect sufficient water to provide not only for the winter, but even for the summer when water is scarce. But it is possible that pools that provide only for the winter are deemed insignificant and are therefore included in the sale of the bathhouse (Tosefot Halakha).

NOTES

MISHNA One who sells a city without specifying what is included in the sale has sold with it the houses, the pits, the ditches and caves, the bathhouses and the dovecotes, and the olive presses and beet hashelaḥin, as will be explained in the Gemara, but he has not sold the movable property in the city. But when the seller says to the buyer: I am selling you the olive press and all of its accompaniments, and these are its boundaries, and he included the area of the stores within those boundaries, the buyer has acquired those stores, but if the seller does not say this, he has not acquired them, as they are not actually part of the olive press.
GEMARA Rav Aha, son of Rav Ayya, said to Rav Ashi: Learn from the mishna that the legal status of a Canaanite slave is like that of movable property, as if it is like that of land, the slave should be sold along with the city. Rav Ashi responded: Rather, what do you claim, that the legal status of a Canaanite slave is like that of movable property? If that is the case, what is the meaning of the mishna’s statement that even if there were cattle and Canaanite slaves in the city, they are all sold? This is obvious, as the slaves should be treated no differently than the rest of the city’s movable property.

Rather, what have you to say? You must explain that there is a difference between movable property that moves about by itself, such as slaves, and movable property that does not move about by itself, i.e., inanimate objects. In exactly the same manner, one can claim that even if you say that the legal status of a Canaanite slave is like that of land, there is a difference between land that moves about by itself, i.e., slaves, and land that does not move about by itself.

The mishna teaches: Rabban Shimon ben Gamliel says: One who sells a city has sold it with the santar. The Gemara asks: What is the meaning of the term santar? Here in Babylonia they interpreted it to mean the land registrar [bar mahavanita] in charge of keeping track of property boundaries. Shimon ben Avtolenos disagrees and says that it is referring to the fields that surround the city. The Gemara comments: The one who says that santar means the land registrar understands that according to Rabban Shimon ben Gamliel, when one sells a city, all the more so are the fields that surround the city included in the sale. But the one who says that it means the fields that surround the city holds that the land registrar is not sold with the city.

The Gemara attempts to adduce proof in support of one of the opinions: We learned in the mishna here that the olive presses and beiš hashebaĥin are sold along with the city. The Sages initially maintained: What is meant by shelalin? This is referring to irrigated fields, fields that require additional irrigation to supplement the rain that they receive. As it is written: “Who gives rain upon the earth and sends [shole’aḥ] water upon the fields” (Job 5:10). Granted, according to the one who says that santar means the land registrar, the first tanna of the mishna said that the fields that surround the city are sold with the city, but the land registrar is not sold, and Rabban Shimon ben Gamliel comes to say that even the land registrar is sold. But according to the one who says that santar means fields, this is what the first tanna is saying as well. In what way, then, does Rabban Shimon ben Gamliel disagree with the first tanna?

The Gemara rejects this proof: Do you maintain that what is meant by shelalin is irrigated fields? This is not the case. Rather, what is meant by shelalin? This is referring to gardens found within the city, as it is stated: “Your shoots [shelahayikh] are an orchard of pomegranates” (Song of Songs 4:13). But the fields that surround the city are not sold. And Rabban Shimon ben Gamliel comes to say that even the fields that surround the city are sold as well. This is one version of the discussion.

Some say that the discussion took place as follows: The Sages initially assumed that what is meant by shelalin is referring to gardens found within the city. Granted, according to the one who said that santar means the fields that surround the city, the first tanna of the mishna said that the gardens found within the city are sold along with the city, but the fields that surround the city are not sold, and Rabban Shimon ben Gamliel comes to say that even the fields that surround the city are sold.
Rabbi Yehuda says – לא RESOURCE (the text here is the Rashash’s version of the text. There is another version from the geonim, cited by the early commentators. According to this other version, which is the version found in the Tosafot (see Tosot) the baraita states the opposite, that the santar is included in the sale but the city scribe is not. A similar version is also found in the Ramban, Rashba, and other commentators. In terms of the Gemara’s conclusion, the different versions are not at odds, but they differ in the way that they adduce proof from the statement of Rabbi Yehuda and in the way that they discuss his opinion.

The strips of the fields – וּבִיצֵי: This is referring to portions of land that are separated from the rest of the fields by stones and rocky ground (Rashbam) or by streams and riverbeds (Ravad). According to Rabbeinu Gershon these are small fields that serve as grazing ground.

Reverse the statement of Rabbi Yehuda – וּכְרַבָּן שִׁמְעוֹן. According to this, when Rabbi Yehuda spoke of the santar, he was referring to the fields that surround the city and not the person responsible for them, in which case Rabbi Yehuda’s opinion is identical to the opinion of Rabban Shimon ben Gamliel.

The Gemara suggests: Come and hear a proof from the following baraita: Rabbi Yehuda says – The santar is not sold with the city, but the city scribe (ankolemus) is sold with it. What, is it not clear from the fact that the city scribe is a man that the santar is also a man? The Gemara rejects this proof: Are the cases comparable? This case is as it is, and that case as it is, and santar means fields, and not the land registrar.

The Gemara asks: How can you say that according to Rabbi Yehuda the fields surrounding the city are not sold along with it? But isn’t it taught in the latter clause of this baraita: But when one sells a city he has not sold its remnants, and not its daughters, i.e., the nearby rural villages, and not the woods that are set aside and designated for the city, and not the enclosures (beivarin) for animals, for birds, and for fish. And we said in explanation: What is meant by its remnants? Bizelei: The Gemara asks: What is the meaning of bizelei? Rabbi Abba said: The strips of the fields that are separated from the main fields by a stretch that cannot be cultivated. From here, it may be inferred that it is the strips of the fields that are not sold with the city, but the fields themselves are sold with it.

The Gemara suggests: Reverse the statement found in the baraita so that Rabbi Yehuda says that the santar, now understood to mean fields, is sold with the city, but the city scribe is not sold with it.

The Gemara asks: How can you say that Rabbi Yehuda holds in accordance with the opinion of Rabban Shimon ben Gamliel, to the point that you adduce proof from the words of Rabbi Yehuda with regard to the opinion of Rabban Shimon ben Gamliel? But doesn’t Rabbi Yehuda hold in accordance with the opinion of the Rabbis? As it is taught in the latter clause of that same baraita: But when one sells a city he does not sell its remnants, and he does not sell its daughters, i.e., the nearby rural villages. Whereas with regard to Rabban Shimon ben Gamliel, doesn’t he say that one who sells a city sold its daughters along with it, i.e., the nearby rural villages, as it is taught in a baraita: One who sells a city has not sold its daughters; Rabban Shimon ben Gamliel disagrees and says: One who sells a city has sold its daughters.

The Gemara answers: This does not prove that Rabbi Yehuda disagrees with Rabban Shimon ben Gamliel, as it may be suggested that Rabbi Yehuda holds in accordance with the opinion of Rabban Shimon ben Gamliel with regard to one issue, that the fields that surround the city are included in the sale, and disagrees with him with regard to another issue, as according to Rabbi Yehuda the nearby villages are not sold along with the city.
The Gemara answers that this is not difficult, as a distinction can be made between different cases: Here, the one baraita addresses animal enclosures whose openings face inward, i.e., toward the city, and they are therefore considered a part of the city, whereas there, the other baraita addresses animal enclosures whose openings face outward, i.e., away from the city, and therefore they are not included in its sale. The Gemara raises a difficulty: But doesn’t the baraita teach: And he has not sold the woods that are set aside for the city, indicating that they face the city, and nevertheless they are not sold along with the city? The Gemara answers: Say that the baraita should be emended so that it reads instead: And he has not sold the woods that are set apart from the city, i.e., that are at a distance and do not face the city.

MISHNA One who sells a field4 without specifying what is included in the sale has sold the stones in the field that are for its use,5 and the reeds in the vineyard6 that are for its use, and the produce that is still attached to the ground, and the cluster of reeds that occupy less than the area required for sowing a quarter-kav of seed [beit rova],7 and the watch station that is not plastered with clay,8 and the young carob tree that has not yet been grafted,9 and the untrimmed sycamore10 that is still young.

NOTES

If it has one part on the sea – אֶחָד בַּיָּם: According to one explanation, this is referring to a city where the majority of it is located on the mainland while a minority is situated on the sea, or conversely, the majority of the city is situated on the sea, with a minority on the mainland (Ramah). Alternatively, this is referring to areas that are located outside the city, either at a distance or on the sea, but which are called by the same name as the city (Rashbam). According to Rav Hai Gaon, this is referring to an island, or part of an island, that is considered part of the city, while the Ra’avad explains that these areas are forests that exist outside the city. The different explanations of this passage depend in part on the text of the baraita, which, according to some early commentaries, states the opposite, that this land is not sold along with the city (see R. Migash, Ra’avad, Ramah). The Jerusalem Talmud cites two conflicting baraitot, which Rav Hida reconciles by distinguishing between whether this land is situated within or outside the border of the city.

Whose openings face [negishah ka’al]: – כְּבָסְאֵל מְצַפְּרָה אֱלֹהִים וַעֲשׂוּיָהּ בְּטִיט. According to the version found in the Arukh and the Ritva, the phrase is one word, negahakayah. The commentaries agree that the phrase means that their openings face the city, but they disagree about the literal meaning of the words. According to the Ritva, naga means an opening, and ka’alhu means their position or place; therefore, the entire phrase means that the place of their openings face the city. According to the Ra’avad, negishah means pulling; therefore, the expression means that the openings extend toward the city.

And not the woods that are set aside for the city [shomirah la’ah]: – אֶת הַשּׁוֹמֵירָה שֶׁאֵינָהּ עֲשׂוּיָהּ בְּטִיט, אֶחָד בַּיַּבָּשָׁה, בֵּיבָרִים שֶׁל הָיוּ לָהּ בָּנוֹת – אֵין וֹת וְשֶׁל. According to some commentaries, these woods, like the animal enclosures, are defined areas used for hunting, and therefore the words muktzin la’ah indicate that they face the city. The Gemara answers that in fact the words are muktzin hemena, which indicate that they do not face the city (Rashbam; see Ra’avad). Others explain that muktzin la’ah means that these woods are in close proximity to the city, and the Gemara answers that they are actually found at a distance from it (R. Migash), or that the woods are more easily reached from a different city (Ramah). Alternatively, the words muktzin la’ah mean that the residences of the city are permitted to enter the woods, and the Gemara answers that the woods are muktzin hemena, meaning that the residents of the city are not permitted to enter them (Meiri).

The stones that are for its use – כתיב בערר אוכף שֶׁאֵינָהּ עֲשׂוּיָהּ בְּטִיט: The general assumption is that when one sells land, anything that is attached to and relevant to the function of the ground is included in the sale, while movable items are not. But with regard to the sale of a field or a vineyard, certain items are included in the sale not because they are attached to the ground, but because they are required for working the land and are designated for this purpose.

And the reeds in the vineyard – שֶׁאֵינָהּ עֲשׂוּיָהּ בְּטִיט: This mishna proves that a vineyard that is located within a field is included in the sale of the field (Rashbam;Nimkau Yosef). By contrast, the Levush understands that the mishna is referring to a case where the vineyard was explicitly included in the sale (see Tosfor Yom Tov). This is also the opinion of the Meiri.

That is not plastered with clay – אֵין וֹת וְשֶׁל: The minimum amount of space required in order to sow one quarter-kav of seed is 104½ square cubits, equal to 24 sq m according to Rabbi Haya Yamin, and 35 sq m according to the Hazon Ish.

Young carob tree that has not been grafted – בֵּית רוֹבַע דב סח: Carob trees grow wild in nature, yet by and large they are small with poor fruit. In contrast, cultivated carob trees are tall and grow fine carobs. The wild carobs, however, are stronger than the cultivated ones, and for this reason to this day carobs are grown from the seeds of wild carob trees, with the branches of cultivated carobs grafted onto them. A carob grown from such a graft retains the strength of the initial planting yet grows branches and fruits like the cultivated carobs. These carob trees are considered superior to carob trees that have not been grafted, i.e., the wild variety of carob trees.

Untrimmed sycamore – שֶׁאֵינָהּ עֲשׂוּיָהּ בְּטִיט: The sycamore, Ficus sycomorus, is a tall, broad tree of the fig species. Even though the fruits of the sycamore are edible, it is usually grown for its wood, as sycamore beams are large, wide, and relatively lightweight. The sycamore is usually left to grow for several years until it reaches sizable dimensions, whereupon it is cut down for its wood. The stump is then left for several years to grow back again, after which time more wood is harvested.
Stones placed on the sheaves (דַּרְשֵׁהָ) – גמרא
Most of the commentaries agree with the Rashbam that דַּרְשֵׁהָ means sheaves and that the phrase is referring to stones that are placed on the sheaves in the field to prevent them from being scattered by the wind. According to the Mei, the stones are prepared in a special manner, as they are flat on one side. Others explain that the expression means stones that are carried on one's shoulder (קַעֹר) (Rabbeinu Yehonatan of Lunell). According to the Ramah, the expression is referring to stones that are loaded on the branches of trees that shed their fruit prematurely.

Arranged for a fence – גמרא
According to some opinions, this is referring to stones that are arranged one on top of the other like a wall, but without clay or mortar (first explanation of Rav Avadav). Others explain that it means stones that were selected to be used to build a fence (Meiri), or stones that are used as a fence during specific seasons but at the moment do not serve as a fence (second explanation of Rav Avadav; see Tosafot 3:6).

That are ready – גמרא
According to the Rashbam and Rav Hai Gaon in Sefer HaMikraho VehaMikra, this means that the stones were designated for this use. Rabbeinu Gershon and others explain that they were chiseled and planed so as to be fit for this purpose.

That are placed – גמרא
Some of the commentaries explain that the stones were already placed on the sheaves. Tosafot and others explain that since the sheaves themselves are not sold along with the field, it does not matter whether or not the stones were resting on them at the time of the sale. Rather, the question is whether the stones were ever used for this purpose, or whether they were merely intended for this use without ever actually having been used. According to the Rashbam, it means that they were placed inside the field.

That are arranged – גמרא
The stones are already arranged, one on top of the other (Rashbam). Alternatively, they are arranged in a row alongside the area where a fence will be built (Meiri).

But he has not sold along with the field the stones that are not designated for use in the field, and not the reeds in the vineyard that are not designated for its use, and not the produce that is already detached from the ground. When the seller says to the buyer: I am selling you it and everything that is in it, all these components are sold along with the field. Both in this case, where he executes the sale without specification, and in that case, where he adds the phrase that he is selling everything that is in the field, he has not sold the cluster of reeds that occupy a beit rosh or more, as they are considered a separate field, and he has not sold the watch station that is plastered with clay, and not the carob tree that has been grafted, and not the sycamore trunk. All of these entities are significant in their own right and have a status independent from that of the fields, and they are therefore not included in the sale of the field.

GEMARA
The mishna teaches that one who sells a field has sold the stones in the field that are for its use. The Gemara clarifies: What is meant by stones that are for its use? Here in Babylonia they interpreted it as follows: Stones placed on the sheaves in the field to protect them from being scattered by the wind. Ulla says: The mishna is referring to stones that are arranged for the future building of a fence for the field. The Gemara asks: But didn’t Rabbi Hiyya teach in a bara‘a that they are stones that are piled up for the future building of a fence, and not necessarily arranged? The Gemara answers: Teach that Rabbi Hiyya said: They are stones that are arranged for the future building of a fence.

The Gemara elaborates on the two explanations: It was stated that here in Babylonia they interpreted the mishna as referring to stones that are placed on the sheaves. According to Rabbi Meir this should be understood as referring to stones that are ready to be used to protect the sheaves, even though they are not yet placed on them. This is in keeping with Rabbi Meir’s opinion that whenever a place is sold, all the accompaniments that are necessary for its proper utilization are included in the sale (see 78b). According to the Rabbis, the mishna is referring specifically to stones that are already placed on the sheaves.

And according to Ulla, who says that the mishna is referring to stones that are arranged for the future building of a fence for the field, according to Rabbi Meir, stones that are ready to be used for building a fence are also included in the sale, even though they are not yet arranged for that purpose. According to the Rabbis, the mishna is referring specifically to stones that are already arranged for building a fence.

HALAKHA
The stones that are for its use – גמרא
The stones that are for its use are those that are used as a fence during specific seasons but at the moment do not serve as a fence (second explanation of Rav Avadav; see Tosafot 3:6). Stones that are placed on the sheaves in the field to protect them from being scattered by the wind. The Gemara answers: Teach that Rabbi Hiyya said: They are stones that are arranged for the future building of a fence.

Not included in the sale. The Rema writes that there are those who say that if the stones had, at some point in the past, been placed on the sheaves, they are included in the sale (תור, citing Tosafot). The halakha is in accordance with the opinion of the Rabbis (Rambam Sefer Kinyan, Hilkhah Mekhira 26:2; Shulhan Arukh, Hoshen Mishpat 215:5).
The Gemara continues its clarification of the mishna, which teaches that one who sells a field has also sold the reeds in the vineyard that are for its use. The Gemara asks: With regard to the reeds, what is their purpose in the vineyard? The Sages of the school of Rabbi Yannai said: These are reeds that are split on top and placed under the vines so that the boughs of the vines can rest on them. According to Rabbi Meir, this is referring to reeds that have been smoothed and made ready for this purpose, even though they are not yet set in their place. According to the Rabbis, the mishna refers specifically to reeds that are already set in their place.

The Gemara continues expounding the mishna, which includes among the components that are sold with a field the produce that is still attached to the ground, even if it is ready to be harvested, as in Rabbi Meir’s interpretation (Rambam, Hilkhot Mekhira 26:2; Shulĥan Arukh, Hoshen Mishpat 215:5).

When one sells a field, the sale includes the produce that is fully ripe and ready to be harvested, as in Rabbi Meir’s interpretation (Rambam, Sefer Kinyan, Hilkhot Mekhira 26:2; Shulĥan Arukh, Hoshen Mishpat 215:5).

The Gemara proceeds to explain the second half of the mishna, which teaches: But he has not sold along with the field the stones that are not designated for use in the field. On the assumption that the mishna speaks of stones that are placed on the sheaves to prevent them from being scattered, according to Rabbi Meir, the mishna is referring to stones that are not ready to be used for this purpose, whereas according to the Rabbis, even if the stones are ready to be used to protect the sheaves, they are not included in the sale if they are not yet placed on them.

And according to Ulla, who says that the mishna is referring to stones that are arranged for the future building of a fence for the field, according to Rabbi Meir, this clause addresses a case where the stones were not ready to be used for this purpose, whereas according to the Rabbis, it addresses a case where the stones were not yet arranged for building a fence, even though they were ready to be used for that purpose.

**Reeds that are split** (meĥullakin) – ים תמאחע: Some explain that these are reeds that are split (mehulak) on top so that the boughs of the vines can rest on them (Rashi; Meiri). Others explain that these are reeds that were made smooth (halak) through the removal of their outer husks to prevent them from rotting (Arukh; Rabbenu Gershon; Tosafot).

Even though the time has come for it to be cut down – לְעַל דִּמְטַאי לְמֶיחֲצָד: The Gemara is not referring to produce that is sufficiently ripe to be cut down, whereas according to Rabbi Meir, the Gemara is referring to produce that is sufficiently ripe to be cut down, as in such a case the produce would certainly be considered as though it were already cut down. Rather, the Gemara speaks of produce that is sufficiently ripe to be cut down, but would still benefit from remaining attached to the ground (Ritva).

**NOTES**

Reeds that are split (meḥullakin) – ים תמאחע: It was customary in some places to build permanent structures on which to trellis the vines. Sometimes, they would simply position canes, usually reeds, under the vines to support the boughs that had grown that year and keep the clusters of grapes off the ground and protect them from damage. These reeds were used for a year and then removed. The vine was then pruned, and new reeds were put in place for the next year.

The thin outer husks of the reeds were removed in order to prevent water from entering between the reed and the husk, causing the reed to rot over time. According to one version of the discussion here, this is what is meant by the expression: Reeds that are split. Other commentators explain that split reeds are reeds whose tops have been split so that the vines can rest upon them.

**BACKGROUND**

The produce – סדרון: The reeds that have been smoothed and placed under the vines to support them are included in the sale of a field or vineyard, even if they were not yet placed under the vines, even if they were smoothed so that they could be used in this manner, they are not included in the sale as the halakha is in accordance with the Rabbis (Rambam Sefer Kinyan, Hilkhot Mekhira 26:2; Shulĥan Arukh, Hoshen Mishpat 215:5).

The produce – סדרון: When one sells a field, the sale includes the produce that is still attached to the ground, even if it is ready to be harvested. Produce that has already been harvested is not included in the sale, even if it still needs to be left in the field (Rambam Sefer Kinyan, Hilkhot Mekhira 26:2; Shulĥan Arukh, Hoshen Mishpat 215:5).

The cluster of reeds – סדרון: If a cluster of reeds occupies less than a bet rova, it is included in the sale of a field, even if the reeds are thick. If it occupies more than a bet rova, it is not included in the sale, even if the reeds are thin (Rambam Sefer Kinyan, Hilkhot Mekhira 26:2; Shulĥan Arukh, Hoshen Mishpat 215:5).

The watch station – שומֵירָה: A watch station that is plastered with clay is included in the sale of a field or vineyard, even if it is not attached to the ground, and a watch station that is not plastered with clay is not included in the sale, even if it is attached to the ground. This is in accordance with the Rif and Rambam’s version of the mishna and Gemara (Rambam Sefer Kinyan, Hilkhot Mekhira 26:2; Shulĥan Arukh, Hoshen Mishpat 215:5).
A small garden bed of spices — With regard to one who sells a field, even if he says that he is selling the field and everything that is in it, he has not included in the sale a small garden bed of spices that has its own name, for example, if it is called the rose garden of so-and-so (Rambam, Sefer Shevi’ot; Shulḥan Arukh). The mischna teaches that one who sells a field has not sold the reeds in the vineyard that are not designated for its use. The Gemara explains: According to Rabbi Meir, this is referring to a case where the reeds are not smoothed, whereas according to the Rabbis, the reference is to reeds that are not yet set in their place, even if they are smoothed. The mischna further teaches: One who sells a field has also not sold the produce that is detached from the ground. The Gemara comments: The produce is not included in the sale even though it still requires the ground, that is, it needs to be left in the field in order to dry out completely.

The mischna teaches that one who sells a field has not sold the cluster of reeds that occupy a beit rova. The Gemara comments: And this is so even though they are thin, as since they occupy the area of a beit rova they are considered a separate entity and are not part of the field. Concerning this ruling, Rabbi Hiyya bar Abba says that Rabbi Yohanan says: It is not only a cluster of reeds that is considered a separate entity, and therefore not included in the sale; rather, even a small garden bed of spices that does not occupy the area of a beit rova but has a distinct name is not sold along with the field. Rav Pappa said: What this means is that people call it the roses (vardda) of so-and-so, thereby establishing for it a name of its own.

The mischna teaches that the sale does not include the watch station that is plastered with clay. The Gemara comments: And this is the halakha even though it is attached to the ground, as it is still considered a separate entity and not part of the field. The mischna teaches: He has also not sold the carob tree that has been grafted, and he has not sold the sycamore trunk. The Gemara notes: Even though they are small, they are considered their own entity.

Apropos the discussion of a watch station that is attached to the ground, the Gemara cites a discussion about the sale of a house: Rabbi Elazar raised the dilemma: With regard to wooden door frames, what is the halakha? Are they sold together with the house, or not? The Gemara explains the question: Do not raise the dilemma in a case where the frames are attached to the house with clay, as they are certainly attached to the house and sold along with it. When you can raise this dilemma is where they are connected only with small wooden pegs. What is the ruling in that case? No resolution was found for this question, and so the dilemma shall stand (teiku) unresolved.

The wooden frames of doorways, i.e., the lintels and crossbeam, as well as the window frames, were not part of the stone or brick structure of the buildings. Rather, they were inserted afterward into the openings left for them. In order to strengthen the frame, any space between the frame and the stone was filled in with clay, which also served as a sealant, or with small wooden pegs.
Door frames, window frames, stands for the legs of a bed – מַלְבֵּנוֹת שֶׁל חַלּוֹנוֹת: When one sells a house, the door frames that are attached to the house with clay are included in the sale. The Rema writes that some say that if the frames are attached with wooden pegs, they are not included in the sale, as the Gemara never reached a conclusion about this matter, and the burden of proof, to demonstrate that he is entitled to them, falls upon the buyer. The Sira questions the necessity of stating this, as no one disagrees that these are reeds that are split.

And similarly, Rabbi Yirmeya raises a dilemma: With regard to stands for the legs of a bed that are placed under the legs to prevent them from being damaged by moisture, what is the halakha? The Gemara explains the question: Do not raise the dilemma wherever the stands move along with the bed, as they move along with it and are therefore not considered part of the house. Where you can raise this dilemma is where they do not move along with the bed. What is the ruling in that case? No resolution was found for this question either, and therefore the dilemma shall stand unresolved.

The mishna teaches: One who sells a field has not sold the carob tree that has been grafted, and he has not sold the sycamore trunk.
HALAKHA

Perek IV
Daf 69 Amud b

One who sells land to another – לְחַבְרֵיהּ, צָרִיךְ לְמִכְתַּב לֵיהּ. The Rema writes that some say that this is considered two.

The land and palm trees – הלְבָדָל, יָהֵיב לֵיהּ תְּרֵי דִּי. If the seller says to the buyer that he is selling him the land and palm trees, the sale is valid even if the land contains no palm trees, provided that the seller gives him two palm trees somewhere else, and the buyer cannot claim that he had intended to buy only a field that contained palm trees. Some explain that in any event, the seller is obligated to purchase palm trees for the buyer (Ravai, citing Rif). The Rema writes that some say that this is considered two sales, so that even if the field contains palm trees, the seller must still give the buyer two palm trees from another field of his, but if the seller has no other palm trees, he is not obligated to purchase them for the buyer (Rambam Sefer Kinayn, Hilkhot Mekhira 24:14, Shulhan Arukh, Hoshen Mitzpat 216:1).

From here there is a source that the acquisition of the actual boundaries in a sale is from the Torah.

The land and palm trees – הלְבָדָל, יָהֵיב לֵיהּ תְּרֵי דִּי. The Gemara asks: From where are these matters, i.e., that a grafted carob and a sycamore trunk are not included in the sale of a field, derived? Rav Yehuda said that Rav said: As the verse states: “So the field of Ephron, which was in Machpelah, which was before Mamre, the field, and the cave that was within it, and all the trees that were in the field, that were in all the boundaries around, were established for Abraham as a possession” (Genesis 23:17–18). This teaches that anything that requires a boundary around it, as it does not have natural demarcations, is included in the sale of a field. This includes these trees, i.e., the grafted carob and the sycamore trunk, which do not require a boundary around them, as they stand out individually on their own. Rav Mesharshiyya says: From here there is a source that the acquisition of the actual boundaries in a sale is from the Torah.

Section 8

Rabbi Yehuda said: One who sells land to another must write for him the following in the bill of sale: Acquire for yourself the palm trees and the dates and the branches and the seedlings. And even if he did not write this for him the buyer would still acquire all of these entities, as demonstrated by the mishna that it is only a grafted carob and a sycamore trunk that are excluded from the sale of a field. Even so, it is an enhancement of the bill of sale that he write all of the details of the transaction so that there be no possible room for disagreement.

If the seller said to the buyer: I am selling you the land and palm trees, we consider the situation. If he has palm trees, he must give him two palm trees as is two is the minimum number of trees that would justify being called: Trees, in the plural. And if he has no palm trees, he must buy two palm trees for him somewhere else. And if he has palm trees, but they are mortgaged to another person, he must redeem two palm trees and give them to the buyer.

NOTES

Anything that requires a boundary – לְבָדָל, יָהֵיב לֵיהּ תְּרֵי דִּי. The proof is not found in the words cited by the Gemara, but in the continuation of the verse, which ostensibly states the same idea twice: “And all the trees that were in the field, that were in all the boundaries around.” Two halakhot can be derived from here. The first is that when one sells a field without specification, in the way that Ephron sold his field to Abraham, the trees are included in the sale. The second is that only trees that require a boundary are included in the sale (Rashbam).

The commentators explain the phrase: Anything that requires a boundary, to mean as follows: Any small or unimportant tree that is not referred to as an independent item, and must be marked by its boundary to define it, is included in the sale of the land. By contrast, significant trees that are known by a name are not included in the sale even when they are not marked by a boundary (Ri Migash). Alternatively, only small trees that require a protective border, i.e., a fence, are sold with the field, while large trees that have no need for such a border are not included in the sale (Rabbeinu Gershon).

Rabbeinu Gershon explains that the verse teaches that at the time of the sale the boundaries must be defined. Rav Hai Gaon and the Rashba point out that even if this was not done, the sale is still valid. Similarly, other early commentators explain that the verse teaches that defining or failing to define boundaries has halakhic repercussions. This is the opinion of the Ravai, who holds that if the boundaries were not mentioned, the seller can claim that he sold only the area required for sowing nine kav of seed. Similarly, if he sold a field in a valley that does not have clearly delineated boundaries, unless the boundaries are specified, the seller can claim that he sold a field in a different location.

Palm trees (dikelin) and dates (talin) – תלין וְתָאלִין. Talin is generally understood as referring to palm trees. Accordingly, the Rashbam explains that dikelin and talin are respectively large and small palm trees. Others explain that these terms refer to other types of tall trees (Arukh). The Rashbam, who perhaps had a different version of the text, seems to have understood talin to mean dates, the fruit of the palm tree.

Branches (hutzin) and seedlings (tizzin) – חַזִין וְתִיצְזִין. According to the Rashbam, these are types of palm trees that do not produce fruit. Others explain that hutzin is referring to all types of shrub-like trees, and tizzin, or according to the version of the Arukh, tizzin, are young palm trees (Rabbeinu Gershon; Arukh). According to the Rashbam, the text does not mention tizzin, and hutzin is referring to palm leaves.
If the seller said to the buyer: I am selling you land with palm trees, we consider the situation. If there are palm trees on the land, he must give him the land, and if not, this is a mistaken transaction and the sale is void. If the seller said to the buyer: I am selling you land of palm trees, the buyer has no claim to receive palm trees. Therefore, if the land has no palm trees, this is not a mistaken transaction, as the seller meant to say to him that the land was fit for palm trees, and not that it already contained them. Furthermore, if the seller said to the buyer that he is selling the land except for such and such a palm tree, we consider the situation. If it is a good palm tree, we assume that he retained only that one for himself and did not include it in the sale, but if it is a bad palm tree, we assume that all the more so did he retain for himself the other ones that are of higher quality.

If the seller said to the buyer that he is selling him the entire field except for the trees, we consider the situation. If he has different types of trees in the field, for example, olive and fig trees, he has sold the entire field except for the trees. If he has only palm trees in the field, we assume that he meant to sell the entire field except for the palm trees, even though one does not ordinarily refer to palm trees by the more general term: Trees. Similarly, if he has only grapevines in the field, the buyer acquires everything except for the grapevines.

If the field has both trees and grapevines, he has sold everything except for the trees; therefore, the buyer does not acquire the trees, which the seller excluded from the sale, but he does acquire the grapevines. Similarly, if in the field there are both trees and palm trees, he has sold everything except for the trees. If there are no other trees in the field, but only grapevines and palm trees, everything, including the palm trees, is sold except for the grapevines, which we assume the seller reserved for himself.

Rav says: If the seller specified that he is selling a field but not the trees, any tree that is so tall that one must climb it by rope in order to harvest its fruit is retained and is not included in the sale, and any tree that one need not climb by rope is not retained and is sold along with the field.

Land with palm trees... mistake transaction – א الثنائية תבש ה. The principle that there is no claim of exploitation with regard to the sale of land applies only to the matter of the purchase price. But if the seller claims that the field has certain characteristics, e.g., that it is of a certain size, and it turns out that the claims are untrue, this is considered a mistaken transaction and the sale is nullified.

A good palm tree – נֵי לְבַר מִדִּי. The seller is not pointing out the best or the worst palm tree. Rather, if he chose a good tree, even if there are better ones, he demonstrates that he wishes to retain something for himself from the field, but if he spoke of a bad one, it means that he is excluding all of the palm trees from the sale (Rashbam; Ri Migash). According to the Rashbam, a bad palm tree is one that does not produce a kev of dates.

Except for the trees – לְבַר מֵאִילֵי. The principle here is that one speaks precisely and if he mentions trees, he does not mean to include palm trees or grapevines. But if the field consists exclusively of grapevines or palm trees, since they are a kind of tree, it is understood that he is referring to them (Rashbam).

Grapevines and palm trees – תְרֵי דִּי לְבַר. If the seller says that he is selling everything except for the trees, and there are only grapevines and palm trees in the field, it is understood that he means to reserve the grapevines for himself. Some commentators explain that this is because grape vines are more commonly referred to as trees than are palm trees (Rashbam; Rabbeinu Gershom). The Rashbam cites and rejects another explanation, which is the explanation of the Ramah, that since grapevines are preferred to palm trees, it is assumed that he would have chosen to withhold them for himself. The Rannah adds that the buyer is at a disadvantage and cannot claim that the seller is referring to the one and not the other.

HALAKHA

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Except for such and such carob tree – הקושו במקימה שטח. Since the carob trees would normally be excluded from the sale in any case, there is room to claim that the seller meant when he excluded a specific carob tree, or a part of it, from the sale. He might have meant to waive his right to the other carob trees in the field, and retain only this one. Or perhaps he did not mean to sell any of the trees, but he specified one particular tree for another reason: Either to state that he wishes to reserve for himself a right of way to access the tree, in accordance with the opinion of Rabbi Akiva in an earlier mishna (6a), or, according to the Rashbam, to enhance the sale of the field and thereby prevent any possible future claim of the buyer to this specific tree (Flashbam).

Most of the early commentators disagree with the Rashbam, who assumes that according to Rabbi Akiva, one who sells a field without specification does not have a right of way to access his carob trees. This would then be the halakha, as the halakha is in accordance with Rabbi Akiva. Nevertheless, it is apparent from later passages that even when one sells a field without specification, the seller has such a right of way. They explain that the seller specified a particular carob tree for another reason, in accordance with a different version of the text. The Ramban and the Rashba point out that this issue does not appear in the Rambam or the Rif, which prove that this entire issue is only a problem for the Rabbi, who disagrees with Rabbi Akiva. In practice, superficial clauses such as this one have no effect on the sale.

Except for such and such field – תחלית פיזikk זית. Here, the seller specifies that the adjacent field is not included in the sale. In this case as well, this added clause is unnecessary, as he sold only a specific field.

Rav Sheshet raised an objection to Rav Sheshet from a halakha that when the seller specified that one particular carob tree is retained for himself, and the half of the carob tree that the seller did not specifically retain for himself, remains from that carob tree the buyer does not acquire. As if the seller specified that half of the entire field, or except for half of such and such carob tree, or except for such and such carob tree, the buyer does not acquire any of them.

But the judges of the exile, Shmuel and Karna, say: Any tree that is bent back by the yoke of oxen as the animals plow the ground under the tree, and in this way the tree does not impede the plowing, is not retained by the seller, as it is not a significant tree. Any tree that is not bent back by the yoke of the oxen is retained by the seller and not included in the sale. The Gemara comments: And these amoraim do not disagree with regard to the halakha: That which Rav said, that the only trees that the seller retains for himself and excludes from the sale are those that must be climbed by means of a rope, was said with regard to palm trees, while that which the judges of the exile said, that the only trees that are retained are those that are not bent back by the yoke of the oxen, was said with regard to other types of trees.

The Gemara cites a discussion related to the mishna’s ruling that a grafted carob tree and a sycamore trunk are not included in the sale of the field: Rav Aha bar Huna raised a dilemma before Rav Sheshet. If one selling a field said to the buyer: I am selling you the entire field except for such and such grafted carob tree,8 or except for such and such sycamore trunk, the buyer does not acquire it. What is it not that it is this carob tree that he does not acquire, but he does acquire the other carob trees, or perhaps he means that he also does not acquire the rest of the carob trees? Rav Sheshet said to him in response: The buyer does not acquire any of them.

Rav Sheshet said to him: No, what this means is that he does not acquire even the other carob trees. Know that this is correct, as if a person selling a field said to the buyer: My field is sold to you except for such and such field15 that is adjacent to it, would you say that it is only that adjacent field that he does not acquire, but he acquires all the other fields offered by the seller? This is clearly not the case, as the seller explicitly stated that he is selling a certain field, not all of his fields. Rather, everyone would agree that the buyer does not acquire the other fields. Therefore, here too,16 the buyer does not acquire the other carob trees.

And there are those who say that the discussion took place as follows: Rav Aha bar Huna raised a dilemma before Rav Sheshet: If one selling a field said to the buyer: I am selling you the entire field except for half of such and such carob tree, or except for half of such and such sycamore trunk, what is the halakha? The Gemara explains the two sides of the question: Do we say that the buyer certainly does not acquire the other carob trees, but he does acquire what remains from that carob tree that was mentioned, that is, the half of the carob tree that the seller did not specifically retain for himself? Or perhaps he does not acquire even what remains from that carob tree? Rav Sheshet said to him: Even what remains from that carob tree the buyer does not acquire.

For the owner of a field that contains grafted carob trees says to the buyer that he is selling him the field, except for a specific grafted carob tree (lssma), the buyer does not acquire that or any of the other carob trees in the field. This is because it is presumed that when the seller specified that one particular carob tree is excluded from the sale, he did so only in order to retain a right of way to access that tree, in accordance with the Rashbam’s version of the text and his explanation (Rema, citing Tur). The Rashbam and the Shulhan Arukh do not cite this halakha, in accordance with Rabbeinu Hananel’s version of the text (Shulhan Arukh, Hoshen Mishpat 216:4 in the comment of Rema).
Rav Aĥa raised an objection to Rav Sheshet from a baraita that states: If the seller said to the buyer: I am selling you the entire field except for half of such and such carob tree, or except for half of such and such sycamore trunk, the buyer does not acquire the other carob trees. What, is it not that it is the other carob trees that he does not acquire, but what remains of that carob tree he does acquire?

Rav Sheshet said to him: No, what this means is that he does not acquire even what remains of that carob tree. Know that this is correct, as if a person selling a field said to the buyer: My field is sold to you except for half of such and such field that is adjacent to it, would you say that it is only that half of the field that he does not acquire, but he acquires the other half of the field? This is clearly not the case, as the seller explicitly stated that he is selling a certain field and nothing else. Rather, everyone would agree that the buyer does not acquire the other half of the field. Therefore, here too, the buyer does not acquire what remains of the carob tree.

Rav Amram raised a dilemma before Rav Hisdà: If one deposits certain items with another and receives a document signed by witnesses testifying that he deposited these items with this individual, and the bailee later says to him: I returned the items to you, but the document is still in the hands of the depositor, what is the halakha? Do we say that since the bailee wanted to lie he could have said that the items were taken from him under circumstances beyond his control, and he would have been deemed credible; therefore now too, when he claims that he returned the items, he is deemed credible as well? Or perhaps, the one who deposited the items can say to him: If you returned the items, what is your document doing in my possession? Upon return of the deposit, you should have retrieved the document. Rav Hisdà said to him: The bailee is deemed credible.

Rav Amram asked: But let the depositor say to the bailee: If you returned the items, what is your document doing in my possession? Rav Hisdà said to him: And according to your reasoning, if the bailee had said to him that the items were taken from him under circumstances beyond his control, would he be able to say to him: What is your document doing in my possession? Since this claim could not have been stated had the bailee stated the alternative claim, it can also not be stated when the bailee claims that the items were returned. Rav Amram said to him:

The Rashbam explains that Rav Amram is challenging Rav Hisdà’s ruling, which seemed to have been that the bailee is deemed credible without having to take an oath. Rav Amram challenges Rav Hisdà’s ruling by claiming that the bailee is deemed credible when claiming that he returned the deposit only due to the fact that he could have made the more advantageous claim that the deposit was taken from him under circumstances beyond his control. Since, were he to claim that, he would have been liable to take an oath in order to be exempted from responsibility, the same should apply when he claims that the deposit was returned.

NOTES

Is he not required to take an oath – Ḥoshen Mishpat 2:12; Shina 1:7. The Rashbam explains that Rav Amram is challenging Rav Hisdà’s ruling, which seemed to have been that the bailee is deemed credible without having to take an oath. Rav Amram challenges Rav Hisdà’s ruling by claiming that the bailee is deemed credible when claiming that he returned the deposit only due to the fact that he could have made the more advantageous claim that the deposit was taken from him under circumstances beyond his control. Since, were he to claim that, he would have been liable to take an oath in order to be exempted from responsibility, the same should apply when he claims that the deposit was returned.
According to the Ritva adds that even if his death was not sudden, perhaps to speak to them.

And the judges of Eretz Yisrael say that he takes an oath and collects only half of the sum.

According to this assumption, everyone agrees that the claimant can recover from the orphans by means of an oath the half of the money that is considered a loan, just as he would have been able to demand that money from their father. Concerning the half that is considered a deposit, what, is it not with regard to this point that they disagree, as one Sage, the judges of the exile, holds like Rav Amram that the depositor can say to the bailee: What is your document doing in my possession? Therefore, neither the father nor his children are deemed credible to claim that they had returned the half that is considered a deposit, and the investor can collect that half as well.

And the judges of Eretz Yisrael, holds like Rav Hisda, that one cannot assert this claim, and therefore the investor can collect only the half that is considered a loan. But as for the half that is considered a deposit, the borrower would have been deemed credible in his claim that he had already returned it.

The Gemara suggests: Let us say that Rav Amram and Rav Hisda disagree with regard to the issue that is the subject of the dispute between these two men, as a halakha is taught in a baraita with regard to a purse document, i.e., a document that records an arrangement whereby one gives another money as an investment in a joint venture on condition that the profits will be divided equally between the two parties. If the person who received the money died, and this document was presented by the lender against the orphans, the judges of the exile say that the lender takes an oath that the money had never been returned to him, and he collects the entire sum. And the judges of Eretz Yisrael say that he takes an oath and collects only half of the sum.

And it is understood that everyone agrees with the opinion of the Sages of Nehardea’s, as the Sages of Nehardea’s say: With regard to this joint venture, whereby one person gives money to another on condition that it will be used for business purposes and that the profits will be divided equally between the two parties, half of the invested money is considered a loan, for which the borrower is exclusively liable, and half is considered a deposit, so that if it is lost under circumstances beyond his control, the borrower is exempt from the liability to return it.

A purse document that was presented against the orphans – according to rabbinic decree, if one gave another person money as an investment in a joint venture, the person who received the money died, and the investor now demands that the orphans return to him the money that he had given to their deceased father, and he has a document given to him by the father attesting to the arrangement, he takes an oath with regard to half of the sum, which was considered a loan. This oath is taken in the manner of an oath mandated by Torah law, while holding a sacred object. After taking the oath, the investor receives half of the money. He cannot collect the other half, which was considered a deposit, even by means of taking an oath, in accordance with the opinion of the judges of Eretz Yisrael (Rambamb Sefer Kinyan, Hilkhot Sheluhin VeShutafin 7:1; Slutman Arukh, Hachen Mishpat 10:84).
Apropos this discussion, it is related that Rava Huna bar Arin sent the following ruling: If one deposits an item with another and receives a document attesting to the deposit, and the bailee later says to him: I returned the item to you, the bailee is deemed credible even if the document is still in the hands of the depositor. And with regard to a purse document attesting to a joint venture that was presented by the lender to support his claim against the borrower’s orphans, the lender takes an oath that the money had never been returned to him and collects the entire sum from the orphans.

The Gemara asks: Don’t these two halakhot contradict each other? If the father is deemed credible when he claims that he repaid a loan, the court should present this claim on behalf of his orphans. The Gemara answers: It is different there, as if it is so that the father had, in fact, repaid the money, he would have told his children that he repaid it. Since he did not tell them anything about it, it may be assumed that he never repaid the money.

Rava said: With regard to the case of a purse document that was presented to support a claim against orphans, the halakha is that the claimant takes an oath that the money had never been returned to him and then collects half of the sum recorded in the document, in accordance with the judges of Eretz Yisrael. The Gemara relates that two generations later, Mar Zutra said: The halakha is in accordance with the opinion of the judges of the exile. Ravina said to Mar Zutra: Didn’t Rava say that the claimant takes an oath and collects half of the sum? Mar Zutra said to him: With regard to the opinion of the judges of the exile, we learned the reverse, that is to say, according to our version of the baraita, it is the judges of the exile who maintain that the claimant collects only half the sum, which corresponds to the halakha taught by Rava.

In continuation of the previous mishna (68b) discussing one who sells a field, the mishna teaches that even if he says that he is selling it and everything that is in it, he has sold neither the cistern, nor the winepress, nor the dovecote, whether it is abandoned or utilized, as these items are not part of the field itself. And the seller must purchase for himself a path through the buyer’s domain to reach whatever remains his. This is the statement of Rabbi Akiva, who holds that one who sells, sells generously; therefore, whatever is not explicitly excluded from the sale is assumed to be sold, and it is presumed that the seller did not retain for himself the right to the path that he requires to access his property. And the Rabbis say: The seller need not purchase a path through the buyer’s domain, as it is assumed that since the seller withholds these items for himself, he also reserves a path to reach them.

And Rabbi Akiva concedes that when the seller says to the buyer in the bill of sale that he is selling the field apart from these things, i.e., the cistern and the winepress, he need not purchase for himself a path through the buyer’s domain. Since these items would have been excluded from the sale even if he had said nothing, it is assumed that he also meant to reserve for himself the right to access them. But if the seller kept the field but sold the cistern and winepress to another person, Rabbi Akiva says: The buyer need not purchase for himself a path through the buyer’s domain to reach what he has bought, since a seller sells generously. But the Rabbis say: He must purchase for himself a path through the seller’s domain.
With regard to one who sells a house, courtyard, olive press, or field, he reserves for himself some of the items found there, as it was the responsibility of the buyer to specify that he wanted any of those items to be included in the sale. But if he gives one of these items to another as a gift, the recipient acquires everything that is appended to it, so long as the giver did not specify that he is reserving the item for himself. The Rema writes that this applies only to items that are situated within the property given as a gift. But if they are outside of it, the halakha governing a gift is the same as that concerning a sale, and the recipient does not acquire them (Rambam Sefer Kinyan, Hilkhot Meḥira 26:5; Shulhan Arukh, Hoshen Mishpat 215:6).

Brothers who divide – נוֹתֵן מַתָּנָה וּזָכוּ בְּשָׂדֶה: In the case of brothers who divide their father’s property among themselves, where they each acquire a field as part of their inheritance, they acquire the items that are fixed in the field, such as a pit, cistern, and dovecote. This is also the halakha with regard to one who takes possession of the property of a convert (Sma). Similarly, one who consecrates his field has consecrated these items as well (Rambam Sefer Kinyan, Hilkhot Meḥira 26:6; Shulhan Arukh, Hoshen Mishpat 215:7).

In what case is this statement, that these items are excluded, said? It is said with regard to one who sells a field, but with regard to one who gives it away as a gift, it is assumed that he gives all of it, including everything found in the field. Similarly, with regard to brothers who divide their father’s estate among themselves, when they each acquire a field as part of their inheritance, they acquire all of it, including the items that would be excluded from a sale. So too, with regard to one who takes possession of the property of a convert, when he takes possession of a field, he takes possession of all of it.

One who consecrates a field has consecrated all of it. Rabbi Shimon says: One who consecrates a field has not consecrated any of the items that are ordinarily excluded from a sale except for the grafted carob tree and the sycamore trunk.

The Gemara asks: How can it be suggested that this one specified and that one did not specify, when in fact this one did not specify, and that one did not specify, as in neither case did the prior owner specify what items he was reserving for himself? Rather, the difference is that this one, the buyer, should have specified that certain items were not included in the sale, and that one, the donor, did not specify.

The Gemara asks: In what way is a sale different from a gift, and in what way is a gift different from a sale? Why does the mishna distinguish between the two with regard to what is retained by the prior owner? Yehuda ben Nekosa explained before Rabbi Yehuda HaNasi: The difference between the cases is that this one, the seller, specified that certain items were not included in the sale, and that one, the donor, did not specify.

He gives all of it – הביא הַבִּירָמִים פִּיַּמָּהוֹ וּבֹזְקִים כּוּלָּהּ: That is to say, he gives all of the items that would not be included had this been a sale and not a gift. But he does not give produce that is detached from the ground and left in the field or other items that are found there, as they are clearly not part of the field and not included in the gift (Rashbam). The Ri Migash adds that anything that is not included within the gifted item’s boundaries is not included in the gift. For example, if one gives a house as a gift, the gallery is not included, as it is only adjacent to the house but not a part of it. The Ramah disagrees.

One who takes possession of the property of a convert – לָא הָיָה לוֹ לְזֵירַשׁ וְזֶה לֹא הָיָה לוֹ לְדִישׁ אֶלָּא אֶת הֶחָרוּב: The Rashbam explains that even though one who takes possession of a field that had belonged to a convert does not acquire the adjoining property if it is separated from it by a fence, he does acquire the sycamore trunk, even though it is considered a separate entity, because it is not separated from the field by a fence. The Ramah adds that after one takes possession of a field that had belonged to a convert, if he is then standing next to it, the field has the status of a courtyard that is consciously secured by its owners, and effects acquisition on his behalf of all movable items found in the field.

Except for the grafted carob tree – וּבֶיתָּן אָבָא: As the Gemara later explains, Rabbi Shimon holds that in principle, the halakha in the case of one who consecrates a field is comparable to the halakha in the case of a sale, and it is not comparable to the case of one who gives a gift. There is a specific reason why the carob and sycamore are consecrated, as they draw nutrients from the field, and it is assumed that the owner does not wish to derive benefit from consecrated property.

This one should have specified – וְזֶה לֹא הָיָה לוֹ לְזֵירַשׁ אֶלָּא אֶת הֶחָרוּב: The Rashbam offers two explanations as to who should have made the specification. According to his first explanation, since one who gives a gift usually gives generously, he should have specified any item that he meant to reserve for himself. By contrast, since one who sells does so only because he needs the money, he sells the minimum amount necessary to complete the sale. The Rif adds that the seller relies on the fact that everyone knows that he is selling as little as possible, and because it is in his interest that the sale should take place, he avoids mentioning the items that are not included in the sale.

According to the Rashbam’s second explanation, it is the buyer who should have specified what is included in the sale, as he generally tries to get the most for his money. Therefore, unless he specified differently, it is assumed that he agreed to the standard conditions of the sale. The recipient of a gift, by contrast, is embarrassed to demand that he receive additional items, as everything that he receives is a gift. Therefore, the responsibility falls upon the giver (Rashbam, citing Rabbeinu Hananel; Rabbeinu Gershon; Rashbam’s Commentary on the Mishnah). A similar dispute appears in the Jerusalem Talmud, where it is discussed whether the reason for the distinction between a sale and a gift is that one who gives a gift gives generously, or that a buyer, as opposed to the recipient of a gift, takes care to specify what is included in the transaction.
HALAKHA

Give to so-and-so my house containing 100 barrels – רבי חנוך הושן אסף ויתן fen. If a man on his deathbed said: Give to so-and-so a house that contains 100 barrels, and his property includes only a house that holds 120 barrels, the recipient receives this house, even though it is larger than the one he was promised. If it contains even more than 120 barrels, he does not acquire the house, as one would not be mistaken with regard to such a large amount (Bab and Winnikwei Yosef, citing Ritva). According to the Winnikwei Yosef himself, even if the house holds more than 120 barrels, the recipient acquires the entire house (Shulhan Arukh, Hoshen Mishpat 253:14 and Shakh there).

If one buys two trees in the field of another – מכסה א鑫חל be mistaken with regard to such a large amount. If one buys two trees in a field belonging to another, he does not acquire the land under the trees. Therefore, if the trees died or were cut down, the buyer has no right to any part of the field, and he cannot plant new trees in place of the dead trees. The buyer does, however, have the right to use the land under and around the trees to tend to his trees and harvest their fruit. In addition, he has a right to use a path to access his trees (Rambam, Sefer Kinyan, Hilkhot Mekhira 21:6; Shulhan Arukh, Hoshen Mishpat 216:9, and in the comment of Rema).

If he sells land and retains two trees for himself – ומקים תורני be mistaken with regard to such a large amount. One who sells a field and reserves for himself two trees in the field has also reserved for himself the land under and around those trees (Rambam, Sefer Kinyan, Hilkhot Mekhira 21:6; Shulhan Arukh, Hoshen Mishpat 216:12).

LANGUAGE

Barrels [gulpe] – גבעות. Some explain that this word is derived from the Greek kalpē, kalpe, meaning a bottle or a container for water.

NOTES

A certain person who said to others – נטש אים ראMarshon: The Ritva notes that this person was on his deathbed, and therefore it is a mitzva to fulfill his instructions, but in general this wording is not effective in conferring ownership.

The owner said to him 100 barrels – מכר 100 ברובים. Because the donor said to give a house that contains 100 barrels, the recipient receives only a part of the house that holds 100 barrels (Rashbam). The Ritva cites some commentators who explain that according to Mar Zutra, since this house does not meet the donor’s criteria, the intended recipient receives nothing. The Ritva rejects this opinion, as the donor was on his deathbed, and it is a mitzva to fulfill his instructions. Therefore, in any event the heirs would have to buy for the other person a house that holds 100 barrels.

Apparently, one who gives a gift – שDidAppear אום. The Ritva also qualifies this presumption with regard to the donor’s generosity, explaining that the entire house is not given to the recipient if the difference between the promised area and the actual area exceeds the amount in the case reported here. The Meir also explains that this presumption applies only when the discrepancy between the two amounts is about one-sixth, as it is assumed that the donor did not speak precisely, nor was he mistaken. If the house was much larger, it cannot be assumed that the donor intended to give all of it.

Even though the Rabbis said – ותרשו בראות. The Rashbam explains that this is in contrast to Rabbi Akiva, who holds that one who sells, sells generously, and a seller therefore includes the land in the sale. Other commentaries understand the opinion of the Rabbis, that the land is sold along with the trees only when three trees are sold, as not related to the matter of whether or not a seller sells generously. Rather, it depends on whether the land around the trees is considered to be a separate entity or included with the trees that are sold (Tosafot, Rashba).

He retains the land – מקום ליה. This means that he enjoys a permanent right to use the land. Therefore, if the tree dies, he can plant another in its place. In addition, he can plant other produce in the ground underneath and around the tree.

A certain person who said to others – נטש אים רמא: The Ritva notes that this person was on his deathbed, and therefore it is a mitzva to fulfill his instructions, but in general this wording is not effective in conferring ownership.

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Even though the Rabbis said – ותרשו בראות. The Rashbam explains that this is in contrast to Rabbi Akiva, who holds that one who sells, sells generously, and a seller therefore includes the land in the sale. Other commentaries understand the opinion of the Rabbis, that the land is sold along with the trees only when three trees are sold, as not related to the matter of whether or not a seller sells generously. Rather, it depends on whether the land around the trees is considered to be a separate entity or included with the trees that are sold (Tosafot, Rashba).

He retains the land – מקום ליה. This means that he enjoys a permanent right to use the land. Therefore, if the tree dies, he can plant another in its place. In addition, he can plant other produce in the ground underneath and around the tree.
Let the buyer say to him, uproot – מַּדְּנֶה שָׁתֵיל לְהוּ. The early commentators disagree as to whether the Gemara means that the buyer could demand that he uproot the tree immediately, since it draws nutrients from soil that belongs to him (Tosafot; Ramban), or if it is referring only to a case where the tree died up and died (Rashi). Others explain that in principle, the owner of the field cannot be forced to uproot the trees immediately, as the halakha is that if someone buys two trees in a field belonging to another, even though he does not own the ground underneath them, the trees remain in the field. The buyer is limited only insofar as that if the trees die, he cannot plant new trees in their place. The same would then be the halakha in the case of one who sells a field but retains ownership of the trees. Even though this is, in fact, the halakha, in order to avoid an unpleasant situation where the buyer is unaware of this and demands that the trees be uprooted, it is assumed that the owner of the field reserves for himself the right to the ground under the trees (Rashi; Ran).

The Gemara raises an objection: We learned in the mishna here that Rabbi Shimon says: One who consecrates a field has not consecrated any of the items that are ordinarily excluded from a sale except for the grafted carob tree and the sycamore trunk. And it is taught with regard to this in a baraita: Rabbi Shimon said: What is the reason that it is specifically the carob tree and the sycamore trunk that are consecrated? Since they draw their nutrients from a consecrated field, the owner must have had in mind to consecrate them as well, as otherwise his trees would be nurtured from consecrated property.

And if it enters your mind, as Rav Huna claims, that when the seller retains certain trees for himself, he also retains the land around them so that they will be nurtured from soil that belongs to him, what is the reason for Rabbi Shimon’s ruling? When these trees draw their nutrients, they draw their nutrients from the ground that the consecrator had retained for himself that still belongs to him, not from consecrated property.

The Gemara answers: The assumption that Rav Huna’s statement is true according to everyone must be reconsidered. Rather, Rabbi Shimon, who says that one who consecrates his field does not retain for himself the land around the trees, holds in accordance with the opinion of his teacher, Rabbi Akiva. According to Rabbi Akiva, one who sells, sells generously, and there is no presumption that he retained some item or right for himself unless this was stated explicitly. Therefore, Rabbi Shimon rules that one who consecrates his field has also consecrated the carob trees, as otherwise they would draw nutrients from consecrated land. And Rav Huna, who says that when a seller retains trees for himself he also retains the land around them, holds in accordance with the opinion of the Rabbis, who say that one who sells, sells sparingly.

The Gemara asks: If Rav Huna’s statement is only in accordance with the opinion of the Rabbis, then isn’t his statement obvious? What novel idea is he adding? The Gemara answers: The practical difference is that while one might have thought that the prior owner retains a right to the land only for the sake of trees that were there, this is not the case. Rather, he retains absolute ownership of the land, and therefore, if the trees fall or die he can plant them again. If the trees fall he can plant them again – מַדְּנֶה שָׁתֵיל לְהוּ. The novelty of Rav Huna’s statement is to emphasize that the right of the owner of the trees to the land is not a temporary one that can be utilized only for the trees that he reserved. Rather, it is a permanent right that gives him ownership of the land. For this reason, he is allowed to plant new trees in place of the old ones (Rashbam).
The Gemara asks: But can you establish that the opinion of Rabbi Shimon is in accordance with the opinion of Rabbi Akiva, that one who sells or consecrates property does so generously? But isn’t it taught in a baraita: If one consecrates three trees in a field where ten trees are planted in an area required for sowing one se’ah of seed [beit se’a], if he has consecrated not only those trees, but also the land and the young trees between them? Therefore, if this is an ancestral field of his, when he redeems them, he redeems the land and everything contained within it according to the standard rate established by the Torah, whereby an area fit for the sowing of a homer, i.e., a kor, of barley seed is redeemed for fifty silver shekels.

The baraita continues: If the ratio of land to trees was less than this, and the trees were planted more densely, or if the ratio of land to trees was more than this, and the trees were planted less densely, or if he consecrated each of the trees separately, one after the other, this person has consecrated neither the land nor the young trees between them. Therefore, when he redeems them, he redeems the trees in accordance with their worth. And moreover, even if one consecrates the trees where they are planted more densely, less densely, or one after the other, and then afterward he consecrates the land, so that everything belongs to the Temple treasury, when he redeems them, he redeems the trees separately in accordance with their worth, and then he redeems the land according to the standard rate, where an area fit for the sowing of a homer of barley seed is redeemed for fifty silver shekels.

Where ten trees are planted in a beit se’a – הִבַּחֲמִשִּׁים שֶׁבֵּינֵיהֶם, לְרַבִּי שִׁמְעוֹן

The baraita is referring to young trees, as three fully grown trees would require a full beit se’a.

And the trees – רָבִּי שִׁמְעוֹן

Rashbam and Rabbi Shimon Gershon explain that the baraita is referring to young trees planted between the grown trees. Tosafot explain that it is referring to trees that do not bear fruit that are situated between fruit-bearing trees.

He redeems an area fit for the sowing of a homer of barley seed – בְּרֵיחַּת תֵּרָה שָׂדֶה – שְׂדֵה אֲחוּזָּה הָאִילָנוֹת שֶׁבֵּינֵיהֶם, לְרַבִּי שִׁמְעוֹן

Since by consecrating the trees he is regarded as having consecrated the land, when he redeems them, he redeems them as one redeems land. The Tosefta establishes that an ancestral field is redeemed at the rate of fifty silver shekels for a parcel of land in which a homer of barley seed can be sown for the entire fifty-year Jubilee period. This is equivalent to one se’a and one pundeyon for each year.

Less than this – בְּרֵיחַּת תֵּרָה שָׂדֶה

If the trees were planted more densely than this, there is insufficient area to support the amount of trees planted, and they are not considered to be permanently planted, as they will ultimately be uprooted (Rambam; Rabbeinu Gershon).

More than this – בְּרֵיחַּת תֵּרָה שָׂדֶה

If the trees were planted less densely, so that there is more space between each tree, the trees are regarded as if they were consecrated individually and the land between them is not consecrated (Rashbam).

One after the other – בְּרֵיחַּת תֵּרָה שָׂדֶה

By consecrating each tree individually, or by consecrating the trees individually and then consecrating the land, he demonstrates that his intent was not to consecrate the land, but only to consecrate the trees. Therefore, he redeems the trees in accordance with their worth, and then afterward he redeems the land according to the standard rate, as the trees and the land were consecrated separately.

Background – הִבַּחֲמִשִּׁים שֶׁבֵּינֵיהֶם

An area fit for the sowing of a homer – בְּרֵיחַּת תֵּרָה שָׂדֶה

This is an area fit for the sowing of the biblical measurement of a homer, the equivalent of a kor in the terminology of the Sages, of barley seeds. A kor is the largest measurement of volume mentioned by name in the sources. According to the standard method of converting talmudic measurements of Rabbi Hayyim Na’eh, a kor is approximately 248 liters and according to the Hazon Ish it is 430 liters.

Notes – נְזֶהַרְזֶה

Ancestral field – הִבַּחֲמִשִּׁים שֶׁבֵּינֵיהֶם

An ancestral field is a field that one inherits from his ancestors within his family holdings in Eretz Yisrael. When the Jewish people entered and conquered Eretz Yisrael, it was divided among the tribes and among households within the tribes. Ancestral land can be sold only until the Jubilee Year, at a price that takes into consideration the number of years remaining from the date of sale until the Jubilee Year. If the seller of the field obtains some money in the interim, he may buy back his field after two years have passed. If one consecrates an ancestral field, he may redeem it at a set price that takes into account the number of years remaining until the Jubilee Year. If one did not redeem his field, and the Temple treasures sold it to someone else, it does not revert to its owner in the Jubilee Year but to the priests who are on the priestly watch when the Jubilee Year begins (see Leviticus 25:16–21).

An area fit for the sowing of a homer – בְּרֵיחַּת תֵּרָה שָׂדֶה

This is an area fit for the sowing of the biblical measurement of a homer, the equivalent of a kor in the terminology of the Sages, of barley seeds. A kor is the largest measurement of volume mentioned by name in the sources. According to the standard method of converting talmudic measurements of Rabbi Hayyim Na’eh, a kor is approximately 248 liters and according to the Hazon Ish it is 430 liters.
The Gemara clarifies: Whose opinion is expressed in the baraita? If it is the opinion of Rabbi Akiva, doesn’t he say that one who sells, sells generously, and all the more so one who consecrates does so generously? This being the case, even if the trees were consecrated one after the other, some of the land should be consecrated along with them. And if the baraita reflects the opinion of the Rabbis, don’t they say in the mishna that it is specifically the seller who sells sparingly, but one who consecrates, consecrates generously, and therefore the pit and the winepress are consecrated along with the field? Therefore, the halakha stated here is not in accordance with their opinion either. Rather, it is obvious that the baraita is in accordance with the opinion of Rabbi Shimon in the mishna here, that even one who consecrates a field does not consecrate the cistern and the winepress along with it.

And the opinion of Rabbi Shimon is in accordance with the opinion of whom? If it is in accordance with the opinion of Rabbi Akiva, doesn’t he say that one who sells, sells generously, and all the more so one who consecrates does so generously? Rather, it is obvious that his opinion is in accordance with the opinion of the Rabbis, who disagree with Rabbi Akiva and say that one who sells, sells sparingly. And Rabbi Shimon disagrees with the Rabbis insofar as he himself holds that just as one who sells, sells sparingly, one who consecrates also consecrates sparingly and retains the land around the trees for himself.

The Gemara concludes stating the difficulty: But this is difficult, as Rabbi Shimon himself said that the grafted carob tree and the sycamore trunk are consecrated along with the field since they draw their nutrients from a consecrated field, indicating that one who consecrates acts generously and does not retain the land around the trees for himself.

The Gemara explains: Rather, it must be understood that when Rabbi Shimon stated his ruling in the mishna, he was not expressing his own opinion. Rather, he was speaking to the Rabbis in accordance with their statement, and he meant to say: According to my opinion, just as one who sells, sells sparingly, so too, one who consecrates, consecrates sparingly and retains for himself land to nurture the trees. Therefore, when one consecrates a field, even the sycamore and carob tree are not consecrated along with it. But according to your opinion, that one who consecrates does so generously, agree with me at least that one who consecrates a field has consecrated only the grafted carob and the sycamore trunk, because they draw nutrients from consecrated ground, but he has not consecrated the other items that are not integral parts of the field. And the Rabbis said to him: There is no difference between the two in this regard. Since one who consecrates an item does so generously, everything found in the field is consecrated.
The Gemara returns to the *baraita* that it had concluded was taught according to the opinion of Rabbi Shimon, and asks: In accordance with which opinion did you interpret the *baraita* discussing consecrated property? It was interpreted in accordance with the opinion of Rabbi Shimon. But say the last clause: And moreover, even if one consecrates the trees and then afterward he consecrates the land, when he redeems them, he redeems the trees separately in accordance with their worth, and then he redeems the land according to the standard rate, where an area fit for the sowing of a *homer* of barley seed is redeemed for fifty silver shekels.

And if the *baraita* is in accordance with the opinion of Rabbi Shimon, let him follow the character of the field at the time of its redemption, and so the trees should be redeemed along with their land, as at the time of the redemption both the trees and the land are consecrated. As we have already heard that Rabbi Shimon follows the time of the redemption, i.e., he determines the price at which a field is redeemed based on the time it is being redeemed.

As it is taught in a *baraita*: From where is it derived that with regard to one who purchases a field from his father and consecrates it, and afterward his father dies, so the field would now be considered his as an inheritance, from where is it derived that with regard to its redemption it should be considered before him as an ancestral field? And not a field that he purchased? The verse states about a field that was purchased: “And if he sanctifies to the Lord a field that he has bought, which is not of his ancestral fields” (Leviticus 27:22). The verse speaks specifically of a field that is not fit at the time of its consecration to be an ancestral field, meaning that he never could have inherited it in the future. This specification excludes this field that was fit to be an ancestral field from this *halakha*, since eventually it would have become his through inheritance, even had he not purchased it. This is the statement of Rabbi Yehuda and Rabbi Shimon.

The *baraita* continues: Rabbi Meir learns a different *halakha* from this verse, and he says: From where is it derived that in the case of one who purchases a field from his father, and his father dies, and afterward he consecrates the field, from where is it derived that it should be considered before him like an ancestral field? The verse states: “And if he sanctifies to the Lord a field that he has bought, which is not of his ancestral fields.” The verse refers specifically to a field that is not fit as an ancestral field at the time of its consecration. This specification excludes this field, as after the death of the father, it is an ancestral field.

But according to Rabbi Yehuda and Rabbi Shimon, a verse is not required to teach that, in a case where his father dies and afterward he consecrates the field, it is considered to be an ancestral field, as this is obvious. A verse is required only to teach the *halakha* in a case where he consecrates the field after having bought it, and afterward his father dies.

The Gemara asks: From where do Rabbi Yehuda and Rabbi Shimon arrive at this conclusion? If they derive it only from this verse, you can say that the verse came to be interpreted in accordance with the opinion of Rabbi Meir, as opposed to the opinions of Rabbi Yehuda and Rabbi Shimon, as there is no clear proof from the verse to support either opinion. Rather, is it not due to the fact that they follow the time of the redemption, and at the time of the redemption the father is dead, and the field is the son’s ancestral field that is currently in the possession of the Temple treasury?
Rav Nahman bar Yitzhak says: Actually, I can say to you that generally speaking, Rabbi Yehuda and Rabbi Shimon do not follow the time of the redemption, and therefore their ruling here is not based on this premise. But here they found a verse and interpreted it, as, if the verse is to be understood as it was explained by Rabbi Meir, then let the verse write: And if he sanctifies to the Lord a field that he has bought, which is not his ancestral estate, or let it write: Which is not his ancestral field. What is meant by the expression: “Which is not of his ancestral fields” (Leviticus 27:23)? It means that a field that is not fit to ever be an ancestral field is considered a purchased field. That excludes this field, as it is fit to be an ancestral field. Based on this explanation, the baraita that addresses one who consecrates trees can, in fact, be understood to be in accordance with the opinion of Rabbi Shimon.

Rav Huna says: A grafted carob and a sycamore trunk have both the status of a tree and the status of land. Each of these has the status of a tree, so if one consecrates or buys two trees and this carob or sycamore, he has also consecrated or bought the land between them, as the sycamore or carob joins with the other two trees to form a unit of three trees that take their land with them. And each has the status of land, as it is not sold along with land, as explained in the mishna, that one who sells a field has not sold a grafted carob or a sycamore trunk that is in the field.

And Rav Huna says in a similar fashion: A large sheaf of grain that contains two se'a has both the status of a sheaf and the status of a heap with regard to the halakhot of forgotten sheaves that must be left for the poor. It has the status of a sheaf, as the principle is that two sheaves that were inadvertently left in the field are considered forgotten sheaves that must be left for the poor, whereas three sheaves need not be left for the poor, but rather the owner of the field may go back and take them for himself. In this regard a two-se'a sheaf is considered one sheaf, so if one forgot two sheaves and also this sheaf that contains two se'a, the three together are three sheaves and are not considered forgotten sheaves that must be left for the poor.

And it has the status of a heap, as we learned in the mishna (Pe’a 6:6): In the case of a sheaf that contains two se’a, if one forgets it in a field, it is not considered a forgotten sheaf that must be left for the poor, as its size and importance grant it the status of a heap, rather than a sheaf.

What is meant by, which is not of his ancestral field – מאי אֲשֶׁר לֹא אֲחוּזָּתוֹ: Rabbi Yehuda and Rabbi Shimon derive from the superfluous letter mem, meaning “of” in the verse, that the verse refers to fields that will never be fit to be ancestral fields. Therefore, any field that can be regarded as an ancestral field is not considered a purchased field.

Each has the status of a tree – יֵשׁ לוֹ שִׁכְחָה: Despite their great importance, which confers upon a grafted carob or a sycamore trunk the status of land, they are both still considered trees, and therefore they retain the halakhot associated with all trees. Therefore, when a grafted carob or a sycamore trunk is sold along with two other trees, it is considered the third tree, and the buyer acquires the land between them. The same principle applies with regard to large sheaves, which are discussed in the continuation of the Gemara. Despite its size, a large sheaf still combines with two other sheaves, and as a result they are not considered forgotten sheaves that must be left for the poor.

Forgotten sheaves – שִׁכְחָה: The mitzvah to leave forgotten sheaves for the poor appears in the Torah (Deuteronomy 24:19) and is explained in detail in tractate Pe’a. The essence of the mitzva is that if one forgets a sheaf while gathering sheaves in the field, it is not permitted for him to go back and take it, as it belongs to the poor. This halakha does not apply to sheaves that have special importance because of their number, size, or placement, because one would remember within a short amount of time that he did not collect them. Therefore, a large sheave that contains two se’a or more is not treated as a forgotten sheaf that must be left for the poor.

As two sheaves left in the field are considered forgotten sheaves – אֲמַר רַבִּי הוּנָא: If one forgot two separate sheaves of grain in his field, they are considered forgotten sheaves and must be left for the poor. If he forgot three separate sheaves, they are not considered forgotten sheaves, and it is permitted for the owner to go back and take them for himself (Rambam Sefer Zedim, Hilkhot Mattenot Aniyim 5:14).
The Gemara asks: But let us say that this is the dispute¹ between Rabbi Shimon and the Rabbis, as it was concluded previously that according to Rabbi Shimon himself, even the carob and sycamore trees are not consecrated. The Gemara answers: Reish Lakish teaches us this,² that Rabbi Menahem, son of Rabbi Yosei, holds in accordance with the opinion of Rabbi Shimon, and therefore Rabbi Shimon is not the only Sage who holds this opinion.

The Rashbam explains the Gemara’s question as follows: If Reish Lakish had taught that this is the dispute between the Rabbis and Rabbi Shimon, he would have taught a novel idea, that Rabbi Shimon himself disagrees with the Rabbis with regard to the consecration of carob and sycamore trees, and although he states in the mishna that they are consecrated, he speaks there according to the opinion of the Rabbis, while he himself holds that they are not consecrated.

Teaches us this – יַעֲבוֹר לַלָּוֶת יָפֵי לִמְדֶיה. According to the Rashbam, this means that the fact that Rabbi Menahem, son of Rabbi Yosei, holds in accordance with the opinion of Rabbi Shimon is a more novel concept, as his opinion is not found in the mishna, whereas Rabbi Shimon’s own opinion can be deduced by comparing his statements in the mishna and the baraita. The Ramah explains that from here it is evident that the halakha is not in accordance with Rabbi Menahem, son of Rabbi Yosei, as his opinion is identical to the opinion of Rabbi Shimon, which is not accepted as the halakha.

¹ The dispute
² Reish Lakish
This chapter analyzed the sale of various types of landed property, what is included in the sale of land, and how the boundaries of sold property are established. The Gemara’s discussion revolved around properties such as a house, courtyard, olive press, bathhouse, field, vineyard, and even an entire city.

The principle that emerges is that when one sells one of these properties without specifying what is included in the sale, any item situated on the property is included in the sale, provided that it is affixed to the ground and serves a function with regard to that property. Similarly, when one sells a field, the trees in the field are included in the sale. By contrast, items that are attached to the ground are not included in the sale of the property if they are considered important in their own right, for example, a cistern when a house is sold; or a dovecote, sycamore trees, or carob trees in a field.

In general, movable property is not included in the sale of land, even if it serves a purpose on the land. Nevertheless, in the case of a field, movable property found in the field is included in the sale, provided that it serves a function in either working or protecting the field.

All of the above applies when the seller sells the land without specifying what is included in the sale. If he explicitly states that he is selling the land and everything that is in it, all the movable property that serves any function with regard to the land is included in the sale, but other movable property, such as money or merchandise, is still excluded. In the case of the sale of a field, this specification is even more inclusive, as it includes all of the movable property found in the field, even items such as harvested produce that was left in the field.

Since the presumption is that a seller sells generously, if certain fixed items that were not included in the sale are situated on the land transferred to the buyer, the seller is obligated to purchase a path in order to access those items. If he states that he is reserving such a path for himself, or if he specifies that he is excluding these items from the sale, he is not required to purchase a path. One who sells a field and retains the trees for himself is not required to purchase a path, as he reserves for himself the land needed to tend the trees even without specifying his intent.

All of these limitations with regard to what is included in the transaction apply only in the case of a sale, as the seller relies on the fact that the buyer could have stipulated that he wanted specific items to be included in the sale. But in cases where one gives the property as a gift or consecrates it, all movable property found in the land is included, with the exception of those items that are clearly not connected to the land. The halakha is the same with regard to one who takes possession of land that
had belonged to a convert or brothers who divide between themselves the property of their father’s estate.

With regard to the boundaries of the land being sold, the Gemara established that when one sells a house, the sale does not include the gallery or a room behind the house. It also does not include the pit, cistern, tunnels, or roof, as these are all considered separate entities. Additionally, the seller has not sold that which is found above the roof or below the ground unless he specifies that he is also selling the depths and the heights of the house. With regard to the sale of a city, everything within the city’s borders is sold, but the nearby villages and lands are not, unless they serve some function only for that city.

When one sells a field that is situated between two other fields, he must delineate the boundaries on all sides. If only some of the boundaries were specified, the buyer receives the smallest area that those boundaries can define. Similarly, when one sells a house or field that is part of a larger unit and specifies only the boundaries of the larger area as opposed to the land that is being sold, it is assumed that the seller expanded the boundaries for the buyer but he in fact meant to sell him only the particular house or field.
Although this chapter discusses several topics, it is primarily focused on the sale of various types of movable property and food. Continuing from the previous chapter, it begins by discussing what is included in the sale of various movable items. It seeks to clarify which items are sold when they are found inside a larger item, e.g., a ship; whether items that are usually sold together, or are adjacent or attached, are included in a sale; and whether the sale of a mother animal includes the sale of its offspring.

Another series of issues concerning the limitations of a sale arises with regard to trees, which are purchased mainly for their fruit. In addition to establishing the extent of the sale, such as whether the ground is also included, and if so, how much ground, it is necessary to define precisely the rights of the new owner to the tree itself and its fruit.

The chapter proceeds to analyze general halakhot concerning sales of movable property. It addresses the issues that ensue when the characteristics of a sold item do not accord with the statements of the buyer and seller, whether the discrepancy relates to the quality of the merchandise or the merchandise is a different type of item than the one agreed upon. In certain cases where the sold merchandise differs from the stipulated product, one or both parties may renege on the sale. This leads to another question: At what stage is a transaction considered final? Since one party may change his mind and seek to renege on the transaction or change its terms, it is necessary to ascertain at what point it is final and too late to make changes. Another reason why it is important to determine the end of a sale is that if the merchandise is broken or spilled, whoever is in possession of the goods suffers the loss.

The Gemara also discusses the halakhot of a common scenario in which a father sends his young child to purchase an item on his behalf. If it is lost or destroyed, it is necessary to ascertain whether the merchant or the father is financially responsible for the lost merchandise.

An important aspect of every sale is the act of acquisition that effects the transfer of ownership. This chapter analyzes the various methods through which one can acquire movable property.

In the case of the sale of movable property, especially dry and liquid food products, the scales and measures that are used must be accurate. In order to supervise their accuracy, the Sages instituted guiding principles, both with regard to the accuracy and reliability of the measures and the proper manner of weighing and measuring.
MISHNA One who sells a ship\(^1\) has sold along with it the toren, and the nes, and the ogin, and all of the equipment that is used for directing it. But he has not sold the slaves who serve as oarsmen, nor the packing bags that are used for transporting goods, nor the antikei on the ship. And when one said to the buyer: You are purchasing it, the ship, and all that it contains, all of these latter elements are also sold.

GEMARA The toren is the mast \(\text{iska}y\alpha\)\(^2\). And in this regard it states: “They have taken cedars from Lebanon\(^3\) to make masts [toran] for you” (Ezekiel 27:5). The nes is the sail, and in this regard it states: “Of fine linen\(^4\) with richly woven work from Egypt was your sail, that it might be to you for an ensign [nes]” (Ezekiel 27:7). With regard to the meaning of ogin, Rabbi Hyya teaches: These are the ship’s anchors, and so it states: “Would you tarry for them until they were grown? Would you shut yourselves off for them [te’aga\eta] and have no husbands?” (Ruth 1:13). This demonstrates that the root ayin, gimel, nun, means being shut up and held firmly in one place.

The mishna teaches that the buyer acquires all the equipment used for directing the ship. Rabbi Abba says: These are the ship’s oars.\(^5\) And this is as it states: “Of the oaks of Bashan they have made your oars” (Ezekiel 27:6). Since a verse discussing ships focuses on its oars, evidently the oars are an integral part of the ship. And if you wish, say instead that it is demonstrated from here: “And all that handle the oar, the mariners, and all the pilots of the sea, shall come down from their ships” (Ezekiel 27:39).

The Sages taught: One who sells a ship has also sold the gangway [iskala]\(^6\) used for boarding the ship, and the water tank\(^7\) it contains. Rabbi Natan says: One who sells a ship has sold the ship’s boat [bitzit], which is used as a lifeboat or for fishing in shallow waters. Sumakhos says: One who sells a ship has sold the dugit, as explained below.

Rava said: The bitzit is the same as the dugit. Rabbi Natan was a Babylonian, and therefore he called small boats bitzit, as people say: The botzi\(\text{ata}\), small boats, of Mi\(\text{a}sh\)an.\(^8\) Sumakhos, who was from Eretz Yisrael, called these boats dugit, as it is written: “You shall be taken away with hooks, and your residue in fishing boats [duga]” (Amos 4:2).

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NOTES

1. Since extremely tall trees from Lebanon were needed to build the toren, this proves that a toren is a mast (Rashbam).
2. From the Greek \(\text{iska}y\alpha\), histokesia, meaning mast.
3. Based on the explanation of Rashi on Shabbat 101a, these boats had tapered hulls, similar to the Roman boat depicted here.
4. They have taken cedars from Lebanon, etc. – יאָ פַּלְצֵי הָבָרֹם. Since extremely tall trees from Lebanon were needed to build the toren, this proves that a toren is a mast (Rashbam).
5. Of fine linen – שֶׁ. This indicates that a nes is made from fabric, from which it can be inferred that it is a sail.
6. Directing [manhigin]...these are the ship’s oars, etc. – דבע 하고 אָהַרָא קֹלָא. There are two possible explanations of the mishna’s term manhigin. It is referring either to the oars or to the ropes used for tugging the ship along rivers and shores (Ri Migash). According to some commentaries, it is understood from the second verse that although oars are not attached to the ship itself, nevertheless they are considered part of the ship and are acquired by its buyer (Tenofe Herosh). The water tank – בּוֹצִיאָתא דְּמִיאָשָׁן. Many early commentators explain that this refers to the tank holding drinking water for the ship’s occupants when at sea (Rashbam). Alternatively, it is the ship’s water ballast tank, located under the ship, which provides stability for the ship (Rabbenu Banuh). Either way, the mishna is speaking of a removable tank that is not part of the body of the ship.
The Gemara cites several incidents that involve ships and the conversation of seafarers. Rabba said: Seafarers related to me that when this wave that sinks a ship appears with a ray of white fire at its head, we strike it with clubs that are inscribed with the names of God: I am that I am, Yah, the Lord of Hosts, amen Amen, Selah. And the wave then abates.

Rabba said: Seafarers related to me that in a certain place between one wave and the next wave there are three hundred parasangs, and the height of a wave is three hundred parasangs. Once, seafarers recounted, we were traveling along the route and a wave lifted us up until we saw the resting place of a small star, and it appeared to me the size of the area needed for scattering forty se‘a of mustard seeds. And if it had lifted us higher, we would have been scorched by the heat of the star.

And the wave raised its voice and shouted to another wave: My friend, did you leave anything in the world that you did not wash away, that I may come and destroy it? The second wave said to it: Go out and see the greatness of your Master, God, as even when there is as much as a string of sand on the land I cannot pass, as it is stated: “Will you not fear Me, said the Lord; will you not tremble at My presence? Who has placed the sand for the bound of the sea, an everlasting ordinance, which it cannot pass?” (Jeremiah 5:22).

Rabba said: I have seen the one called Hurmin, son of Lilith (when he was running on the pinnacles of the wall of the city of Mehoza, and a horseman was riding an animal below him but was unable to catch up to him. Once, they saddled for him two mules and they stood...
**LANGUAGE**

Antelope (urzila) — עַרְצֵילָא: In Aramaic this word means doe, young ram, or deer. It appears in the Aramaic translation of the Bible. It is similar to the Arabic غزال, meaning deer.

Frog (akroka) — אָקוּרְקָה: Apparently this term is an onomatopoetic imitation of the sound of a frog croaking.

Fort (akra) — אַרְקָא: From the Greek ἀκρα, meaning fort.

Nostril (avassy) — אַבָּסִי: Some commentaries explain that this means nose or nostril. Its source is unclear. Some suggest it is derived from the Latin naso, meaning nose, with the omission of the first letter. Others contend that it means ear, from the Greek ἀος, which bears this meaning.

Mud eater (akhla tina) — אֵחֶלְתִּינָא: Some explain that tina is from the Latin tinea, meaning woodworm. Others contend that akhla tina is a single Aramaic term, meaning mud eater. If so, it would seem to denote a type of woodworm.

**PERSONALITIES**

Rabba bar bar Hana — רַבָּא מַעֲנֵהוּ: An amora of the third generation, Rabba bar bar Hana was a student of Rabbi Yohanan. He was apparently born in Babylonia, emigrated to study Torah in Eretz Yisrael, and later traveled through many lands. He transmitted statements of his teacher Rabbi Yohanan, as well as those of Rabbi Yehoshua ben Levi, Rash Laki, and Rabbi Blazer. He was also a student of Rabbi Yishya of Usha. One of his sons, Rabbi Yitzhak, also became a well-known scholar. Rabba bar bar Hana relates many stories of the wonders he saw in his travels, as detailed here.

**NOTES**

Was heard in the house of the king, etc. — לְאֵלָה בְּפִי הַמֶּלֶךְ הַדָּוִד: The commentators suggest two explanations of the identity of this king. First, this may be referring to the king of the demons, and Humrin was killed for revealing himself overtly to mankind. Alternatively, this is referring to a human king, who felt threatened by Hurmin (Rashbam). This interpretation is consistent with the idea that Humrin was a magician.

A day-old antelope — וְיַרְדְּנָא: According to some commentaries, this is a parable describing Joshua. He is described figuratively as possessing the horns of an antelope because he achieved great victories and caused the water in the Jordan to stand still (Maharsha). Others maintain that this is a critical depiction, which is referring to a young student who is unaware of his ignorance and imagines himself to be as great and mighty as Mount Tabor; in fact, he will besmirch and ruin truly great Torah scholars, just as the animal leaves feces that besmirch and ruin his environment (Gra). Alternatively, the animal represents the nascent religion of Christianity that arose and spread rapidly, becoming a mighty force. The feces that block the Jordan symbolize the negative impact of this religion on the spirit of the Jewish nation (Ritva).

A certain frog — עַרְצֵילָא כִּי אֵין שְׁלֵשׁ לֶאַבּוּרָא: The frog symbolizes a Torah scholar, while the snake represents the evil inclination that attempts to distract him from his studies by means of the difficulties in earning a living. The raven is the Torah scholar who overcomes the evil inclination, while the tree is the Tree of Life (Gra). Alternatively, the different creatures represent various natural forces that consume one another, but which are ultimately sustained by the Tree of Life (Maharsha). Yet others explain that this is a parable for the different enemies that arise up, rule, and are conquered in turn by the next empire (Ritva; Maharsha). The tree, which is the merit of Abraham (Maharsha) or which represents God Himself (Ritva), sustains the Jewish people under these different powers until the ultimate redemption. This explains why Rav Pappa bar Shmuel states that he himself witnessed these matters, as they refer to recurring historical events.

A certain fish in whose nostril a mud eater had sat — עַרְצֵילָא כִּי אֵין שְׁלֵשׁ לֶאַבּוּרָא: According to some commentators this is an allusion to Haman, as his decree was intended for the month of Adar, whose zodiac sign is a fish. His downfall was brought about by Mordecai, whom he had believed to be only a small creature. This victory led to the further downfall of many other enemies of the Jewish people (Maharsha). Alternatively, the fish symbolizes a righteous person, as the righteous are frequently compared to fish. In that case, the story teaches that a small imperfection can cause a righteous man to falter, and his failure leads to the collapse of many others. The story shows that ultimately there is a positive outcome, as the ruins are rebuilt.
A certain fish upon which sand had settled, etc. – איזה עוד תַּחֲלֵת מְאֹד חִפָּא? This is an allusion to the Jewish people in exile, who sometimes believe erroneously that they are safe in a foreign land. This false sense of security leads to the dangers of assimilation. Ultimately, they discover that not only are they not on stable-ground, but unless they repent, they are in danger of drowning in troubles (Ritva). Other commentators agree with this general idea but maintain that this is referring specifically to the persecutions of Haman (Maharsha).

Sea gildana – акрокта: The gildana is a type of small fish. Rav Ashi is emphasizing the wonders of God’s creation, as this enormous fish actually belongs to a species of small fish (Rashbam).

A certain bird – אקרופיטה: The bird represents the Jewish people, whose feet are firmly planted in reality and yet their heads reach the heavens. Sometimes they believe that they can enjoy the waters of life like other nations, at which point they are warned that what appears to them as shallow water is in fact turbulent waters filled with dangers (Ritva). Others explain that the bird symbolizes Torah scholars; it appears as though anyone can engage in Torah study and that they sometimes believe erroneously that they are safe in a foreign land. This type of prophecy, as although prophecy had ceased by this time, the Divine Voice remained in force (Ritva; Maharsha). Yet another explanation is that the bird is similar to the Arabic gildana, i.e., the Jewish people who left Egypt and died of a fish (Shalshelet ha-Yemei Hazev). In this context, the word means fin. It is possibly a type of small fish. Rav Ashi concluded that the gigantic fish was from one of those species.

Ankle (kartzul) – לְשֵׁיכָּא: This term is frequently used in place of the word karsul, meaning the lower leg area.

BACKGROUND

Between one fin and the other fin – בַּת לָא: Although all fish have fins, a great many species have only frontal fins, in the area of the fish’s chest. Certain species of fish have two pairs of fins, one closer to the chest and the other nearer the tail. Based on this description of two sets of fins, Rav Ashi concluded that the gigantic fish was from one of those species.

Divine Voice (bat kala) – רַבָּה בַּר בַּר חָנָה: Many explanations have been suggested for this concept. Some explain that hearing a Divine Voice is a type of prophecy, as although prophecy had ceased by this time, the lower form of communication known as the Divine Voice remained in force (Tosefta; see Grinom). Others suggest that a Divine Voice is a type of echo or sound whose source cannot be placed. Sometimes, this voice is simply another people having a conversation; they happen to be overheard saying something that resolves a difficulty that was puzzling the listeners. Similar cases are found in the Jerusalem Talmud (Marahz Hayyus). Another possibility is that the word bat refers to a measure, as a bat is a biblical measure of liquid volume. If so, this phrase means a voice for those who measure; in other words, it is a voice heard only by those who are worthy (Rosh; see Sefer HaNitzahon).

Mnemonic – סבירה: Because the Talmud was studied orally for many generations, mnemonic devices were a necessary aid, designed to help one to remember a series of statements and the order in which they were taught.

And Rabba bar Haná said: Once we were traveling in a ship and we saw a certain fish upon which sand had settled, and grass grew on it. We assumed that it was dry land and went up and baked and cooked on the back of the fish; but when its back grew hot it turned over. And were it not for the fact that the ship was close by, we would have drowned.

And Rabba bar Haná said: Once we were traveling in a ship and the ship traveled between one fin [shitzu] and the other fin of a fish for three days and three nights. The fish was swimming in the opposite direction of the ship, so that it was swimming upward against the wind and the waves, and we were sailing downward. And if you would say that the ship did not travel very fast, when Rav Dimi came from Eretz Yisrael to Babylonia he said: In the short amount of time required to heat a kettle of water, that ship can travel sixty parasangs. And another demonstration of its speed is that a horseman shot an arrow, and yet the ship was traveling so swiftly that it outraced it. And Rav Ashi said: That fish was a sea gildana, which has two sets of fins.

And Rabba bar Haná said: Once we were traveling in a ship and we saw a certain bird that was standing with water up to its ankles [kartzulei] and its head was in the sky. And we said to ourselves that there is no deep water here, and we wanted to go down to cool ourselves off. And a Divine Voice emerged and said to us: Do not go down here, as the ax of a carpenter fell into it seven years ago and it has still not reached the bottom. And this is not because the water is so large and deep. Rather, it is because the water is turbulent. Rav Ashi said: And that bird is called ziz sadai, wild beast, as it is written: “I know all the fowls of the mountains; and the ziz sadai is Mine” (Psalms 50:11).

And Rabba bar Haná said: Once we were traveling in the desert and we saw these geese whose wings were sloping because they were so fat, and streams of oil flowed beneath them. I said to them: Shall we have a portion of you in the World-to-Come? One raised a wing, and one raised a leg, signaling an affirmative response. When I came before Rabbi Elazar, he said to me: The Jewish people will eventually be held accountable for the suffering of the geese. Since the Jews do not repent, the geese are forced to continue to grow fat as they wait to be given to the Jewish people as a reward.

The Gemara provides a mnemonic for the items shown by an Arab man to Rabba bar Haná in the following stories: Like the dust of the sky-blue; the scorpion stung the basket.

And Rabba bar Haná said: Once we were traveling in the desert and we were accompanied by a certain Arab who would take dust and smell it and say: This is the road to such and such a place, and that is the road to such and such a place. We said to him: How far are we from water? And he said to us: Bring me dust. We brought it to him, and he said: Eight parasangs. Later, we said this a second time, and gave him dust, and he said to us that we are at a distance of three parasangs. I switched the type of dust to test him, but I could not confuse him, as he was an expert in this matter.

That Arab said to me: Come, I will show you the dead of the wilderness, i.e., the Jewish people who left Egypt and died in the wilderness. I went and saw them; and they had the appearance of one who is intoxicated,
And they were lying on their backs. — Abba: Before burial, one places the deceased on his back so that he is facing upward. The Gemara here is the source for this custom (Rambam Sefer Shofetim, Hilkhot Evel 4:4 and Kesef Mishneh and Lehem Mishneh there; Shulhan Arukh, Orach Hayyim 343).

Whether the halakha is in accordance with the opinion of Beit Shammai…counted the treads, etc. — Abba: Ritual fringes comprise four double threads, totaling eight threads, on each of the four corners of a garment. If one adds to this number, the ritual fringes are invalid. This halakha is in accordance with the opinion of Beit Shammai (Rambam Sefer Ahava, Hilkhot Tzitzit 11:12).

The Arab entered under his knee — Tannaiti: This alludes to the spiritual greatness of that generation, and symbolizes the fact that other people are like dwarfs in comparison to them (Maharal).

Every Abba, etc. — Abba: Who? Rabba bar bar Ĥana. Rabba bar bar Ĥana did not nullify the oath because he said: Perhaps you took something from them? Return it, as we know by tradition that one who takes something from them cannot walk. I then returned the corner of the garment, and then we were able to walk.
The joints are bookended with knots. There is a dispute concerning Abba. The Sages' comment can be understood in one of two ways.

The Arab entered under his knee –

וְגָנוּ אַ׳ַרְ ִיד
call Abba, etc. –

כָּל אַבָּא וכופ

together three times or more to form a single unit that is called a joint.

That other people are like dwarfs in comparison to them (Maharal).

The existence of their Father in Heaven (Maharsha).

Most commentaries explain that this and the following story allude to the rise of great kingdoms that are ultimately swallowed up by the most powerful of them (Ritva). According to the others, the two anecdotes refer to the month of Adar, which has the zodiac sign of a fish, and the details of the story allude to the various features of this month (Maharsha).

To insert sky-blue wool in it –

וַעֲיַל טַיָּיעָא תּוּתֵי בִּרְכֵּיהּ

This is an Aramaic form of the Syriac root amad, meaning to dive.

Relief of Assyrian diver from the eighth century BCE.

It is possible that Rabbi Yoĥanan saw this as is evident from the Gemara’s statement here with Rabbi Hanina ben Dosa’s wife (Sinag, Rosh).

Some claim that a woman should not insert and tie the strings ab initio (Rema). Nevertheless, the Rema concedes that a woman is permitted to spin the threads even ab initio (Shulĥan Arukh, Orah Hayyim 141, and Beur HaGra there).

The wife of Rabbi Hanina ben Dosa, etc. –

מֹשֶׁה וְתוֹרָתוֹ אֱמֶת

Moses and his Torah are true, etc. –

כופ

This dem-

נְחֵית

אֶבֶן טָבָא שַׁדְיוּהָ לִסְ

יָרָא לְהַהִיא אֶבֶן טָבָא שַׁדְיוּהָ לִסְ

לְאַטְמֵיהּ, וּשְׁדָא זִי

וַחֲזֵינַן הַהוּא כְַוְרָא דְּאַ׳ְּ ֵיהּ לְרֵישֵׁיהּ

דִּדְבֵיתְהוּ דְּרַבִּי חֲנִינָא בֶּן דּוֹסָא, דַּעֲתִידָה דְּשַׁדְיָא

וַחֲזֵינַן הַהוּא כְַוְרָא דְּאַ׳ְּ ֵיהּ לְרֵישֵׁיהּ

וַחֲזֵינַן הַהוּא כְַוְרָא דְּאַ׳ְּ ֵיהּ לְרֵישֵׁיהּ

ַרְטַלִיתָא

Diver (bar amora’i) – In accordance with the opinion of Beit Shammai; a diver went into the water to bring up this chest, and the fish became angry and sought to sever his thigh, but the diver threw upon it a flask of vinegar and they descended and swam away. A Divine Voice emerged and said to us: What right do you have to touch the crate of the wife of Rabbi Hanina ben Dosa, as she is destined to insert sky-blue wool in it to be used in the ritual fringes of the righteous in the World-to-Come?

Ray Yehuda from India relates: Once we were traveling in a ship and we saw a certain precious stone that was encircled by a snake. A diver descended to bring it up, and the snake came and sought to swallow the ship. A raven came and cut off its head, and the water turned into blood due to the enormousness of the snake. Another snake came, took the precious stone, and hung it on the dead snake, and it recovered. It returned and again sought to swallow the ship, and yet again a bird came and cut off its head, took that precious stone, and threw it onto the ship. We had with us these salted birds; we placed the stone on them, and they took the stone and flew away with it.

The crate of the wife of Rabbi Hanina ben Dosa, etc. – The wife of Rabbi Hanina ben Dosa, as well as other righteous people, suffered from poverty in this world so that she could receive the entirety of her reward in the World-to-Come (Maharsha). Others explain that the story alludes to the idea that when Torah scholars wish to attain possessions that provide ease and comfort in this world, as symbolized by the crate of precious stones, they are told that their reward will be given only in the World-to-Come, not in this world (Ezr Yosef).

A certain precious stone – אַעֲשֵׂה נָבָא אַנָּא חֲדָא הֲוָה

Some commentaries explain that this precious stone symbolizes wisdom, which can be acquired only through great exertion and effort. The snake that encircles it represents the spiritual pitfalls that lie in the path of wisdom, which must be removed before one can hope to become wise. Once one successfully does so, wisdom becomes like an elixir of life for him (Ritva). Alternatively, the precious stone alludes to the Torah, and the snake represents the wicked empires that prevent the Jewish people from engaging in its study. The salted birds are Torah scholars, who suffer under the foreign ruler. Nevertheless, they are still preserved, and fly away to other countries to escape during difficult times (Maharsha).
Apropos the stories of large sea creatures, the Gemara discusses the large sea creatures mentioned in the Bible. The Sages taught: There was an incident involving Rabbi Eliezer and Rabbi Yehoshua, who were traveling on a ship, and Rabbi Eliezer was sleeping and Rabbi Yehoshua was awake. Rabbi Yehoshua trembled, and Rabbi Eliezer awoke. Rabbi Eliezer said to him: What is this, Yehoshua; for what reason did you tremble? Rabbi Yehoshua said to him: I saw a great light in the sea. Rabbi Eliezer said to him: Perhaps you saw the eyes of the leviathan, as it is written: “And his eyes are like the eyelids of the morning” (Job 4:10).

The verse states: “And God created the great sea monsters” (Genesis 1:21). Here, in Babylonia, they interpreted this as a reference to the sea oryx. Rabbi Yoĥanan says: This is leviathan the slant serpent, and leviathan the tortuous serpent, as it is stated: “And his eyes are like the eyelids of the morning” (Job 4:10).

The Gemara provides a mnemonic for the following statements of Ray Yehuda citing Rav: Everything; time; Jordan. Rav Yehuda says that Rav says: Everything that the Holy One, Blessed be He, created in His world, He created male and female. Even leviathan the slant serpent and leviathan the tortuous serpent He created male and female. And if they would have coupled and produced offspring, they would have destroyed the entire world. What did the Holy One, Blessed be He, do? He castrated the male and killed the female, and salted the female to preserve it for the banquet for the righteous in the future. As it is stated: “And He will slay the serpent that is in the sea” (Isaiah 27:1).6

Drug of life (samterae) –egment: The origin of this term is unknown; it is also not entirely clear to which drug it is referring. Some maintain that it is a medicine produced from the bark of the Dracaena cinnabari or Dracaena draco trees. These trees produce a red resin. This was once viewed by doctors as one of the most important vulnerary preparations, especially as a coagulant that shrinks blood vessels to stop bleeding.

Broom – Retama raetam: This refers to the Retama raetam plant, a tall broom bush that at times reaches the height of a typical tree, and which grows principally in sandy areas and by streams. The branches of this broom bush are gray-green and lack leaves for most of the year. The broom blooms at the end of the winter with an abundance of white flowers. In antiquity, charcoal was often made from its roots and trunk. In several places the Sages mention that the coals from this plant wood burn and retain their heat for longer than coals from other kinds of trees.
Fish are unrestrained — רְצוֹנִים. This comment about the mating habits of fish may refer to the fact that most fish do not fertilize eggs internally but instead reproduce by laying eggs that are later fertilized in the water. Consequently, there is no need for actual contact between the male and the female.

The Gemara asks: There too, with regard to the leviathan, let Him castrate the male and cool the female; why was it necessary to kill the female? The Gemara answers: Fish are unrestrained, and therefore even if the female was cooled, the female would still procreate. The Gemara suggests: And let Him do the opposite, and kill and preserve the male leviathan. The Gemara responds: If you wish, say that the salted female is better; if you wish, say instead that since it is written: “There is leviathan, whom You have formed to sport with” (Psalms 104:26), the male must be left alive for sport, because it is not proper conduct to sport with a female. The Gemara asks: Here too, with regard to the beasts, let Him preserve the female in salt, instead of cooling it. The Gemara answers: Salted fish is good, but salted meat is not good.

And Rav Yehuda says that Rav says: At the time when the Holy One, Blessed be He, sought to create the world, He said to the minister of the sea: Open your mouth and swallow all the waters of the world, so that there will be room for land. The minister of the sea said before Him: Master of the Universe, it is enough that I will stay within my own waters. God immediately struck him and killed him; as it is stated: “He stirs up the sea with His power, and by His understanding He smites through Rahab” (Job 26:12).

And he created even the beasts on the thousand hills (see Psalms 50:10) male and female. And they were so enormous that if they would have coupled and produced offspring, they would have destroyed the entire world. What did the Holy One, Blessed be He, do? He castrated the male and cooled the sexual desire of the female and preserved it for the righteous in the future. As it is stated about the beasts: “Lo now, his strength is in his loins” (Job 40:16); this is referring to the male. The conclusion of the verse: “And his force is in the stays of his body”; this is the female, alluding to the idea that they did not use their genitals for the purpose of procreation.

Leviathan and beasts — דָּגִים. The commentators explain that all of these creatures represent abstract concepts. The male and female leviathan symbolize the power of the mind and the spirit, respectively, while the male and female beasts allude to form and matter (Rashba). The Rashba adds that the mind and the soul are not meant to be joined eternally, so that there will be room for land. The minister of the sea represents the highest and loftiest level of wisdom, which includes all other forms of wisdom (Midrash Shlomo).

It is not proper conduct to sport with a female, etc. — רְצוֹנִים. Not even cooling their sexual ardor will prevent them from procreating (Rashbam). Alternatively, the male still wishes to be with the female, and if he cannot fulfill his desire he will destroy the world (Ri Migash).

They would have destroyed the entire world — מַחֲרִיבִין כָּל הָעוֹלָם כּוּלּוֹ. This passage utilizes the image of the serpent in the same manner as the verse, i.e., as a metaphor for the nations of the world. It is alluding to a method by which God saves the Jewish people from these nations. The castration of the serpent represents the weakening of the desire of the nations to unite, as the consequence of this union would be particularly detrimental to the Jewish people. In order to draw attention away from the Jewish people, God creates or allows for discord among the nations. Following the model of the prophet Isaiah, Rav makes use of metaphorical imagery to teach esoteric, spiritual concepts or political matters. He refers to God’s active intervention in the world in order to guarantee the survival of the Jewish nation (Midrash Shlomo).

Fish are unrestrained — רְצוֹנִים. Not even cooling their sexual ardor will prevent them from procreating (Rashbam). Alternatively, the male still wishes to be with the female, and if he cannot fulfill his desire he will destroy the world (Ri Migash).

As this is meant only as a parable, this means that it is not fitting to attribute to God the activity of sporting with females (Rashba).

Minister of the sea — בֶּן נְדוֹם: According to some commentators, the minister of the sea represents the highest and loftiest level of wisdom, which includes all other forms of wisdom (Ritva). Others explain that this refers to the laws of nature that hold sway over the waters. God’s instructions that the waters make room for dry land contradict the laws of nature, and therefore this is described in terms of God killing the minister of the sea (Maharsha).
Rabbi Yitzhak said: Conclude from here that the name of the minister of the sea is Rahab, and were it not for waters of the sea that cover him, no creature could withstand his smell, as his corpse emits a terrible stench. As it is stated: “They shall not hurt nor destroy in all My holy mountain; for the earth shall be full of the knowledge of the Lord, as the waters cover the sea” (Isaiah 11:9). Do not read this phrase as “cover the sea”; rather read it as: Cover the minister of the sea, i.e., the term sea is referring to the minister of the sea, not to the sea itself.

And Rav Yehuda says that Rav says: The Jordan issues forth5 from the cave of Pamyas.6 That is also taught in a baraita: The Jordan issues forth from the cave of Pamyas, and travels in the Sea of Sivkhi, i.e., the Hula Lake, and in the Sea of Tiberias, the Sea of Galilee, and rolls down7 to the Great Sea, and rolls down until it reaches the mouth of the leviathan. As it is stated: “He is confident, though the Jordan rush forth to his mouth” (Job 40:23). Rava bar Ulla strongly objects to this explanation of the verse, stating: But this verse is written about the beasts on the thousand hills. Rather, Rava bar Ulla said that this is the meaning of the verse: When are the beasts on the thousand hills confidence? When the Jordan rushes forth into the mouth of the leviathan.

The Gemara provides a mnemonic for the upcoming statements of Rav Dimi: Seas; Gabriel; hungry. When Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan said: What is the meaning of that which is written: “For He has founded it upon the seas, and established it upon the floods” (Psalms 24:2)? These are the seven seas and four rivers that surround Eretz Yisrael. And these are the seven seas: The Sea of Tiberias, the Sea of Sodom, i.e., the Dead Sea, the Sea of Heilat, the Sea of Helilata, the Sea of Sivkhi, the Sea of Aspamya, and the Great Sea, i.e., the Mediterranean. And these are the four rivers: The Jordan, the Jamruth, and the Keiromyon, and the Piga,8 which are the rivers of Damascus.

When Rav Dimi came from Eretz Yisrael to Babylonia he said that Rabbi Yonatan says: In the future, Gabriel will perform

NOTES

1. The Jordan issues forth...: According to some commentaries, this is a metaphysical description of the creation, development, and refinement of the soul. The soul originates from a concealed source, as symbolized by the cave. The soul passes through various stages until it is eventually manifested in the corporeal universe, which combines mind and body, as symbolized by the leviathan (Rashba). Alternatively, the leviathan alludes to the Roman Empire, which consumes all the lesser powers within its sphere (Ritva).

BACKGROUND

The Jordan issues forth from the cave of Pamyas — יֵכְדוֹר הַיָּם מִמְּעָרַת פָּמְיָא The Pamyas cave, also known as Pan’s cave, from the Greek Παννα The Pampas, was originally one of the main sources of the Jordan River. It is located near the source of the Jordan, close to the ancient city of Dan. Nowadays, the water does not originate from the Pamyas cave due to an earthquake that moved the spring outside the cave. Known in modern Hebrew as the Banyas, the spring is today a popular destination for hikers.

Cave of Pamyas

Halakha

Fish are unrestrained — דָּגִים ׳ְּרִיצִי It is unclear whether this is meant as a literal description of reality. This Gemara does not include the Jordan flowing down to the Dead Sea, unless one understands that in this context the name Great Sea is referring to the Dead Sea, as opposed to other instances, in which the Great Sea refers to the Mediterranean Sea. A parallel discussion in tractate Bekhorot (55a) mentions the Dead Sea before the Great Sea, and this also appears in other versions of the text. In any case, according to the description here, the Jordan flows underground until reaching the Mediterranean.

Seven seas — שִׁבָּעָה יַמִּים: Many commentaries have tried to identify these seven seas, which include both large seas and lakes. The difficulty is compounded because certain texts have different versions of the names, which renders it difficult to determine which bodies of water are being discussed. In four cases, the identification is clear. The Sea of Tiberias refers to the Sea of Galilee; the Sea of Sodom is the Dead Sea; the Sea of Sivkhi is the Hula Lake; and the Great Sea refers to the Mediterranean Sea. The identification of the Sea of Helilata and the Sea of Heilata are uncertain. Some explain that the Sea of Aspamya refers to a lake in north Syria in the area of Aspamya. An alternative version of this text lists the Sea of Pamyas rather than the Sea of Aspamya, thereby resolving the question. This body of water, situated at the foot of Mount Hermon, is known nowadays as Lake Ram.

The Sea of Sivkhi — הַיָּם שֶׁל טִבֶּרְיָא: Many commentaries have tried to identify these seven seas, which include both large seas and lakes. The difficulty is compounded because certain texts have different versions of the names, which renders it difficult to determine which bodies of water are being discussed. In four cases, the identification is clear. The Sea of Tiberias refers to the Sea of Galilee; the Sea of Sodom is the Dead Sea; the Sea of Sivkhi is the Hula Lake; and the Great Sea refers to the Mediterranean Sea. The identification of the Sea of Helilata and the Sea of Heilata are uncertain. Some explain that the Sea of Aspamya refers to a lake in north Syria in the area of Aspamya. An alternative version of this text lists the Sea of Pamyas rather than the Sea of Aspamya, thereby resolving the question. This body of water, situated at the foot of Mount Hermon, is known nowadays as Lake Ram.

The Piga — פֶּגֶת: These rivers are mentioned together in several places. Some explain that Piga refers to the Yarkon River and is named after the city of Piga, or in Greek Πηγή, pēgē, meaning spring. This city was situated at the source of the river, near the location of the modern city Rosh HaAyin. The identification of Piga as the Yarkon River is difficult, as the Yarkon River does not encircle Eretz Yisrael. Some explain that the Keiromyon and the Piga are two rivers that pass through Damascus. This fits the description found in other sources.

Draceana cinnabari — אַדְמָטָא פֶּגֶר הָעַלַּבְּא The Pamyas cave, also known as Pan’s cave, from the Greek Παννα The Pampas, was originally one of the main sources of the Jordan River. It is located near the source of the Jordan, close to the ancient city of Dan. Nowadays, the water does not originate from the Pamyas cave due to an earthquake that moved the spring outside the cave. Known in modern Hebrew as the Banyas, the spring is today a popular destination for hikers.
And were the Holy One, Blessed be He, not assisting – whether or not 

The commentaries explain that the destruction of a significant aspect of nature such as the leviathan goes against the natural order. Therefore only God Himself, who created the leviathan, can destroy them.

Only He Who made him can use His sword to approach him – not you, nor I. Alternatively, this verse is referring to land-based animals, some is true of the leviathan, i.e., only its Creator can defeat it (Rashiabim).

When the leviathan is hungry, etc. – פְּשֵׂעָה פָּאָקָן: The Maharal explains that every entity in the world requires completion. Here, the sense of lacking is described as hunger. It refers to a need for wholeness that can come only from another source. The leviathan symbolizes a great spiritual essence, and its needs are proportionate to its size. This accounts for the great extent of its metaphorical hunger.

A feast for the righteous – דִּבְּעָה דִּבְּעָה: For the righteous, the World-to-Come is not only a spiritual realm but a state of union of the body and the soul. Therefore, the feast for the righteous is not merely an allusion to spiritual matters but refers to an actual feast. The purpose of eating and feasting is renewed strength, which is the goal of the future feast for the righteous (Rabbi; see Ramban in Sh'ar HaG'emul).

Similarly, commentaries state that this feast symbolizes the eternal connection between the body and the soul (Shita Mekubsheret; but see Maharal).

**Notes**

When Rav Dimi came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan said: When the leviathan is hungry, he produces breath from his mouth and thereby boils all of the waters in the depths of the sea. As it is stated: “He makes the deep boil like a pot” (Job 41:23). And if the leviathan did not place its head in the Garden of Eden, no creature could withstand his foul smell, as it is stated: “He makes the sea like a seething mixture [merkala]” (Job 41:23), and the term merkala is also used to describe something with a smell (see Exodus 30:25).

And when he is thirsty, he makes many furrows in the sea, as it is stated: “He makes a path to shine after him” (Job 41:24). Rav Aba bar Yakov says: After the leviathan drinks from the sea, the depth of the sea does not return to its normal condition until seventy years have passed, as it is stated: “One would think the deep to be hoary” (Job 41:24), and hoary indicates a person who is no less than seventy years old.

Rabba says that Rabbi Yoḥanan says: In the future, the Holy One, Blessed be He, will make a feast for the righteous from the flesh of the leviathan, as it is stated: “The habbarim will make a feast [yikra] of him” (Job 40:30). And kera means nothing other than a feast, as it is stated: “And he prepared [yu’yikreh] for them a great feast [kera]; and they ate and drank” (I Kings 6:23). And habbarim means nothing other than Torah scholars, as it is stated: “You dwell in the gardens, the companions [ha’erim] hearken for your voice: Cause me to hear it” (Song of Songs 8:13). This verse is interpreted as referring to Torah scholars, who listen to God’s voice.

And with regard to the remainder of the leviathan, they will divide it and use it for commerce in the markets of Jerusalem, as it is stated: “They will part him among the kena’anim” (Job 40:30). And kena’anim means nothing other than merchants, as it is stated: “As for the merchant [kena’ani], the balances of deceit are in his hand. He loves to oppress” (Hosea 12:8). And if you wish, say that the proof is from here: “Whose merchants are princes, whose traffickers [kinaneha] are the honorable of the earth” (Isaiah 23:8).

And Rabba says that Rabbi Yoḥanan says: In the future, the Holy One, Blessed be He, will prepare a sukka for the righteous from the skin of the leviathan, as it is stated: “Can you fill his skin with barbed iron [besukkah]?” (Job 40:31). If one is deserving of being called righteous, an entire sukka is prepared for him from the skin of the leviathan; if one is not deserving of this honor, a covering is prepared for his head, as it is stated: “Or his head with fish-spears” (Job 40:31).

If one is deserving at least of this reward, a covering is prepared for him, and if one is not deserving, a necklace is prepared for him, as it is stated: “And necklaces about your neck” (Proverbs 19:12). If one is somewhat deserving, a necklace is prepared for him, and if one is not deserving even of this, only an amulet is prepared for him from the skin of the leviathan, as it is stated: “Or will you bind him for your maidens” (Job 40:29), i.e., a small amulet is prepared for him, like the amulets tied on children’s necks.
And with regard to the remaining part of the skin of the levithian, the Holy One, Blessed be He, spreads it on the walls of Jerusalem, and its glory radiates from one end of the world until the other end. As it is stated: “And nations shall walk in your light, and kings at the brightness of your rising” (Isaiah 60:3).

With regard to the future glory of Jerusalem, the Gemara interprets the verse: “And I will make your pinnacles of kadkhd” (Isaiah 54:12). Rabbi Shmuel bar Nahmani said: Two angels in heaven, Gabriel and Michael, disagree with regard to the material that will be used to form the walls of Jerusalem. And some say that this dispute is between two amora’im in the West, i.e., Eretz Yisrael. And who are they? They are Yehuda and Hizkiyya. One said they will be made of onyx, and one said of jasper. The Holy One, Blessed be He, said to them: Let it be like this [kedein] and like that [ukhedein], i.e., let them be formed from both together. This compromise is indicated by the word kadkhd, a combination of this [kedein] and that [ukhedein].

The Gemara analyzes the rest of that verse: “And your gates of precious stones” (Isaiah 54:12). This should be understood in light of that incident where Rabbi Yoĥanan sat and taught: In the future, the Holy One, Blessed be He, will bring precious stones and pearls that are thirty by thirty cubits, and He will hollow out in them a hole of ten by twenty cubits and set them in the gates of Jerusalem. A certain unnamed student sneered at him, saying: Now we do not find precious stones even of the size of an egg of a dove, and yet all of this we will find?

After a period of time that student’s ship went to sea, where he saw ministering angels sitting and sawing precious stones and pearls that were thirty by thirty cubits, and hollowed out in them were holes of ten by twenty cubits. He said to the angels: For whom are these? They said to him that in the future, the Holy One, Blessed be He, will place them in the gates of Jerusalem. Later, the student came before Rabbi Yoĥanan and said to him: Continue to interpret, my teacher, it is fitting for you to interpret, as I saw just as you said. Rabbi Yoĥanan said to him: Worthless man, if you had not seen, you would not have believed; clearly, you are mocking the statement of the Sages. Rabbi Yoĥanan set his eyes upon him, and the student was instantly killed and turned into a pile of bones.

The Gemara raises an objection against Rabbi Yoĥanan’s statement, based on a baraita. The verse states: “And I will make you go upright [komemiyut]” (Leviticus 26:13). Rabbi Meir says: In the future, the Jewish people will have the stature of Adam the first man, whose height was one hundred cubits. Rabbi Meir interprets the word komemiyut as two komot.
Rabbi Yehuda says: They will have the stature of one hundred cubits, corresponding to the Sanctuary and its walls, as it is stated: “We whose sons are as plants grown up in their youth; whose daughters are as corner-pillars carved after the fashion of the Sanctuary” (Psalms 144:12). But if they are each one hundred cubits tall, how could the Jews enter the gates of Jerusalem, whose entrance gate will be ten by twenty cubits, as claimed by Rabbi Yoĥanan? The Gemara answers: When Rabbi Yoĥanan stated that idea, he was not referring to the gates themselves but to the windows that allow wind to enter.

§ And Rabba says that Rabbi Yoĥanan says: In the future, the Holy One, Blessed be He, will fashion seven canopies6 for each and every righteous individual, as it is stated: “And the Lord will create over the whole habitation of Mount Zion, and over those who are invited to it, a cloud and smoke by day, and the shining of a flaming fire by night; for over all the glory shall be a canopy” (Isaiah 4:5). This teaches that for each and every righteous individual, the Holy One, Blessed be He, fashions for him a canopy seven times over, in accordance with his honor, i.e., greater individuals receive grander and larger canopies.

The Gemara asks a question with regard to the above verse: Why should there be smoke in a canopy? Rabbi Hanina says: It is because anyone whose eyes are narrow, i.e., is stingy, toward Torah scholars in this world, his eyes fill with smoke in the World-to-Come. And why should there be a canopy? Rabbi Hanina says: This teaches that each and every one is burned from embarrassment at the size of the canopy of the other,6 and says: Woe for this embarrassment, woe for this disgrace, that I did not merit a canopy as large as his.

In a similar manner, you can say that God said to Moses about Jordan: “And you shall put of your honor upon him” (Numbers 27:20), which indicates that you should put some of your honor, but not all of your honor. The elders of that generation said: The face of Moses was as bright as the face of the sun; the face of Joshua was like the face of the moon. Woe for this embarrassment, woe for this disgrace, that we did not merit another leader of the stature of Moses.

Rabbi Hama bar Hanina says: The Holy One, Blessed be He, fashioned ten canopies for Adam the first man, in the Garden of Eden; as it is stated to Hiram, king of Tyre: “You were in Eden the garden of God; every precious stone was your covering, the carnelian, the topaz, and the emerald, the beryl, the onyx, and the jasper, the sapphire, the carbuncle, and the smaragd, and gold; the workmanship of your drums and of your holes was in you; they were prepared on the day that you were created” (Ezekiel 28:13). This verse mentions ten items, from carnelian to gold.

Mar Zutra said: There were eleven canopies, as it states: “Every precious stone,” which is also part of the tally. Rabbi Yoĥanan said: And the worst of all of them was gold, as it is counted last, which indicates that the other items are more valuable.

Seven canopies – תשבית והזיווה: The number seven is derived from the items listed in the verse. One possible list is as follows: A cloud by day; smoke; the shining; of a flaming; fire; for over all the glory; and a canopy (Rabbeinu Gershon HaGola). Some commentators substitute the phrase: “And there shall be a sukkah for a shadow,” which appears in the following verse, for the expression “For over all the glory” (Rashi). Alternatively, the number seven is derived as follows: A cloud; by day, which refers to canopies of light; smoke, which is a canopy for those whose eyes are stingy; the shining; of a flaming; fire, with which those with smaller canopies are burnt; and night (Rabbeinu Tam, cited in Shiva Mekubbezet).

Burned from the canopy of the other – חסרי ג.jsx[1]: Those with smaller canopies burn with shame because of those with larger canopies, as they realize that the difference must be due to their sins (Rabbeinu Gershon HaGola).

The face of Moses, etc. – רבי יוחנן מקשו: Since Moses experienced a revelation of God in a clear manner, unlike all other prophets, his face was as bright as the sun. In contrast, Joshua experienced the Divine Presence as one who sees through an opaque crystal, and therefore he is compared to one who reflects indirect light. Consequently, his face was as bright as the sun (Maharah). The commentators explain that the elders were upset that the honor of their leader should be diminished so drastically (Rashi).

Others add that it was an embarrassment for the entire generation (Iyyun Ya’akov). Yet others suggest that Joshua was ashamed that he did not merit the greatness of Moses (Ri Migash).
The Gemara asks: What is the meaning of the phrase: “The workmanship of your drums and of your holes [nekavim]”? (Ezekiel 48:35). Rav Yehuda says that Rav says: The Holy One, Blessed be He, said to Hiram, king of Tyre: Were you in the Garden of Eden when I created all of this for you? I looked at you, saw that you would one day claim divinity for yourself, and created many orifices [nekavim] in man, i.e., the excretory system, so that you would know that you are human and not a god. And there are those who say that this is what God said to Hiram. I looked at you and I decreed death on Adam the first man, to demonstrate that he was human and not a god.

The Gemara returns to the aforementioned verse: “And the Lord will create over the whole habitation of Mount Zion, and over those who are invited to it, a cloud and smoke by day” (Isaiah 44:5). What is the meaning of the phrase: “And over those who are invited to it”? Rabba says that Rabbi Yohanan says: Jerusalem of the World-to-Come is not like Jerusalem of this world. With regard to Jerusalem of this world, anyone who wants to ascend there can ascend. With regard to Jerusalem of the World-to-Come, only those who are invited to it can ascend.

And Rabba says that Rabbi Yohanan says: In the future, the righteous will be called by the name of the Holy One, Blessed be He, as it is stated: “Every one that is called by My name, and whom I have created for My glory, I have formed him, yea, I have made him” (Isaiah 44:7). This indicates that one who was created by God and causes Him glory is called by His name. And Rabbi Shmuel bar Nahmani says that Rabbi Yohanan says: Three were called by the name of the Holy One, Blessed be He, and they are: The righteous, the Messiah, and Jerusalem.

With regard to the righteous, this is as we have just said. With regard to the Messiah, this is as it is written: “And this is his name whereby he shall be called, the Lord is our righteousness” (Jeremiah 23:6). With regard to Jerusalem, this is as it is written: “It shall be eighteen thousand reeds round about. And the name of the city from that day shall be, the Lord is there [shammai]” (Ezekiel 48:35). Do not read the word as “there” [shammai]; rather, read it as: The Lord is its name [shemah]. Rabbi Elazar says: In the future, the righteous will have the name: Holy, recited before them, as one recites before the Holy One, Blessed be He; as it is stated: “And it shall come to pass, that he who is left in Zion, and he who remains in Jerusalem, shall be called holy” (Isaiah 4:13).
One thousand tefaf, etc. – תְּפַפָּא, and the other terms used to indicate numerical values are unclear. Some explain that these are not proper words but simply stand for numerical values. For example, one thousand times the numerical value of the word tefaf would be one thousand multiplied by one hundred and one thousand times the numerical value of kafel would be one thousand multiplied by two. The idea being conveyed is that there is no limit to the size of Jerusalem (Rashbam). Others contend that these are the sizes of large cities in other countries (Ravad). Alternatively, tefaf means straight and equal, while kafel refers to strong posts that serve as a basis for towers or tall buildings (Tosafot). Others suggest that all of these terms are types of locks or fortifications; others that they refer as a basis for towers or tall buildings (Tosafot). Some sauces are prepared, as some sauces are different kinds of plots of land (Ritva).

The Gemara continues to discuss the statement of Rabbi Yohanan: And lest you say that there is discomfort in ascending to a place so high, the verse states in a prophecy depicting the return of the Jewish people to Jerusalem: “Who are these that fly as a cloud, and as the doves to their coops?” (Isaiah 60:8). This indicates that they can easily ascend to Jerusalem, as though they were clouds or doves. Rav Pappi says: Incidentally, one can learn from that statement that this cloud mentioned in the verse is three parasangs high, as it reaches Jerusalem, which will be raised three parasangs.

The ministering angels said before the Holy One, Blessed be He: Master of the Universe, You have created many cities in Your world for the nations of the world, and You did not give the measure of their length or the measure of their width, i.e., they are not limited by any set measure, but expand as they develop. With regard to Jerusalem, which has Your name in it, and Your Temple in it, and righteous people in it, will You give it a measure? Immediately: “And, behold, the angel that spoke with me went forth, and another angel went out to meet him, and said to him: Run, speak to this young man, saying: Jerusalem shall be inhabited without walls for the multitude of men and cattle within it” (Zechariah 2:7–8).

Reish Lakish says: In the future, the Holy One, Blessed be He, will add to Jerusalem one thousand times the numerical value of tefaf of gardens; one thousand times the numerical value of kafel of towers; one thousand times the value of itzoy of fortifications; and one thousand and two times the value of shilo of small houses. And each and every one of these additions will be like the great city of Tzippori in its prosperity.

The Gemara clarifies the size of the city of Tzippori. It is taught in a baraita that Rabbi Yosei said: I saw Tzippori in its prosperity, and there were one hundred and eighty thousand markets of sellers of meat sauces in it. On this basis, one can estimate the future size of Jerusalem.

In a similar manner, the Gemara interprets the verse: “And the side-chambers were one over another, three and thirty times” (Ezekiel 41:6). What is the meaning of: “Three and thirty times”? Rabbi Levi says that Rav Pappi says in the name of Rabbi Yehoshua of Sikhinei: If in the future Jerusalem will triple in size, so that it occupies three times its former area, then each and every dwelling will contain thirty stories upward. If the area of Jerusalem will be multiplied by thirty, each and every dwelling will contain three stories above every house.
The Gemara returns to discuss the mishna, which discusses the acquisition of a ship. It was stated that there was a dispute among amoraim with regard to the manner in which a ship is acquired. Rav says: Once the buyer has pulled the ship and moved it by any amount, he has acquired it. And Shmuel says: He does not acquire it until he pulls the entire ship to the extent that the end of the ship has at least reached the place previously occupied by its front.

The Gemara suggests: Let us say that this dispute is parallel to a dispute between tanna'im, as it is taught in a baraita: How is an animal acquired through passing?256 If the buyer grasped it by its hoof, or by its hair, or by the saddle that is on it, or by the load that is on it, or by the bit (perumbiya) in its mouth, or by the bell on its neck, he has acquired it. How is an animal acquired through pulling?257 If he calls it and it comes, or if he hits it with a stick and it runs before him, once it lifts a foreleg and a hind leg from where it was standing, he has acquired it. Rabbi Aha, and some say Rabbi Aha, says: It is not enough if the animal lifts its hooves. Rather, one does not acquire it until it walks its full length.

Shall we say that Rav, who holds that a buyer can acquire the ship even by moving it only a minimal distance, states his ruling in accordance with the first tanna that it is enough for the animal to lift two legs; and Shmuel, who holds that the entire ship must be moved, states his ruling in accordance with the opinion of Rabbi Aha that the animal must move its full length? The Gemara rejects this suggestion: Rav could have said to you: I state my ruling even in accordance with the opinion of Rabbi Aha, since Rabbi Aha states his opinion only with regard to animals, as although it lifted a foreleg and a hind leg, it stands in its place. But in the case of a ship, once a bit of it moves, all of it moves, and therefore the buyer acquires it.

And Shmuel could say: I stated my ruling even in accordance with the opinion of the first tanna. The first tanna states his opinion only with regard to animals, as once an animal has lifted a foreleg and a hind leg, the other legs stand ready to be lifted. But with regard to a ship, if he pulls the entire ship, yes, he acquires it, but if he does not pull the whole ship, he does not acquire it.

The Gemara offers another suggestion: Let us say that the dispute of Rav and Shmuel is parallel to the dispute between these tanna'im, as it is taught in a baraita: A ship is acquired by pulling. Rabbi Nathan says: A ship and letters, i.e., the content of a promissory note, are acquired by pulling the document.

Notes

Any amount – בִּמְסִירָה: In general, the Gemara uses the expression: Any amount, in reference to something that does not have an exact measure. In several places, the Sages required a more precise definition (see 53a). Here, the commentators explain that the term: Any amount, means a handbreadth or a half-handbreadth, as it is not the case that any amount of movement, no matter how slight, is sufficient (Rashbam).

He pulls the entire ship – יִמְשַׁךְ אֶת כּוּלָּה. This means that the entire ship must move from its position, so that the place occupied by the front of the ship is now behind the ship. This is similar to the opinion mentioned later in the Gemara that an animal must move its entire body forward. Some claim that it is sufficient for the ship to move completely to the side (Ramah).

How through passing – בִּמְסִירָה. Passing is one of the modes of acquisition through which one assumes ownership of animals. It is achieved when one passes the animal to the recipient, with the intention that he will acquire it. Some say that this method is effective only when the seller himself passes the animal, or a part of it, to the recipient (Tosafot, citing Riva). Others claim it is not necessary for the seller to hand the animal to the buyer. Rather, it is enough if the seller tells the buyer to acquire the animal; once the buyer grasps it, it is considered as though the animal was passed to him (Tosafot). Tosafot cite a proof for this from the phrase: If he grabbed it by its hoof (see Rabbeinu Yona and Ramban).

How through pulling – בִּמְסִירָה. This baraita proves that one does not have to pull the animal itself. Rather, this act of acquisition involves causing the animal to move, whether by physically pulling it or through some other means.

Letters – מִטְמֵאָה. This is referring to a promissory note; one can give or sell a promissory note to another in order to enable the recipient to collect the debt recorded in the note. The reason a promissory note is called: Letters, is because its value is based solely on that which it records.

Language

Bit (perumbiya) – בת בתר: From the Greek φασίβια, forbiya, meaning the cord by which a horse is tied to the manger.
The practical difference between the two opinions is the dispute of Rav and Shmuel – by means of a bill of sale. This expression is used whenever one of the Sages refers to a matter that had not been mentioned earlier. In this case, the discussion concerns a ship, it is assumed that Rabbi Natan would state his opinion only with regard to a ship, instead of bringing up the new topic of promissory notes.

And letters…by means of a bill of sale – Rabbi Natan means that promissory notes are also acquired by means of a bill of sale, in addition to the option of pulling. This is clear from the continuation of the Gemara. See Tosafot, whose version of the text apparently states this explicitly.

The practical difference between the two opinions is the dispute of Rav and Shmuel – by means of a bill of sale. According to some commentators, the first tanna holds in accordance with the opinion of Shmuel, that it is necessary to pull the entire item, while Rabbi Natan maintains that it can be acquired through any amount of pulling, like the opinion of Rav (Rashi). Others contend that Rabbi Natan accords with the opinion of Shmuel, while the opinion of the first tanna is like that of Rav (Rabbenu Gershon Meor HaGola). They explain this interpretation as follows: Since Rabbi Natan requires a more substantial act of acquisition for promissory notes than does the first tanna, it is reasonable to conclude that he also imposes a more considerable act of pulling, i.e., pulling the entire item, as stated by Shmuel (Tosafot).

In accordance with which opinion did you interpret, in accordance with Rabbi Yehuda HaNasi – as it is taught in a baraita. According to this interpretation, both the first baraita, which speaks of acquiring a ship and promissory notes, and the second baraita, which addresses only acquiring promissory notes, refer to the opinions of Rabbi Yehuda HaNasi and Rabbi Natan. The difference is that in the first baraita Rabbi Yehuda HaNasi’s ruling is stated as the unattributed opinion and Rabbi Natan’s statement is cited as the dissenting opinion, whereas in the second baraita Rabbi Yehuda HaNasi’s ruling is presented as an individual opinion and that of Rabbi Natan is stated in the form of the ruling of the Rabbis.

**BACKGROUND**

It is incomplete and this is what it is teaching. This method of explanation is found often in the Gemara. The addition introduced by the Gemara is an elaboration upon that which is written in the tannaitic source, based on various difficulties raised in the Gemara that render the source in its original form incoherent or inconsistent with another authoritative source. The addition provides the necessary clarification.

**HALAKHA**

A ship – Since it is impossible to lift a ship, and it requires a great deal of effort to pull it, it is acquired by passing (Rambam Sefer Kinyan, Hilkhot Mekhira 3:3; Shulhan Arukh, Hoshen Mishpat 198:7).

The Gemara clarifies the baraita: Letters in promissory notes, who mentioned anything about them? Why would Rabbi Natan speak about promissory notes, which are not discussed by the first tanna? The Gemara answers: The baraita is incomplete, and this is what it is teaching. A ship is acquired by pulling, and letters, i.e., the content of a promissory note, are acquired by merely transferring the document, not through pulling. Rabbi Natan says: A ship and letters are acquired by pulling and also by means of a bill of sale.

The Gemara asks: Why do I need a bill of sale for a ship? A ship is movable property, which is acquired not by means of giving a bill of sale, but through other acts of acquisition. Rather, is it not correct to say that this is what the baraita is teaching: A ship is acquired by pulling, and letters of credit by passing. Rabbi Natan says: A ship is acquired by pulling, and letters, i.e., the contents of a promissory note, are acquired either through pulling or by means of a bill of sale.

The Gemara asks: If Rabbi Natan holds that a ship is acquired by pulling, his opinion is apparently identical to the opinion of the first tanna. Rather, the practical difference between the two opinions is the dispute of Rav and Shmuel. According to the opinion of one tanna the buyer must move the entire ship out of its current location, while the other tanna maintains that one must move the ship only a minimal amount. The Gemara rejects this suggestion: No, everyone, Rabbi Natan and the first tanna, holds either in accordance with the opinion of Rav, or in accordance with the opinion of Shmuel. And with regard to a ship, everyone agrees that it is acquired through pulling.

When they disagree, it is with regard to acquiring letters, i.e., the contents of a promissory note. And this is what Rabbi Natan is saying to the first tanna: With regard to a ship, I certainly concede to you that it is acquired by pulling. But with regard to letters, whereas you maintain that passing suffices to acquire them, I hold that if in addition there is a bill of sale, yes, the acquisition is valid, but if not, the act of passing is not effective.

And according to this interpretation, the first tanna and Rabbi Natan disagree with regard to the dispute between these tanna’im. As it is taught in a baraita: Letters, i.e., the contents of a promissory note, are acquired by merely transferring the document; this is the statement of Rabbi Yehuda HaNasi. And the Rabbis say: Whether one wrote a bill of sale but did not transfer the promissory note to the buyer, or whether he transferred the promissory note but did not write a bill of sale, the buyer does not acquire the documents until the seller both writes a bill of sale and transfers the promissory note.

The Gemara asks: In accordance with which opinion did you interpret the opinion of the first tanna of the aforementioned baraita? If it is in accordance with the opinion of Rabbi Yehuda HaNasi, then let a ship be acquired also by passing, not only through pulling, as stated in the following baraita. As it is taught in a baraita: A ship is acquired by passing; this is the statement of Rabbi Yehuda HaNasi. And the Rabbis say: The buyer does not acquire it.
The Gemara asks: To what case did you interpret that last baraita to be referring? It was interpreted as referring to the public domain. If so, say the latter clause of the baraita: And the Rabbis say that the buyer does not acquire it until he pulls it or until he rents its place. The Gemara asks: But if the ship is situated in the public domain, from whom can he rent the place? And furthermore, does pulling in the public domain effect acquisition? But don’t Abaye and Rava both say with regard to the different methods of acquisition: Passing effects acquisition in the public domain or in a courtyard that does not belong to either of the parties; pulling effects acquisition in an alleyway or in a courtyard that belongs to both of the parties; and lifting effects acquisition in every place, even in the seller’s domain.

The Gemara answers: What does the baraita mean when it says: Until he pulls it, and what does it mean when it says: Until he rents its place? This is what it is saying: The buyer does not acquire the ship until he pulls it from the public domain into an alleyway. And if the ship is located in the domain of some other owner, the buyer does not acquire it until he rents its place from the owner.

The Gemara asks: Shall we say that Abaye and Rava state their opinion in accordance with the opinion of Rabbi Yehuda HaNasi, not that of the Rabbis? The baraita indicates that only Rabbi Yehuda HaNasi maintains that one can acquire ownership by means of passing in the public domain.

### Notes

**Passing effects acquisition in the public domain – כפירה**

One cannot effect acquisition via pulling in the public domain, as he is not pulling the item into his own domain (Rashbam). Others explain that pulling is not effective in the public domain due to the presence of a multitude of people, who prevent the buyer from pulling as he wishes (Ray HaGaon). Therefore, one can acquire a ship in a public domain only by passing it directly from seller to buyer.

And if the ship is located in the domain of an owner – א윤 סכתא לבקה דא דריא איה. Some hold that the phrase: The domain of an owner, is referring to the seller’s domain (Rashbam). Others explain that it means the domain of some other owner, who is neither the seller nor the borrower (Tosafot; Rashbam).

Shall we say that Abaye and Rava state in accordance with Rabbi Yehuda HaNasi – ענייה? The Gemara is dissatisfied with this option, as there is a principle that the halakha is in accordance with the opinion of the majority, not an individual ruling (Rashbam).

**In an alleyway – ספק**

There are several unique halakhot pertaining to an alleyway with regard to acts of acquisition. Although an alleyway is not a public domain, it is situated near the public domain and is occasionally used by the public, so it is not classified as a full-fledged private domain either. Consequently, an alleyway is considered the domain of anyone who is there, i.e., it is as though one maintains possession of the place where he is located. In this case the Gemara is referring to an alleyway with a canal, so that the ship is actually situated in the public domain.

But if the ship is situated in the public domain, etc. – ברש הראב’a רכ’h. Renting is problematic in this case because the public domain does not belong to any specific person who can lease it to him (Rashbam).
According to the Rabbis, when the seller instructs the buyer to pull the item, he has given the buyer permission to acquire the item. A seller who says this has given the buyer permission to acquire the item (Rashbam).

One Sage holds that the seller is particular about where he pulls the item, indicating the manner (Ramban). Some explain that the seller is pointing out one of three possible methods through which the buyer can acquire the item, but it is not particular that he use this specific one (Ramah). Yet others claim that the seller said: Go pull and thereby effect acquisition of it, and then silently passed the ship’s rope, without stating which made of acquisition the buyer should employ. Rabbi Yehuda HaNasi and the Rabbis disagree about whether one follows his initial statement, or whether his action demonstrates that he did not mean that the buyer should acquire the item specifically through pulling (Ravad).

The Gemara returns to the issues of acquiring promissory notes. Rav Pappa says: One who sells a promissory note to another must write to him: Acquire it and all liens on property that are contained within it. Rav Ashi said: I stated this halakha before Rav Kahana, and I said to him the following analysis: The reason the buyer acquires it is that the seller wrote this for him. This indicates that if he did not write this for him, the buyer does not acquire the monetary rights recorded in the promissory note.

Rav Ashi asks: Why, then, did he purchase the promissory note? But does he require it to tie around the mouth of his flask as a stopper? Clearly, he purchased the document for the purpose of collecting the debt recorded in it. Rav Pappa said to me: Yes, it is possible that he purchased the promissory note in order to tie it around his flask. Since the owner did not transfer ownership of the obligation recorded in the promissory note, the buyer acquires only the paper itself.

Rav Ashi elaborates: One Sage, the Rabbis, holds that the seller is particular about the method by which the item is acquired, and therefore it can be acquired only through pulling. And one Sage, Rabbi Yehuda HaNasi, holds that the seller is merely indicating the manner to him, i.e., he advises him to use this act of acquisition but he does not mind if the buyer prefers to perform a different act of acquisition.

The reason the buyer acquires it is that the seller wrote this for him.

Go pull and thereby effect acquisition – מְסִירָה וֹנָה בִּרְשׁוּת: If one transfers to another an item that can be acquired by passing in the public domain, saying to him: Go pull and thereby effect acquisition of it, the buyer acquires the item only if he pulls the entire item and brings it into a domain where pulling effects acquisition. The acquisition must take place in this manner, as the seller specified acquisition via pulling. The halakha is in accordance with the statement of the Rabbis in theHorayot, following the explanation of Rav Ashi (RambamSefer Klaliyot, Hilkhote Mikho’os 33; Shulhan Arukh, Hoshen Mishpat 198:7, 9).

Acquire it and all liens on property that are within it – לֵךְ מְשׁוֹךְ וֹנָה בִּרְשׁוּת: How does one transfer a promissory note to another? The owner writes in a new document or in the promissory note itself (SimaShakh) the following statement: You, so-and-so, acquire from me this promissory note that records the debt owed by so-and-so (Sima), and all liens the note contains. The seller then passes the promissory note with this document to the buyer. In this way, the promissory note is acquired by means of writing and through passing. If the owner does not write the, the buyer acquires nothing, not even the paper upon which the promissory note is written. This is in accordance with the opinion of Arizal stated on 77a, according to the version accepted by the majority of the early commentators, that promissory notes are not acquired through passing. Some add that if the debtor had written in the promissory note: I am obligated to you, i.e., the seller, and to anyone who finds this, this document can be acquired through passing alone (RambamSefer Klaliyot, Hilkhote Mikho’os 33; Shulhan Arukh, Hoshen Mishpat 198:10, and in the comment of Rema, and see Shakh there).

Although some such earthenware vessels were made with covers from the same material, covers were not always made for these flasks, most likely because liquid would generally be kept in the flask for a relatively short period of time. In cases when it was necessary to seal the flask, people would use whatever material was readily available, including paper.
Ameimar says: The halakha is that letters are acquired by merely transferring the document to the buyer, in accordance with the opinion of Rabbi Yehuda HaNasi. Rav Ashi said to Ameimar: Is your ruling based on a tradition or on your own logical reasoning? Ameimar said to him: It is based on a tradition. Rav Ashi said: It also stands to reason that the contents of a promissory note are acquired through transferring, as letters, i.e., the contents of a promissory note, are words, i.e., the buyer is acquiring the right to a monetary obligation, not a physical item, and words cannot be acquired through other words.

The Gemara asks: And is it true that documents cannot be acquired through words? But doesn’t Rabba Bar Yitzchak say that Rav says: There are two types of documents. The first type is where one says to others: Take possession of this field and write the document for him as proof of the sale of the field. In this case, he may renge with regard to the document, i.e., he may change his mind and tell them not to write it. But he may not renge with regard to the field, as the buyer has already acquired it.

The second type of document is where he said: Take possession of this field for so-and-so on the condition that you write him a document. If the document has not yet been delivered he can retract his instruction both with regard to the document and with regard to the field, as the transfer of the field is dependent on the writing of the document.

And Rav Hiyya bar Avin says that Rav Huna says: There are actually three types of documents. Two are those that we stated above, and the other is if the seller wrote the document in advance.

Letters are acquired by transferring.

This is the version of the text accepted by the Rashbam and Rabbeinu Gershom Meor HaGola. The Rashbam maintains that it is not necessary to write a separate bill of sale in order to sell a promissory note, whereas Rabbeinu Gershom Meor HaGola holds that both the writing of a separate bill of sale and the transfer of the promissory note are required.

By contrast, the text of most of the early commentaries states: Letters are not acquired by transferring (Rav Hai Gaon; Rav Shmuel ben Hofni Gaon; Rif; Rambam; Ri Migash; Ramban; Rabbeinu Yona; Rashba; Ran). Some commentators claim that according to Ameimar even if a symbolic exchange is performed in addition to the act of transferring, the buyer acquires only the paper on which the promissory note is written, not the financial agreements recorded in the document (Ri Migash, Halakhot Gedot, Tosafot, citing Rav Yehudai Gaon). The only way to transfer the financial agreements recorded in the promissory note is to write a new bill of sale in which this fresh transaction is stated in clear terms.

A tradition or logical reasoning.

There is a principle that the halakha is ruled in accordance with the opinion of Rabbi Yehuda HaNasi when he disagrees with one colleague, but not when his opinion is disputed by several Sages (Pesahim 27a). According to one version of the text, Ameimar possessed a tradition that in this case the halakha is in accordance with the opinion of Rabbi Yehuda HaNasi despite the fact that the dissenting ruling is presented as the opinion of the Rabbis (Rashbam). According to an opposing version of the text, the tradition of Ameimar was that the halakha is not in accordance with the opinion of Rabbi Yehuda HaNasi precisely because his ruling is at odds with that of the Rabbis (Rashba).

Letters are words.

The value of the promissory note does not come from the physical item, which is merely paper, but from the obligations it records. Therefore, essentially it is merely words (Rashbam).

And words cannot be acquired through other words.

Since essentially a promissory note is mere words, it cannot be acquired by the drafting of another document. Rather, the act of transferring is required instead (Rashbam). Those early commentaries whose text states: Letters are acquired by transferring, as letters, explain that the opposite is the case if the seller simply transfers the promissory note, even if he says that he is transferring the document along with the monetary obligation it contains, his action is not effective. The buyer acquires only the physical document, as this statement is mere words. In order to acquire the rights to the monetary obligations recorded in the promissory note, one must write another document (Tosafot; Rambam).

Take possession of this field.

The seller says: I am transferring the field to you by means of this cloth, so that you can acquire it on behalf of so-and-so (Rashbam). The commentators explain that if the acquisition was performed through this symbolic act, the seller cannot renge even with regard to the writing of the document, as the act of acquisition grants implicit authorization to write the document (Meiri). He may renge with regard to the document.

The middleman may not write the document if the seller objects.

If the seller wrote the document in advance.

This is referring to a situation where the owner of the field wanted to sell his land but had not yet found a buyer. Since scribes were not generally available, he wrote the document in advance when he encountered a scribe so that he would be able to use it as soon as he found a buyer (Rashbam). Alternatively, the two parties had agreed to the sale but the buyer had not yet paid for the field (Rabbeinu Gershom Meor HaGola).
By means of land – one manner of transferring the ownership of movable items is by means of the acquisition of land. Instead of performing a separate act of acquisition for each movable item, one may perform a transaction for a parcel of land while stipulating that the transaction includes the acquisition of certain movable items along with it.

This is like that which we learned in a mishna (167b): A scribe may write a bill of sale for the seller even if the buyer is not with him when the seller presents his request. In a case of this kind, once this buyer takes possession of the land the deed is acquired wherever it is. And this is that which we learned in another mishna (Kiddushin 26a): Property that does not serve as a guarantee, i.e., movable property, can be acquired together with property that serves as a guarantee, i.e., land, when the land is acquired by means of giving money, or by means of giving a document, or by means of taking possession. This shows that a bill of sale can be transferred without any act of acquisition performed for the document, and certainly through words, which presents a difficulty to Rav Ashi’s opinion.

The Gemara answers: Acquiring a bill of sale by means of acquisition of land is different, i.e., it is similar to acquisition through an item, not by means of words. The reason is that money, which cannot be acquired through symbolic exchange, a pro forma act of acquisition effecting the transfer of ownership of an item, nevertheless can be acquired by means of land.

Like that which we learned… with him – הביא ב XR: A scribe may write a bill of sale for the seller even if the buyer is not present. Some say that this is the halakha only if the seller states that he has already received the money for the sale (Ri Migash). The scribe may write the bill of sale only if the sale takes place through an act of acquisition immediately, in the presence of the court, or if the seller states that such acquisition has already taken place. The reason for this is that if the sale will take place at a later date, the purchaser, holding an antedated document, would have an unfair advantage over others who lay claim to the property. The scribe may write the bill only if the witnesses who sign it know that the recorded names of the seller and purchaser correspond to their true names (Rambam Sefer Kinyan, Hilkhot Mekhira 3:1; Sefer Mishpatim, Hilkhot Ma’as V’Valevah 24a; Shulhan Arukh, Hoshen Mishpat 238:1, and Shma there).

Once this buyer takes possession of the land – הביא ב XR: If the owner of land wrote a bill of sale not in the presence of the buyer, then when the buyer takes possession of the land he acquires the bill of sale regardless of where it is (Rambam Sefer Kinyan, Hilkhot Mekhira 6:14).

Property that does not serve as a guarantee, etc. – הביא ב XR: If one transfers ownership of land and movable property together, then once the recipient acquires the land through an act of acquisition he acquires the movable property along with it. If the movable property was not located on the land, the one who transfers ownership must say that the recipient acquires it along with the land. The Ra’alav and Rosh hold that he should say this in all cases (Rambam Sefer Kinyan, Hilkhot Mekhira 3:16; Shulhan Arukh, Hoshen Mishpat 202:1, and in the comment of Rema).

Acquiring a bill of sale by means of acquisition of land is different – הביא ב XR: If one sells any amount of land and says to the buyer: Acquire this land and along with it this promissory note and all liens on property it contains, the buyer acquires the promissory note. There is no need to write that the buyer acquires all of the obligations contained in the document, nor to perform the act of acquisition of transferring. This is the case even if the promissory note is not located on the land. Others say that a promissory note is not acquired along with land (Rav Hai Gaon; Rabbeinu Hananel; see Shakh). The Shakh claims that this method of acquisition is no more effective than transferring the document itself, i.e., one must actually write that the buyer acquires rights to all of the obligations contained in the document (Rambam Sefer Kinyan, Hilkhot Mekhira 6:14; Shulhan Arukh, Hoshen Mishpat 66:10).

Money – הביא ב XR: As opposed to most movable property, money cannot be acquired or transferred through symbolic exchange. Nevertheless, it can be acquired by means of land. By contrast, the right to receive payment of a debt cannot be acquired even by means of the acquisition of land (Rambam Sefer Kinyan, Hilkhot Mekhira 6:17; Shulhan Arukh, Hoshen Mishpat 203:9).
This is like that incident where Rav Pappa had deposited twelve thousand dinars with bailees in Be’er Ḥozai. He transferred ownership of the money in Be’er Ḥozai to his agent Rav Shmuel bar Aḥa by means of the threshold of his house. The Gemara adds: When Rav Shmuel bar Aḥa came from Be’er Ḥozai with the money, Rav Pappa was so happy that he was bringing him his money that he went out all the way until Tavakh to greet him.

The mishna teaches that when one sells a ship he has sold various other items; but he has not sold the slaves, nor the packing bags, nor the antikei. But when one said to the buyer: You are purchasing the ship and all that it contains, all of these are sold as well. The Gemara asks: What is the meaning of antikei? Rav Pappa said: It means the merchandise that is on the ship. This merchandise is not sold together with the ship.

**MISHNA**

One who sold a wagon [ḥakkaron] has not sold the mules that pull the wagon. Similarly, if one sold the mules, he has not sold the wagon. One who sold a yoke [ḥatzemed] has not sold the oxen, and one who sold the oxen has not sold the yoke. Rabbi Yehuda says: The sum of money indicates what one has sold. How so? If the buyer said to the seller: Sell me your yoke for two hundred dinars, since it is a known matter that a yoke is not sold for two hundred dinars he clearly intended to purchase the oxen as well. And the Rabbis say: The sum of money is not proof.

**GEMARA**

Rav Tahlifa, from the West, etc., Eretz Yisrael, taught a baraita before Rabbi Abbahu. If one sold a wagon, he has sold the mules together with it. Rabbi Abbahu asked: But didn’t we learn in the mishna that he has not sold the mules? Rav Tahlifa said to him: Should I erase this baraita, as it is incorrect? Rabbi Abbahu said to him: No, do not erase it; you should explain that your baraita is referring to a case where the mules are fastened to the wagon. In that situation, one who purchases the wagon receives the mules as well.

He transferred ownership – Ḥakkaron: Had Rav Pappa not transferred ownership, the bailiee would not have conveyed the money to Rav Shmuel bar Aḥa, as if the money was subsequently lost the bailees would have been held responsible for it. Once Rav Pappa transferred ownership of the money to Rav Shmuel bar Aḥa, the money is considered Rav Shmuel bar Aḥa’s, and therefore he is responsible for it (Rashbam).

By means of the threshold (assippa) – Ḥatzemed: The commentators explain that Rav Pappa transferred the money by means of the threshold of his house, as it is sufficient to transfer any minimal amount of land in order to acquire money along with it (Rashi). Alternatively, this refers to the courtyard that is at the end of his house (Rabbeinu Gershom Meor HaGola). Rashi in tractate Bava Kamma (10a) explains that this refers to a corner of his house.

Until Tavakh – Ḥakkaron: This comment shows that the bailiee gave the money to Rav Shmuel bar Aḥa, which indicates that the transfer of money by means of the acquisition of land is effective (Rashbam). Others add that as Rav Pappa traveled such a distance to greet him, he must have been sure that the money would be given to his agent (Y’aavetz). Alternatively, Rav Pappa went to meet Rav Shmuel bar Aḥa because he wanted to receive the money immediately, fearing that if Rav Shmuel bar Aḥa returned to his locale a dispute might arise over ownership of the money (Ri Migash).

Mules (peradot) – Ḥatzemed: According to most commentators, peradot is referring to beasts of burden that pull the wagon. Others add that specifically mules were used for pulling wagons (Rabbeinu Gershom Meor HaGola). Alternatively, peradot is referring to wooden poles used for pulling the wagon (Rambam’s Commentary on the Mishna). They are called by this name possible because they are separate entities (inhadim), not an integral part of the wagon.

Should I erase this baraita – Ḥatzemed: Rav Tahlifa could have simply emended the baraita slightly, so that it would state that one has not sold the mules along with the wagon. The commentators explain that this was not an option, as the baraita was clearly meant to add to the mishna, not to repeat it verbatim (Rabbeinu Yona). Rabbeinu Yona himself had an additional version of the text, which states: Should I reverse the ruling.

Where the mules are fastened to the wagon – Bar Ḥakkaron: According to some commentators, the same halakha applies to oxen and their yoke: If the two are tied together, they are sold together (Ri Migash). Others suggest that the case of oxen and their yoke is not comparable to that of mules and a wagon, which are more often sold together (Rashbam).
The Gemara explains: No, their dispute is necessary in a place where they call a yoke: Tzimda, and call oxen: Bakar. Since it is unclear what is meant by the term: Tzimda, Rabbi Yehuda holds that the sum of money indicates whether he purchased a yoke or oxen, and the Rabbis hold that the amount of money does not serve as proof. The Gemara asks: But if the amount of money does not serve as proof, then in a case where the buyer paid two hundred dinars and received only a yoke, let the transaction be nullified.

The mishna teaches: One who sold a yoke has not sold the oxen; and the Rabbis and Rabbi Yehuda disagree over whether the sum of money proves exactly what was sold. The Gemara analyzes their disagreement: What are the circumstances? If we say that the mishna is referring to a place where they call a yoke: Tzimda, and they call oxen: Bakar, it is obvious that he sold him a yoke and did not sell him the oxen. But if the mishna is referring to a place where they also call oxen: Tzimda, then the seller sold him everything.

Where they also call oxen tzimda – תזימהו מָשִׁלָּט מִיקְּשָׁיָהוּ לְיַבָּקֵן עָלָיוּ מִיַּבָּקֵן מְזוֹמִית מְזוֹמִית עָלָיוּ מִיַּבָּקֵן – Tzimed or, in Aramaic, tzimda, refers to an item that attaches a pair of oxen together, and can also refer to the pair of joined oxen themselves. Rabbeinu Yona points out that this usage of the term tzemad can be found in the Bible, as it states with regard to Elisha: "And he was plowing, with twelve yoke of oxen (tzemadim) before him" (I Kings 19:19).

As a final note: The Sages instituted that if there is a difference of one-sixth between the value of an item and the price that was paid for it, this is considered exploitation and this difference must be returned. If the difference amounts to more than one-sixth, the transaction is nullified, as though it never took place. Consequently, in this case, as the yoke is certainly worth much less than the sum that was paid, the transaction should be nullified.

In a place, etc. – כל הנקמה ממוקד משקפת: The halakha even in a place where some people call oxen: Tzimda (see Sma and Beur HaGra). Some commentaries claim that if the oxen were harnessed to the yoke and he sold either the oxen or the yoke, the other one is included in the sale (Ra’avad), as is the case with regard to the sale of wagons and mules. Some hold that if the owner said: I am selling to you oxen for plowing, he has sold both the oxen and the yoke, even if the oxen were not harnessed to the yoke (Rambam Sefer Kinyan, Hilkhot Melkhiot 27:2; Shulhan Arukh, Hoshen Mishpat 220:4, 8, and in the comment of Rema).

The money does not serve as proof – משמה אין נימוקו תזימהו: It was stated in the mishna that one who sells a yoke has not sold the oxen together with it. This is the case even if the price was much higher than the normal price of a yoke, as the halakha is in accordance with the opinion of the Rabbis. But if the majority of people in that place call oxen: Tzimda, then the price does serve as proof (Tur, citing Ramah). If all the local residents refer to oxen as: Tzimda, to the extent that if one means only a yoke he would say so explicitly, the price does not serve as proof, i.e., he has sold him the oxen (Rambam Sefer Kinyan, Hilkhot Melkhiot 27:3; Shulhan Arukh, Hoshen Mishpat 220:8, and in the comment of Rema).
And if you would say that the Rabbis do not hold that in a case of exploitation of less than one-sixth one must return the money and that if it was more than one-sixth there is nullification of the transaction,¹ can it be maintained that they do not accept these halakhot? But didn’t we learn in a mishna (Bava Metzaza 6b) that Rabbi Yehuda says: Even in the case of one who sells a Torah scroll, an animal, or a pearl,² these items are not subject to the halakhot of exploitation, as they have no fixed price. The Rabbis said to him: The early Sages stated that only these items listed earlier in the mishna, i.e., land, slaves, and documents, are not subject to the halakhot of exploitation. Therefore, the Rabbis should agree that the sale of the yoke is nullified.

The Gemara answers: What is the meaning of the mishna that teaches that according to the opinion of the Rabbis the sum of money is not proof? This means that the transaction is nullified.³ And if you wish, say that the sale of the yoke is nullified, because when the Sages spoke of exploitation and the nullification of a transaction,⁴ they meant that these halakhot apply only in a case where the difference in price is an amount about which one could be mistaken and believe that this is the correct price. But when the difference in price is so great a sum that one could not be mistaken,⁵ this sale is not subject to the halakhot of exploitation. In that case, one must say that the buyer gave the extra money to the seller as a gift; he could not have thought that this was the actual price of the object.

¹ **Not a halakha**

² The version of the text that appears here is the one accepted by the Rashbam and his teachers. The straightforward meaning of the Gemara’s statement is as follows: if you claim that the Rabbis do not accept the **halakha** that a transaction is nullified, but maintain that in any case of exploitation the difference is given to the rightful owner and the sale is valid, there is a difficulty based on the mishna in Bava Metzaza. The Rashbam rejects this interpretation, as the mishna subsequently cited by the Gemara indicates only that the Rabbis accept that the sale is subject to the **halakho** of exploitation; it proves nothing with regard to the issue of whether the transaction is nullified. The Rashba presents a different explanation, according to which the Gemara is suggesting that the Rabbis do not accept the sale is subject to the halakhot of exploitation at all, i.e., one who exploits another by one-sixth is not even required to return the money. The mishna is cited as proof that the Rabbis, who disagree with Rabbi Yehuda, concede that the difference between the appropriate price and the price the item actually sold for must be returned. Once it has been demonstrated that the Rabbis accept that the sale is subject to the halakho of exploitation in principle, by extension it is understood that the Rabbis also maintain that in other cases of exploitation the transaction is nullified. The Rashba also believes that the question is not the same as in the Rambam’s Mishnah Torah in the section of the Talmud: for in the case of a Torah scroll, an animal, or a pearl, the sale is valid; whereas in the case of exploitation there is a clear difference in price, and thus the sale is void. The Rashba’s interpretation is that the Gemara’s statement is intended to mean that the difference in price is so great that the buyer could not have thought that this was the actual price of the object.

² In other words, the money does not prove that the sale was valid and that he intended to sell the oxen along with the yoke. Rather, the transaction is nullified because the yoke was sold for far more than its price, as is the halakha in a case of exploitation (Rashbam).

³ In other words, the money does not prove that the sale was valid and that he intended to sell the oxen along with the yoke. Rather, the transaction is nullified because the yoke was sold for far more than its price, as is the halakha in a case of exploitation (Rashbam).

⁴ The meaning of the halakho here is that a transaction is not subject to the halakho of exploitation if the difference in price is so great that the buyer could not have thought that this was the actual price of the object.

⁵ In other words, the money does not prove that the sale was valid and that he intended to sell the oxen along with the yoke. Rather, the transaction is nullified because the yoke was sold for far more than its price, as is the halakha in a case of exploitation (Rashbam).
MISHNA One who sells a donkey has not sold its vessels, i.e., its equipment, with it. Nahum the Mede says: He has sold its vessels. Rabbi Yehuda says: There are times when the vessels are sold, and there are times when they are not sold. How so? If the donkey was before him and its vessels were on it, and the buyer said to him: Sell me this donkey of yours, its vessels are sold. If the buyer said to him: Is the donkey yours? I wish to purchase it, its vessels are not sold.

GEMARA Ulla says: The dispute in the mishna is referring to the donkey’s sack and the saddlebag [disakkaya] and the kumni, a term explained later in the Gemara. As the first tanna holds: An ordinary donkey is used primarily for riding, and therefore these articles, which are not used for riding but for carrying burdens, are not included in the sale. And Nahum the Mede holds: An ordinary donkey is used for carrying burdens, and therefore the items that serve this purpose are sold along with the donkey. But with regard to the saddle and the saddlecloth, the harness and the saddle band, everyone agrees that they are sold, as they are used both for riding and for carrying burdens.

The Gemara raises an objection from a baraita. If a seller says: I am selling you a donkey and its vessels, this one has sold the saddle, and the saddlecloth, and the harness, and the saddle band. But he has not sold the sack, and the saddlebag, and the kumni. And when the seller said to the buyer: I am selling it and everything that is on it, to you; the donkey and all of these items are sold. It can be inferred from here that the reason that the buyer acquires the saddle and the saddlecloth is that the seller said to him: I am selling you a donkey and its vessels. By inference, if the seller did not say this, the buyer does not acquire them.

The Gemara answers: The same is true even if the seller did not say to him: I am selling you a donkey and its vessels. In that case as well, the saddle and the saddlecloth are sold. And this is what the baraita teaches us: That even though the seller said to him: I am selling you a donkey and its vessels, the buyer still does not acquire the sack and the saddlebag and the kumni.

The Gemara inquires: What is the meaning of: And the kumni? Rav Pappa bar Shmuel said: This is the saddle used by women.¹¹

HALAKHA One who sells a donkey – מכר חמור: If one sold a donkey he has also sold its saddle and saddled cloth, even if they were not on the donkey at the time of the sale. He has not sold the equipment used for carrying burdens, e.g., sacks and saddles designed for women. This is in accordance with the opinion of the Rabbis, as explained by Ulla. This is the halakha even when the equipment is on the donkey at the time of the sale, as the dispute concerning this case was not resolved by the Gemara and therefore it is incumbent upon the buyer to prove that he is entitled to the equipment. If the seller explicitly said: I am selling you a donkey and everything on it, all of these items are sold (Bamidbar Sefer Krayon, Hilchos Mekhira 27:4; Shulhan Arukh, Hoshen Mishpat 220:7).

Saddlebag (disakkaya) – דייסאיקה: From the Greek δίσακκα, δισακκίον, meaning double sack, a saddlebag placed on an animal.

NOTES

¹¹ Saddle used by women – כבלות נשים: For reasons of modesty, women would ride sidesaddle, i.e., with both legs on the same side of the animal. Since a woman’s saddle does not serve for standard riding, it is considered akin to any other equipment used for carrying burdens (see Rashbam and Rashba).
A dilemma was raised before the Sages: Does this dispute apply only to a case where the vessels are on the donkey, but when the vessels are not on the donkey; Nahum the Mede concedes to the Rabbis* that they are not sold? Or perhaps the dispute applies to a case where the vessels are not on the donkey, but when the vessels are on the donkey the Rabbis concede to Nahum that the vessels are sold. The Gemara suggests: Come and hear a proof from the aforementioned baraita. And when the seller said to the buyer: I am selling it and everything that is on it, the donkey and all of these items are sold. In this case, the vessels are on the donkey, and everything is sold.

Grant, if you say that the dispute applies when the vessels are on the donkey, in accordance with whose opinion is this ruling? It is the opinion of the Rabbis that although in general one does not acquire the vessels, if the seller explicitly says that he is selling the donkey and everything on it, the buyer acquires it all. But if you say that the dispute applies when the vessels are not on the donkey, but when the vessels are on the donkey everyone agrees that they are sold, in accordance with whose opinion is this ruling? Even according to the opinion of the Rabbis there is no need to say explicitly that he is selling everything.

The Gemara answers: Actually, the dispute applies when the vessels are not on the donkey, and the baraita is in accordance with the opinion of the Rabbis, and the language of the baraita should be emended to say: And when he said to him: I am selling it and everything that is fit to be on it, i.e., those items usually found on a donkey, everything is sold.

The Gemara suggests another proof: Come and hear a solution from the mishna. Rabbi Yehuda says: There are times when the vessels are sold, and there are times when they are not sold. What, is it not the case that Rabbi Yehuda is referring to that which the first tanna said? If so, the dispute between the Rabbis and Nahum the Mede must be referring to a case where the vessels are on the donkey, as Rabbi Yehuda addresses the same set of circumstances. The Gemara rejects this proof: No, Rabbi Yehuda was speaking of a different matter* and was not necessarily addressing the same case discussed in the beginning of the mishna.

Ravina said to Rav Ashi: Come and hear a resolution of the dilemma, as it was taught in the previous mishna: If one sold a wagon he has not sold the mules that pull the wagon. And Rav Tahliifa, from the West, i.e., Eretz Yisrael, taught a baraita before Rabbi Abbahu: If one sold a wagon, he has sold the mules along with it. And Rabbi Abbahu said to him: But didn’t we learn in the mishna that he has not sold the mules? And Rav Tahliifa said to him: Should I erase this baraita? And Rabbi Abbahu said to him: No, you should explain that your baraita is referring to a case where the mules are fastened to the wagon.

One can learn by inference from Rabbi Abbahu’s statement that the mishna is referring to a situation where the mules are not fastened to the wagon. And since the first clause, i.e., the previous mishna, is referring to a case corresponding to where the vessels are not on the donkey, i.e., the mules are not fastened to the wagon, the latter clause, the mishna here, must also be referring to a situation where the vessels are not on the donkey.

* A different matter – קמה במאתה. The first tanna and Nahum the Mede disagree with regard to a case where the vessels are not on the donkey, but if the vessels are on the donkey everyone agrees that they are sold. Rabbi Yehuda subsequently states that even when the vessels are on the donkey, they are sold only in certain cases (Rashbam). Alternatively, Rabbi Yehuda’s statement is entirely independent of the dispute between the Rabbis and Nahum the Mede, and therefore it is possible that they disagree with regard to any one of several scenarios.
The Gemara rejects this proof: On the contrary, say the first clause, i.e., the preceding mishna: One who sells a ship sells the mast along with it, but he has not sold either the slaves or the antikei. And we said: What is the meaning of antikei? Rav Pappa said: It means the merchandise that is in the ship. But according to your logic, since the first clause, i.e., the mishna concerning the ship, is referring to a case where the merchandise is on the ship, the latter clause, the mishna here, must also be referring to a case where the vessels are on the donkey. Rather, the tanna teaches each statement individually, and the circumstances of one ruling do not prove that another ruling is referring to a parallel case.

The Gemara provides a mnemonic based on the letters of the names of the tanna'im who appear here: Zayin, gimmel, mem; nun, samekh, nun. Abaye said: Rabbi Eliezer, and Rabban Shimon ben Gamliel, and Rabbi Meir, and Rabbi Natan, and Sumakhos, and Naḥum the Mede all hold that when a person sells an item, he sells it and all of its accoutrements.

Rabbi Eliezer holds this, as we learned in a mishna (67b) that Rabbi Eliezer says: One who sells an olive press has sold the beam used for pressing the olives, despite the fact that the beam can be removed from the press. Rabban Shimon ben Gamliel holds this, as we learned in a mishna (68b) that Rabban Shimon ben Gamliel says: One who sells a city has sold the city's guardsman. Rabbi Meir holds this, as it is taught in a baraita that Rabbi Meir says: If one sells a vineyard, has sold the accoutrements of the vineyard. Rabbi Natan and Sumakhos hold this, as they state with regard to the bitzit and the dugit, i.e., the light-going boats of the ship, which they claim are sold when the ship is sold (73a). Naḥum the Mede holds this, as it is evident from that which we said in the mishna here.

The mishna teaches that Rabbi Yehuda says: There are times when the vessels are sold, and there are times when they are not sold. How so? If the donkey was before him and its vessels were not sold, the donkey belongs to him. The mishna here indicates his intention is to purchase the donkey as it stands, and this is in accordance with his ruling.

One who sells a donkey...a cow - One who sold a donkey has not sold its vessels. With regard to one who sells a cow or a donkey, if he does not specify that he is selling the animal's offspring along with it, the offspring is not sold. Even if the seller said to the buyer that he is selling a nursing cow, he has not sold its calf. But if he said that he is selling a nursing donkey he has sold its foal, as he does not sell a donkey for the sake of its milk. The halakha is in accordance with the explanation of Rav Pappa (Rambam Sefer Kinyan, Hilkhut Mehira 27:7; Shulhan Arukh, Hoshen Mishpat 221:11).

One who sold a dunghill - One who sold a dunghill has also sold the manure it contains. Some say that if one sold the manure he has not sold the dunghill (Rambam Sefer Kinyan, Hilkhut Mehira 27:10; Shulhan Arukh, Hoshen Mishpat 222:16, and in the comment of Rema).

One who sold a cistern - One who sold a cistern has not sold its water, as the ruling recorded in the mishna is that of an individual Sage. According to the Rashba and the Rosh, the water is included in the sale (Rambam Sefer Kinyan, Hilkhut Mehira 27:10; Shulhan Arukh, Hoshen Mishpat 221:6, and in the comment of Rema).

One who sold a beehive - One who sold a beehive: has sold the bees it contains (Rambam Sefer Kinyan, Hilkhut Mehira 27:10; Shulhan Arukh, Hoshen Mishpat 222:17).

One who sold a dovecote - One who sold a dovecote has sold its doves (Rambam Sefer Kinyan, Hilkhut Mehira 27:10; Shulhan Arukh, Hoshen Mishpat 222:17).

Rava said that when the buyer says: Sell me this donkey of yours, it is the meaning of antikei, i.e., the preceding mishna: One who sells a ship sells its manure. And we said: What is the meaning of antikei? Rav Pappa said: It means the merchandise that is in the ship. But according to your logic, since the first clause, i.e., the mishna concerning the ship, is referring to a case where the merchandise is on the ship, the latter clause, the mishna here, must also be referring to a case where the vessels are on the donkey. Rather, the tanna teaches each statement individually, and the circumstances of one ruling do not prove that another ruling is referring to a parallel case.

One who sells a female donkey has sold its foal along with it. But one who sold a cow has not sold its young. One who sold a dunghill has sold its manure. One who sold a cistern has sold its water. One who sold a beehive has sold the bees in it, and likewise one who sold a dovecote has sold the doves.
Rav Pappa said: This is referring to a case where the seller said to the buyer: I am selling you a nursing donkey, or: I am selling you a nursing cow. Granted, with regard to the cow, one could say that he needs it for its milk, and the suckling calf would not necessarily be included in the sale. But with regard to the donkey, for what reason is he saying to him that the donkey is nursing? Since he does not need the milk of a donkey, learn from here that he is saying to him that he is selling it and its young. The Gemara adds tangentially: And why does the mishna call a donkey foal a seyah? It is because it follows after pleasant talk and obeys pleasant talk [silah], whereas an old donkey must be led forcibly.

The Gemara cites a related discussion. Rabbi Shmuel bar Nahman says that Rabbi Yohanan says: What is the meaning of what that is written: “Therefore they that speak in parables [hamoshlim] say: Come to Heshbon! Let the city [ir] of Sihom be built and established! For a fire is gone out of Heshbon, a flame from the city of Sihon; it has devoured Ar of Moab, the lords of the high places of Arnon” (Numbers 21:27–28)?

The Gemara interprets these verses homiletically. “Hamoshlim” [parables]; these are the people who rule over [hamoshlim] their evil inclination. They will say: “Come to Heshbon,” meaning: Come and let us calculate the account of [heshbon] the world, i.e., the financial loss incurred by the fulfillment of a mitzva in contrast to its reward, and the reward for committing a transgression, i.e., the pleasure and gain received, in contrast to the loss it entails.

“Let it be built and established” means that if you make this calculation, you will be built in the World-to-Come. The phrase “city [ir] of Sihom” means that if a person fashions himself like this young donkey [ayir] that follows after pleasant talk [silah], i.e., if one is easily tempted to listen to his inclination, what is written after it? “For a fire is gone out of Heshbon… it has devoured,” i.e., a fire will go out from those who calculate the effect of their deeds in the world, and will consume those who do not calculate and examine their ways but instead do as they please.

A similar interpretation applies to the continuation of the verse: “A flame from the city of Sihom”; this means that a flame will come from the city of righteous people, who are called trees [sibhon]. “It has devoured Ar of Moab”; this is referring to one who follows after his inclination like this young donkey [ayir] that follows after pleasant talk. “The lords of the high places of Arnon”; this is referring to the arrogant. As the Master says: Every person who has arrogance in him will fall into Gehenna.

The Gemara interprets a subsequent verse: “We have shot at them [vanniram], Heshbon is perished, even until Dibon, and we have laid waste even until Nophah, which reaches until Medeba” (Numbers 21:30). “Vanniram”; this indicates that the wicked person says: There is no higher [ein ram] power governing the world. “Heshbon is perished” means: The account [heshbon] of the world has perished, i.e., they claim there is no accountability for one’s actions. “Even until Dibon [divon]”; the Holy One, Blessed be He, says: Wait until judgment comes [yaro din]. And we have laid waste.

 NOTES

And why does the mishna call a donkey foal a seyah – דָּוֹדָה הָרָה יַעֲבֵרָה כְּנֶגֶד הַּסֵּדָהּ? The mishna simply could have referred to the creature as the donkey’s young, as it did in the case of the cow. By using this term, the mishna must be intending to teach another matter parenthetically (Yosef Yom Tov). According to another version of the text, the Gemara is asking why the mishna refers to the foal as a seyah rather than an ayir, which is the term used in several places in the Bible.

The loss incurred by the fulfillment of a mitzva, etc. – יִרְאוּ הַמּוֹכֵר אֶת הַחֲמוֹר…אֶת הַ׳ָּרָה: If one incurs a financial loss due to the fulfillment of a mitzva, he should take into account the reward that he will receive in the World-to-Come, which is infinitely greater. Similarly, if one derives benefit from committing a transgression, that gain should be weighed against the punishment he is due to receive in the future (Rashbam; Meiri).

That follows after pleasant talk, etc. – רַבֶּנְאֵיהוּ וַניי הָאָמַר רַבָּה: Foals, like other young animals, will come to anyone who calls them with a soft tone; it is not necessary to pull them forcibly. According to the standard version of the text, this is mentioned disparagingly, in allusion to one who gives in to any temptation. Several early commentaries have a different version of the text, in which the example of a donkey that follows pleasant talk serves as an example of praiseworthy behavior, similar to one who does not need to be forced to perform good deeds (see Meir and Rashi).

A fire will go out from those who calculate, and will consume, etc. – רַבֶּנְאֵיהוּ וַניי הָאָמַר רַבָּה: This is similar to the Gemara’s statement on 75a that in the World-to-Come everyone will be burned by his embarrassment at not having attained the level of others around him (Rashbam). The commentaries add, based on the Gemara on Haggig 15a, that all people have a share both in the Garden of Eden and in Gehenna; and the righteous receive the share of the wicked in the Garden of Eden, while the wicked receive the share of the righteous in Gehenna (Mahazah).

Righteous people, who are called trees – רַבֶּנְאֵיהוּ וַניי הָאָמַר רַבָּה: In many verses in the Bible the righteous are compared to trees, e.g., “The righteous shall flourish like the palm tree; he shall grow like a cedar in Lebanon” (Psalms 92:13).

Ar of Moab – רַבֶּנְאֵיהוּ וַניי הָאָמַר רַבָּה: According to this homiletic interpretation, the word “Ar” is similar to it, and this phrase is understood in the same manner as “the city [ir] of Sihon” mentioned earlier in the verse. The commentaries add that the mention of Moab (Moav) alludes to the manner in which they follow their inclination, like (kerno) a son who listens to and follows his father (av) (Rabbeinu Gershon Meor HaGola).

BACKGROUND

Generally, young animals, especially domesticated ones, are neither suspicious nor afraid of strangers. For this reason, a young donkey will come to anyone who calls it, and it is not necessary to pull it forcibly. Only after time will it learn to fear strangers and disobey their commands and calls.
Any item that is fit to be sacrificed on the altar, etc. – דב עט. With regard to one who consecrates items for Temple maintenance, whether items such as stones or beams that are suitable only to be used in the maintenance of the Temple structure, or animals such as lambs or doves that can also be brought as offerings, if one derives benefit from the items, he is liable for misusing consecrated property. One is also liable for misusing consecrated property if one derived benefit from items consecrated for the altar which are suitable only for Temple maintenance, or if one misused items consecrated for the altar or Temple maintenance that are not suited for either, e.g., a dunghill filled with manure. In all of these cases, one may not derive benefit from the consecrated property until he redeems it, if the property can be redeemed (Rambam Sefer Avoda, Hilkhot Me’ila 5:1).

BACKGROUND

Misuse of consecrated property – הלען: 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, violates this prohibition. One who does so is obligated to bring an offering as well as pay to the Temple the value of the object from which he benefited. In addition, he must pay an additional one-fifth of the value as a fine. After an individual 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 the halakhot of one who derives benefit intentionally. Therefore, this person cannot atone for deriving benefit by sacrificing an offering or by paying the additional one-fifth of the value as a fine.

HALAKHA

That does not require fanning – רכיב מפה. As indicated by a verse cited by the Rashbam: “A fire not blown by man shall consume him” (Job 20:26), it is evident that this is not a physical fire but an eternal fire, the fire of Gehenna (see Rabbeinu Gershon Meor HaGola).

Until He does, etc. – רכיב מפה: According to the Rashbam, this means until God does that which He wishes to do in the World-to-Come, where He will punish the wicked for their actions. This is in contrast to the success He allows them in this world, so that they will receive in this world any reward that those whom she has called are in the depths of the netherworld” (Proverbs 9:18).

How so? One who consecrated a cistern filled with water, dunghills filled with manure, a dovecote filled with doves, a field filled with plants, or a tree bearing fruit, and subsequently derived benefit from them or their contents is liable for misuse of consecrated property.

Notes

Other commentaries maintain that the mishna is speaking of only two types of consecrated property: Items that are fit to be used as offerings and those that cannot serve as offerings and are slated to be sold, with the profits used for Temple maintenance. This second category includes two subcategories: The first comprises standard items that are to be sold, whose profits are then used for Temple maintenance. The second includes items, such as manure, which, due to their repugnance, may not even be brought to the Temple in order to be sold. This latter category is termed by the mishna: Items that are fit neither for the altar nor for Temple maintenance. Although it is forbidden to consecrate these items, if one does so, the consecration takes effect (Ri Migash).

He is liable for misuse of consecrated property – נמי הלען: According to some commentaries, one misuses a consecrated cistern by storing his personal belongings in it (Rashbam). Most early commentators maintain that one cannot misuse consecrated property that is attached to the ground. In the case of the cistern, one can misuse it by taking one of its stones and employing it for his personal needs, after it has been detached (Rabbeinu Tam, Sefer Holatshar; Tosafot; Ramban).
But with regard to one who consecrated a cistern and it was later filled with water, a dunghill and it was later filled with manure, a dovecote and it later was filled with doves, a tree and it later bore fruit, or a field and it was later filled with plants, if he derives benefit from them he is liable for misuse of consecrated property but he is not liable for misuse of consecrated property by deriving benefit from its contents. This is the statement of Rabbi Yehuda. Rabbi Yosei says: With regard to one who consecrated a field or a tree, he is liable for misuse of consecrated property if he derives benefit from them or that which grows from them, because they are growths of consecrated property.

It is taught in a baraita that Rabbi Yehuda HaNasi said: The statement of Rabbi Yehuda appears to be correct in the cases of a cistern and a dovecote, i.e., if one consecrated an empty cistern or dovecote, the water or doves that later fill it do not become consecrated. And the statement of Rabbi Yosei appears to be correct in the cases of a field and a tree. The Gemara asks: What is the meaning of this statement of Rabbi Yehuda HaNasi? Granted, when he says that the statement of Rabbi Yehuda appears to be correct in the cases of a cistern and a dovecote, by inference this means that Rabbi Yehuda disagrees with Rabbi Yosei in the cases of a field and a tree, and Rabbi Yehuda does explicitly disagree in those cases.

But when Rabbi Yehuda HaNasi says that the statement of Rabbi Yosei appears to be correct in the cases of a field and a tree, this indicates by inference that Rabbi Yosei disagrees with Rabbi Yehuda in the cases of a cistern and a dovecote. But Rabbi Yosei stated his opinion solely in the cases of a field and a tree, as only plants and fruit grow directly from consecrated property, and this reasoning is not relevant in the case of a cistern or dovecote.

And if you would say that Rabbi Yosei stated his opinion in accordance with the statement of Rabbi Yehuda, whereas he himself holds that even the items found in a dovecote or a cistern are consecrated, this is difficult: But isn’t it taught in a baraita that Rabbi Yosei said: I do not see the statement of Rabbi Yehuda as correct in the cases of a field and a tree, because the plants and the fruit are the growths of consecrated property? Infer from here that it is in the cases of a field and a tree that Rabbi Yosei does not see and accept the opinion of Rabbi Yehuda. But in the cases of a cistern and a dovecote, he does see and accept his opinion.

He is not liable for misuse of consecrated property by deriving benefit from its contents – אֲשֶׁר לֹא שָׂרֵד בְּהַגְּזֵרָה. Even though an ownerless item found on one’s property is acquired by the property owner, this is not true with regard to land owned by the Temple treasury. Therefore, the contents that entered the cistern or dovecote after those items were consecrated do not belong to the Temple treasury (Rashbam; see also Tosafot and Rabbeinu Yona). Alternatively, even if the Temple treasury does acquire ownerless property found in its domain, one who makes use of it is liable for misuse of consecrated property only if it is explicitly consecrated (see Ritva; Ran; Nishtor Halashen).

Because they are growths of consecrated property – אֲשֶׁר הֵם גִּידּוּלֵי הֶאָמָה. The suggestion is that Rabbi Yosei actually holds that any item that grows from or is found in consecrated property is acquired by the consecrated property. If so, he is claiming that even Rabbi Yehuda should at least concede that the produce of a consecrated field or tree should be consecrated, as it grows directly from consecrated property.
And Rabbi Elazar, son of Rabbi Shimon, reverses – Rabbi Elazar, son of Rabbi Shimon, reverses his opinion, as he stated earlier that if one consecrated property when it was empty and it was later filled, he is liable for misuse of consecrated property if he derives benefit from its contents. Therefore, it stands to reason that Rabbi Elazar should certainly rule in this manner with regard to one who consecrates property when it is full. According to some commentaries, this statement is part of the baraita. Rabbi Elazar, son of Rabbi Shimon, reverses his opinion, as he stated earlier that if one consecrated property when it was empty and it was later filled, he is liable for misuse of consecrated property if he derives benefit from its contents. Therefore, it stands to reason that Rabbi Elazar should certainly rule in this manner with regard to one who consecrates property when it is full. The baraita therefore stresses that in fact Rabbi Elazar reverses his opinion, as he maintains that in this case one is not liable for misuse (Rashbam).

Alternatively, the baraita is saying that Rabbi Elazar maintains an opinion that is totally the opposite of that of the first tanna; both in the case where the property is empty and in the case where it is full (Rabbeinu Yona). Rabbeinu Yona further suggests that it is possible that the statement: And Rabbi Elazar, son of Rabbi Shimon, reverses, is issued by the Gemara, and it is an abridged version of his lengthier statement of reversal that actually appears in the baraita (but see Rashba).

The Gemara answers that this is what Rabbi Yehuda HaNasi is saying: 'The statement of Rabbi Yehuda appears to Rabbi Yosei to be correct in the cases of a cistern and a dovecote. In other words, Rabbi Yehuda HaNasi is saying that even Rabbi Yosei disagrees with Rabbi Yehuda only in the cases of a field and a tree. But in the cases of a cistern and a dovecote, he concedes to him that the prohibition against misuse of consecrated property does not apply to items that were added afterward and were not present at the time of the consecration.'

Rabba says: This dispute in the baraita applies only in the cases of a field and a tree, as the first tanna holds in accordance with the opinion of Rabbi Yehuda, and Rabbi Elazar, son of Rabbi Shimon, holds in accordance with the opinion of Rabbi Yosei. But in the cases of a cistern and a dovecote, everyone agrees that if one derives benefit from them he is liable for misuse of consecrated property, but he is not liable for misuse of consecrated property if he derives benefit from their contents. This ruling will be clarified below. Rabbi Elazar, son of Rabbi Shimon, says: One is liable for misuse of consecrated property even by deriving benefit from their contents.

Rabba says: This dispute in the baraita applies only in the cases of a field and a tree, as the first tanna holds in accordance with the opinion of Rabbi Yehuda, and Rabbi Elazar, son of Rabbi Shimon, holds in accordance with the opinion of Rabbi Yosei. But in the cases of a cistern and a dovecote, everyone agrees that if one derives benefit from them he is liable for misuse of consecrated property, but he is not liable for misuse of consecrated property if he derives benefit from their contents.

Abaye said to him: But consider that which is taught in the continuation of the baraita: If one consecrated them when they were full and then derives benefit from them or from their contents, he is liable for misuse of consecrated property. And Rabbi Elazar, son of Rabbi Shimon, reverses his previous ruling in this case and holds that if the items were consecrated when full their contents are not subject to the prohibition against misuse of consecrated property.

And if their dispute is referring to a field and a tree, why does Rabbi Elazar, son of Rabbi Shimon, reverse his opinion? Rather, Rabbi’s statement must be adjusted, and this is what Rabba said: This dispute between the first tanna and Rabbi Elazar, son of Rabbi Shimon, applies only in the cases of a cistern and a dovecote. But in the cases of a field and a tree, everyone agrees that one is liable for misuse of consecrated property if one derives benefit from them or their contents.

The Gemara asks: And in the cases of a cistern and a dovecote, where the cistern and the dovecote are empty, with regard to what matter do they disagree? And similarly, where the cistern and the dovecote are full, with regard to what do they disagree? The Gemara answers: In the cases of a cistern and a dovecote that are empty, they disagree with regard to the matter that is the subject of the dispute between Rabbi Meir and the Rabbis.

Why does he reverse his opinion – Rabbi Elazar, son of Rabbi Shimon, reverses his opinion? If fruit that was produced after the tree’s consecration is subject to the halakhot of misuse of consecrated property, certainly the fruit that was present when the tree was consecrated is subject to these halakhot (Rashbam). Other commentaries add that in the analogous case of a sale to an ordinary person, as opposed to the Temple treasury, everyone agrees that one who sells a tree or a field has sold its produce, and there is no reason that Rabbi Elazar would disagree in the case of consecration (Tosafot). By contrast, if they disagree with regard to a cistern and a dovecote, there is a way of explaining the different rulings, as the Gemara proceeds to explain.
The Gemara asks: And in cases where the cistern and the dovecote are full, with regard to what matter do they disagree? Rava said: This dispute concerns a case where he consecrated a cistern without specification. And Rabbi Elazar, son of Rabbi Shimon, holds in accordance with the opinion of his father, who says: One infers the halakha of consecration to the Most High from the halakha of transactions between one ordinary person [ḥedyot] and another.

The Gemara elaborates: Just as the halakha with regard to transactions between one ordinary person and another is that one can say: I sold you the cistern but I did not sell you the water it contains, so too, the halakha in the case of consecration to the Most High is that one can say: I consecrated the cistern but I did not consecrate the water within it. And the first tanna holds that one does not infer the halakha of consecration to the Most High from the halakha of transactions between one ordinary person and another. Rather, one who consecrates property does so generously, i.e., the most expansive meaning is assumed for his vow of consecration, and therefore even if he did not say so explicitly, he consecrated the water together with the cistern.

The Gemara asks: And does the halakha concerning a transaction with an ordinary person say that one does not sell the water along with the cistern? But didn’t we learn in the mishna (78b) that one who sold a cistern has sold its water? Rava said: The ruling in the mishna is an individual opinion, as it is taught in a baraita: One who sold a cistern has not sold its water. Rabbi Natan says: One who sold a cistern has sold its water.

**NOTES**

A person can transfer ownership of an object that has not yet come into the world – דֶּרֶךְ שׁוֹבָכ וֹ. According to some commentaries, Rabbi Elazar, son of Rabbi Shimon, maintains that one who consecrates a cistern also consecrates the water that will eventually come into the cistern (Rashbam). The Ramban, Rabbeinu Yona, and other early commentaries disagree with this claim. Rabbeinu Yona explains that for the water to be consecrated it is necessary that one specify this explicitly. According to this opinion, the sanctity of the water does not result from it being found inside consecrated property but from an explicit consecration. The question is whether one agrees with Rabbi Meir that it is at all possible to consecrate items such as these, which have not yet come into the world.

By way of his courtyard into the cistern – רַבָּא אָמַר רַבָּא. An example of this is a case where the courtyard is on a slant and the cistern is situated at the courtyard’s lowest point, so that the water would naturally flow into it (Rashbam). An alternative way to understand the text is that an aqueduct passes through the courtyard to the cistern (Rabbeinu Gershon Meor HaGola).

By way of his dovecote – רַבָּא אָמַר רַבָּא. Since he has another dovecote nearby that is full of doves while this dovecote is empty, the doves will certainly settle in the empty dovecote. This is referring to a case where the same individual owns both dovecotes. If the full dovecote belongs to someone else, he should prevent his neighbor’s doves from entering his dovecote (Rashbam, citing Rashi).
MISHNA

One who buys the produce of a dovecote 39 from another, i.e., the doves that will hatch over the course of the year in a dovecote, must leave \( [mäfriś] \) the first pair of doves from the brood 40 for the seller. If one buys the produce of a beehive, i.e., all the bees produced from a beehive over the course of the year, the buyer takes three swarms 41 and then the seller renders the bees impotent, so that they will stop producing offspring and instead produce only honey. One who buys honeycombs must leave two combs. If one buys olive trees for felling, he must leave two shoots 42 for the seller.

HALAKHA

One who buys the produce of a dovecote from another – ִמְרֵי מְרֵי: If one buys the chicks that will be hatched in a dovecote, he acquires the baby doves, because it is as though the seller said to him: I am selling you this dovecote for its chicks. This is the case even if the seller does not say this explicitly (Kesef Mishne), although some maintain that he must actually say so (R'avad). The buyer may not take all of the young doves but must leave some behind, if at the time of the sale there were a pair of doves and two of their brood in the dovecote, the buyer cannot take their brood, and he must also leave behind a pair of doves that will be born from the first brood. All other doves that are born belong to the buyer.

Others say that the buyer must always leave behind the first two pairs born to each and every dove (Tosafot; see Sm) (Rambam, Hilkhot Mehilta 23:13, 15; Shulhan Arukh, Hoshen Mishpat 213:220:18).

Honeycombs – ְרַעְבּוֹת בָּדַשׁ: If one buys honeycombs he must leave behind two combs for the seller, so that the bees will not leave and ruin the beehive (Rambam Sefer Kinyan, Hilkhot Mehilta 23:13). Olive trees for felling – ְרַעְבּוֹת הַרְּכָה: If one buys olive trees for felling he may not cut down the entire tree. Instead, he leaves near the ground two genifyot so that the tree can grow again. Some explain that genifyot is a measure equal to the size of two fists (Kesef Mishne) or handbreadths (Rambam's Commentary on the Mishna). Others (Rashbam; Tur) maintain that it means branches (Rambam Sefer Kinyan, Hilkhot Mehilta 23:13; Shulhan Arukh, Hoshen Mishpat 216:14).

BACKGROUND

First brood – ֵרֵי מַרְאֶה: House doves, and even domesticated wild doves, lay and hatch eggs throughout most of the year. They lay one pair of eggs at a time. Approximately half the time this pair is composed of a male and a female. It is possible that the custom of leaving at least the first pair of the brood was intended as a way of examining the quality of the offspring of this pair of doves, to see whether it was preferable to slaughter them or raise them.

Swarms – ְרִיחָן: Generally, in the summer, when a beehive is full of honey, one or more swarms of bees will leave. These swarms are comprised of thousands of bees, led by a queen bee. They will establish a colony in a new beehive, if it has been prepared for them by the scout bees.

The number of swarms that leave a hive depends on many factors. Some have to do with the type of bee, others concern the amount of honey in the hive; while yet others are unknown. Every time bees swarm, there are fewer bees left in the hive. It is possible that after many swarms, there would not remain enough bees in the hive to maintain it, certainly not at its previous size and production rate. For this reason, there are a set number of swarms that are allowed to leave the hive, after which the owner of the hive will take measures to curtail the desire of the bees to swarm. The Rashbam's comments on this mishna describe the practice of his day in different places with regard to the number of swarms and their qualities.

Combs – ְרַעְבּוֹת: During the winter bees almost never leave their hive, because the amount of flowers and nectar available is minuscule. Although the bees stay in a sort of hibernation, they still require some food over the course of the winter, and it is therefore necessary to keep some stock of honey in the hive, so that it will continue to exist the next year. The two honeycombs left behind are the minimum required for the beehive for the coming year. Therefore, those honeycombs are not removed unless one intends to destroy the hive.
The Gemara asks: What is different about the mother that there is no concern that she will escape from the dovecote? If the reason is that she is attached to her daughter and the mate which one leaves for her, this should also be true with regard to the daughter, i.e., she too will become attached to her mother and the mate which one leaves for her. Why, then, is it necessary to leave behind a pair of the daughter’s own brood to ensure that the daughter will not leave? The Gemara answers: A mother is attached to her daughter, whereas a daughter is not attached to her mother. Therefore, in order for the daughter to remain in the dovecote it is necessary to leave the daughter’s brood with her.

The Gemara teaches: The one who buys the produce of a beehive takes three swarms and then the seller renders the bees impotent [mesares]. The Gemara asks: By what means does he render them impotent? Rav Yehuda said that Shmuel said: He renders them impotent by feeding them mustard. They say in the West, Eretz Yisrael, in the name of Rabbi Yosei bar Hanina: It is not the mustard itself that renders them impotent. Rather, since their mouths sting from the bitterness of the mustard, they return and eat their own honey. Due to their excessive eating of honey, they cease to form new swarms and instead produce honey for the seller.

Rabbi Yoĥanan says: This is not the meaning of mesares. Rather, the mishna should be understood as follows: One takes three swarms by skipping [beseirus] every other swarm, so that the buyer receives the first, third, and fifth swarms, while the others remain with the seller. It is taught in a baraita: The buyer takes the first three swarms one after the other, and from this point forward he takes one and leaves one.

The Gemara teaches: The one who buys honeycombs must leave the two combs and one who buys olive trees for felling must leave two shoots. Rav Kahana says: As long as honey remains in the beehive it never leaves its status as food, i.e., it is always considered fit for human consumption. The Gemara notes: Apparently, Rav Kahana holds that honey does not require that one have intention to eat it for it to be susceptible to ritual impurity.

The Gemara raises an objection from a baraita: Honey in a beehive is not considered to have the status of either food or liquid with regard to ritual impurity. Abaye said: This halakha, that honey is considered neither food nor liquid, is necessary only with regard to those two combs mentioned in the mishna, which are designated for the sustenance of the bees and are not for human consumption. Rava said: The baraita is in accordance with the opinion of Rabbi Eliezer.

Background

The best way to stop bees from swarming, i.e., from splitting and forming new colonies, is to prevent them from raising new queen bees, since a queen will not leave the nest without a successor. The method described here is to try to cause the bees to consume large amounts of their own honey. When the amount of available honey in the hive decreases drastically, the bees will try to fill the cells with honey, instead of forming cells for new queen bees.

Notes

This is referring to the pair left for the first pair itself, that is referring to a pair left for the mother. According to the Rashi, the baraita complements the mishna, as it explains that not only does the buyer leave behind a pair to ensure that the doves do not fly away, he also leaves behind a pair that is hatched from the young brood, so that they too will not fly away. Others say that it is not sufficient to do this for only two generations. Instead, for each pair that is left behind another pair of their young must be left as well. This is to ensure that the parent dove will not fly away, as this would ultimately cause a chain reaction and all the doves would leave the dovecote. In other words, for each generation of doves one takes, he must leave a pair, as well as one from the subsequent generation (Rabbeinu Tam, Sefer Halakhot, Tosafot, Rambam).

Other commentators explain that the mishna and baraita are both referring to the same situation, in which two pairs of doves, a pair of parents and their young, are left in the dovecote. Each pair requires an additional two pairs of doves to ensure that they will not fly away (Rabbeinu Genhorn Meor HaGola; Ri Migash; Rambam; Ramah). The parent pair require the pair of their young and an additional pair, while their young require another two pairs of doves because, as the Gemara explains, parents do not serve as companions for their young (see Ran). The early commentators explain that this interpretation is based on an alternative version of the text, which reads: This refers to the pair left for the daughter whereas that refers to the pair left for the mother. The early commentators also record a different explanation, citing Rabbeinu Hananel.

Her daughter and the mate [zuga] – Some commentators explain that zuga is a reference to a mate [zuga] (Rashbam; Rabbeinu Hananel). Others maintain that it means another pair [zuga] of doves (Rif; see Ran).

Three swarms by skipping [beseirus] – Some commentators explain that as the first three swarms are the choicest, they are divided between seller and buyer, and the same applies to the other, less preferable swarms (Rashbam). Others claim that the seller does not take every second swarm, as he has sold all the produce of the hive. Instead, after every swarm, he renders the next swarm impotent, so that they will fill the hive with honey (Razavad; see Meiri).

Does not require intention – Some substances are considered food only after one intends to eat them; beforehand, they are categorized as a raw material that is not susceptible to ritual impurity. Rav Kahana is saying that honey is considered a food and is susceptible to ritual impurity whether or not one intends to eat it.

Is not considered either food or liquid – Only food and drink intended to be used by people are susceptible to ritual impurity, whereas these honeycombs are designated for bees (Ramah).
It is considered like land – although the beehive is not attached to the ground, it is treated as though it were land. This has ramifications with regard to its manner of acquisition: Like land, it can be acquired through money, a deed, or taking possession, but not through pulling, like movable property. It also has ramifications concerning other matters. For this reason the food contained in the beehive is considered attached to the ground, and like all foods that are attached to the ground it is not susceptible to ritual impurity while it remains attached.

And one who takes honey out of it on Shabbat is liable. The Gemara interprets the expression

\textit{Honey – What does a forest, etc. – And one who takes honey out of it on Shabbat is liable.}

As we learned in a mishna (Sheni‘it 10:7): Concerning a beehive, Rabbi Eliezer says: It is considered like land with regard to the manner in which one purchases it and with regard to other matters, and therefore one writes a document that prevents the Sabbatical Year\textsuperscript{2} from canceling an outstanding debt [\textit{prosbul}]\textsuperscript{3} based on it, as a \textit{prosbul} can be written only if the debtor possesses land of some sort.

And a beehive is not susceptible to ritual impurity, provided that it is in its place and attached to the ground, as it is considered equivalent to the ground itself, which is not susceptible to impurity. And one who takes honey\textsuperscript{4} out of it on Shabbat is liable to bring a sin-offering, like one who uproots something from the ground. According to this opinion, honey in a beehive is not considered to have the status of either food or liquid with regard to ritual impurity, as it is attached to the ground.

The mishna continues: And the Rabbis say: A beehive has the status of movable property; one may not write a \textit{prosbul} based on it, and it is not considered like land with regard to its sale but is instead sold in the manner of movable property. And it is susceptible to ritual impurity even when it is in its place, and one who takes honey out of it on Shabbat is exempt\textsuperscript{5} from bringing a sin-offering. According to this opinion, the honey contained within the beehive is considered detached from the ground and is therefore susceptible to ritual impurity, as stated by Rav Kahana.

Rabbi Elazar said: What is the reasoning of Rabbi Eliezer? As it is written with regard to Jonathon: \textit{“He put forth the end of the rod that was in his hand, and dipped it in the honeycomb [\textit{ya‘arat hadevash}]”} (1 Samuel 14:27). Now, what does a forest [\textit{ya‘ar}]\textsuperscript{6} have to do with honey [\textit{devash}]? Why is the honeycomb called a forest of honey [\textit{ya‘arat hadevash}]? Rather, this serves to tell you: Just as with regard to a forest, one who picks fruit from a tree on Shabbat is liable to bring a sin-offering, so too, with regard to honey, one who removes honey from a beehive on Shabbat is liable to bring a sin-offering.

The Gemara raises an objection from a \textit{baraita}: Honey that flows from one’s beehive is not considered either food or liquid. Granted, according to the reasoning of Abaye this works out well, since he would explain here, as in the previous case, that this is referring to the two combs in the beehive designated for the sustenance of the bees, and is not intended for human consumption.

\textbf{Background:}

\textbf{Sabbatical Year – \textit{mekiẓe}:} The Sabbatical Year is the last year in the seven-year Sabbatical cycle. The first such cycle began after the conquest of Eretz Yisrael by Joshua. The halakha of the Sabbatical Year are based on Torah law (see Leviticus 25:1–7), but most authorities maintain that the conditions enabling performance of the mitzva by Torah law do not currently exist, and therefore present-day observance is based on rabbinic ordinance. The Hebrew term for the Sabbatical Year, \textit{shemitta}, means abandonment or release.

During the Sabbatical Year all agricultural land must lie fallow. It is prohibited to work the land, except for that which is necessary to keep existing crops alive. All produce that does grow is ownerless and must be left unguarded in the fields so that any creature, including wild animals and birds, can have ready access to it. As long as produce can still be found in the fields it may be eaten, although it may not be bought and sold in the normal manner or used for purposes other than food. After the last remnants of a crop have been removed from the field, that crop may no longer be eaten.

\textbf{Prosimbol – \textit{prosbul}:} The \textit{prosbul} is a contract written during the Sabbatical Year, when monetary debts are canceled. In this document the writer declares that he delivers to the court all debts owed him, so that the court, and not he, is demanding repayment. This practice was instituted by Hillel the Elder when he saw that people were refraining from lending money to the needy before the Sabbatical Year. He instituted this practice for the good of lenders and borrowers alike, to ensure that loans could be collected.
But according to the opinion of Rava, who says that the baraita is in accordance with the ruling of Rabbi Eliezer, this presents a difficulty, as even according to Rabbi Eliezer the honey is not considered attached to the ground once it leaves the beehive. Rav Zevid said: The baraita is referring to a case where the honey flowed onto a repulsive vessel⁴ and therefore is unfit for human consumption. Rav Aha bar Yaakov said: It is referring to a case where it flowed onto straw [kashkashin]⁵ and weeds, which renders it inedible.

The Gemara raises another objection from a baraita: Honey in one’s beehive is not considered either food or liquid. If one intended to use it as food, it is susceptible to ritual impurity as food, and if one intended to use it as liquid, it is susceptible to ritual impurity as liquid. Granted, according to the reasoning of Abaye, this works out well, as he can explain that this too is referring to the two combs of honey left for the bees, and that if one reconsidered and decided to eat the honey, it is once again considered fit for human consumption.

But according to Rava, who said that the ruling of the baraita that honey in a beehive does not have the status of food or liquid is in accordance with the opinion of Rabbi Eliezer, this poses a difficulty. This baraita does not accord with the reasoning of Rabbi Eliezer, as he maintains that one’s intention is not enough for honey attached to the ground to be considered as though it were detached. Therefore, the baraita must be in accordance with the opinion of the Rabbis, and yet it contradicts Rav Kahana’s statement that intention is not required for honey to be susceptible to ritual impurity.

The Gemara answers: Rava could have said to you that the baraita is in fact in accordance with the opinion of Rabbi Eliezer, and you should resolve the difficulty and answer like this.⁶ If one intended to use the honey as food, it is not susceptible to ritual impurity as food, and if one intended to use it as liquid, it is not susceptible to ritual impurity as liquid. The Gemara notes: It is taught in a baraita in accordance with the opinion of Rav Kahana: Honey in one’s beehive is susceptible to ritual impurity as food even if there was no intention to use it as food, as it has an innate status of food.

The mishna teaches: If one buys olive trees for felling, he must leave two shoots⁷ from the tree. The Sages taught: One who buys a tree from another for felling must cut the tree one handbreadth above the ground, to allow the tree to grow again. In the case of an untrimmed sycamore, he must cut the tree a minimum of three handbreadths above the ground, and with regard to a large sycamore, which has strong roots because the sycamore has been cut down once already, he must cut the tree a minimum of two handbreadths above the ground. In the case of reeds or of vines, he may cut only from the knot and above, so that they will grow back. In the cases of palm and of cedar trees, he may dig down and uproot them, because their trunks do not replenish themselves after they are cut down, and therefore there is no reason to leave anything behind.

Notes

Onto a repulsive vessel – עַל גַּבֵּי כְּלִי מָאוּס. Rava also explains this baraita in accordance with the opinion of Rabbi Eliezer. Since Rabbi Eliezer maintains that the honey in the beehive is not classified as food but is considered attached to the ground and is not susceptible to ritual impurity, if it flows directly into a repulsive vessel nobody will think of using it as food, and it is regarded unfit for human consumption. But according to the opinion of the Rabbis, who hold that the honey is considered food from when it is in the hive, it forfeits its status of food only by becoming unfit even for consumption by a dog (Rashbam).

Onto straw – עַל גַּבֵּי קַשַּׁקְשַׁקִּים. Rav Aha disagrees with Rav Zevid, as he maintains that the honey is still considered fit for human consumption even if it flows into a repulsive vessel. It becomes unfit to serve as food only if it flows onto straw and wood pieces, as it would then be impossible to gather the honey and separate it from the straw (Rashbam).

Resolve the difficulty and answer like this – יִפְסְלֹ לְךָ בִּגְוָה. Rava explains that the first statement of the baraita: Honey in one’s beehive is not considered either food or liquid, is then clarified by the continuation of the baraita, and means that it is not considered either food or liquid even if one intends to use it as food or liquid. This is in accordance with the opinion of Rabbi Eliezer that honey is considered as though it is attached to the ground, and therefore it does not matter whether one intended to use it as a food or liquid (ToSofor; Rambam).

Shoots [gerofyot] – גְּרוֹף יוֹתֵר. According to some commentaries, gerofyot means shoots or branches (Rashbam; RId). Others explain that the buyer leaves the trunk at a height of two fists [gerofyot], which are equal to two handbreadths (Rashi on Bava Kamma 8a; Rabbeinu Gershon Meir HaGola; Rambam’s Commentary on the Mishna). Alternatively, this refers to two knots on the tree from which branches grow (Ri Migrah; Ramah).

Language

Straw (kashkashin) – קַשַּׁקְשַׁקִּים. Some explain that this refers to the plant’s roots, which are removed by hoeing (Av Ashkenaz).

Halakha

One who buys a tree from another for felling – רכש רכש. The baraita notes: If one buys an untrimmed sycamore for felling, he leaves three handbreadths of the trunk and cuts off the rest. If the sycamore has been cut down before, he is required to leave only two handbreadths. With regard to all other trees, he leaves only one handbreadth. In the case of reeds and grapevines, he may cut from above the knot, while the knot itself belongs to the seller (Sina). One who buys cedar and palm trees may cut down everything, and even dig and uproot them, because even if he does not cut down the entire tree it will not grow again. If the cedar is one of the types that do grow back, he must leave one handbreadth and cut above that point, as with other trees (Rambam Sefer Kinyan, Hilkhot Mekhira 23:15 and Maggid Mohne there; Shulhan Arukh, Hoshen Mishpat 216:14).
An untrimmed sycamore during the Sabbatical Year – The Gemara asks: And do we require an untrimmed sycamore to be cut a minimum of three handbreadths above the ground for it to grow back? And the Gemara raises a contradiction from a mishna (Shavuot 4:5): One may not fell an untrimmed sycamore during the Sabbatical Year because it is considered work, as it promotes the growth of the tree.

The Gemara asks: And do we require an untrimmed sycamore to be cut a minimum of three handbreadths above the ground for it to grow back? And the Gemara raises a contradiction from a mishna (Shavuot 4:5): One may not fell an untrimmed sycamore during the Sabbatical Year because it is considered work, as it promotes the growth of the tree.

The mishna continues. Rabbi Yehuda says: It is prohibited for one to fell the tree during the Sabbatical Year in its usual manner; rather, he must cut the tree ten handbreadths above the ground, or raze the tree until it is even with the ground. Neither of these methods promote the growth of the tree; in fact, they damage it. It can be inferred from here that it is only cutting the sycamore until it is even with the ground that is harmful for it, and it does not grow again. Cutting in another manner is beneficial for it, even if it is cut less than three handbreadths from the ground.

Abaye said that the mishna should be understood as follows: Cutting down a sycamore from a height of three handbreadths is beneficial for it, whereas cutting it so that it is even with the ground is certainly harmful for it and is permitted during the Sabbatical Year. Cutting it down from this point onward, i.e., between the ground and three handbreadths, is neither very harmful for it nor particularly beneficial for it. With regard to the Sabbatical Year, we perform only a matter that is certainly harmful to it, so as to avoid enhancing it. With regard to buying and selling, we perform only a matter that is certainly beneficial for it, as the seller intended to sell the sycamore in such a manner that the tree would grow again. The baraita teaches: In the case of palm and cedar trees, a buyer may dig down and uproot them, because their trunks do not replenish themselves after being cut down. The Gemara asks: And is it correct with regard to a cedar that its trunk does not replenish itself? But didn’t Rabbi Hyya bar Lulyani teach: What is the meaning of that which is written: “The righteous shall flourish like the palm tree; he shall grow like a cedar in Lebanon” (Psalms 92:13)? If “palm tree” is stated, why is “cedar” stated? And if “cedar” is stated, why is “palm tree” stated? What is added by this double comparison?

Rabbi Hyya bar Lulyani explains: Had the verse stated only “cedar” and had not stated “palm tree,” I would have said that just as a cedar does not produce fruit, so too, a righteous person does not produce fruit, i.e., he will have no reward in the World-to-Come. Therefore, it is stated: “Palm tree,” which is a fruit-bearing tree.

And had the verse stated only “palm tree” and had not stated “cedar,” I would have said that just as with regard to a palm tree its trunk does not replenish itself after being cut down, so too, in the case of a righteous person, his trunk does not replenish itself, i.e., he will be unable to recover from misfortune. Therefore, it is stated: “Cedar,” to indicate that just as the trunk of the cedar replenishes itself, so too, the righteous will thrive again. This demonstrates that the trunk of a cedar does grow again.

Because it is considered work – It is prohibited to work the land during the Sabbatical Year, apart from work that serves to maintain existing trees. One may not improve them or cause them to grow larger. Since the Torah states explicitly: “You shall not prune your vineyard” (Leviticus 25:4), and pruning grapevines causes them eventually to grow, it is prohibited to trim the trunk of a sycamore for the same reason.

With regard to buying and selling – A buyer may not cut an untrimmed sycamore below three handbreadths from the ground, as the seller wants to retain for himself enough of the tree that it will grow again (Rashbam). A righteous person does not produce fruit – Rashbam notes: One might have thought that a righteous person is rewarded for his actions only in this world, but receives no reward in the World-to-Come (Rashbam; Rabbeinu Gershon Meor HaGola), or even that he receives no reward at all (Rashbam).

His trunk does not replenish itself – There are different explanations of the idea of a replenishing trunk in the context of righteous individuals. It might be referring to a child who acts in a manner similar to his parent (Rashbam; Rabbeinu Gershon Meor HaGola), or it might mean that even if a righteous individual stumbles he will rise again (Rashbam). Alternatively, a righteous person receives reward in this world, but the principal reward remains for him in the World-to-Come. Others claim that this refers to the immortality of the soul, which continues to exist in the World-to-Come (Maharsha).
The Gemara answers: Rather, with what are we dealing here? We are dealing with other types of cedars, as the trunks of certain species do not grow back after the tree is felled. This is in accordance with the opinion of Rabba bar Rav Huna. As Rabba bar Rav Huna says that they say in the school of Rav: There are ten types of cedars; as it is stated: "I will place in the wilderness the cedar [erez], the acacia tree [shittim], and the myrtle [hadass] and the pine tree [ets shemen]; I will set in the desert the juniper [berosha], the teak [tida], and the cypress [te’asah] all together" (Isaiah 41:19). The Gemara elaborates: Erez means cedar; Shittim means acacia tree; Hadass is the myrtle; Ets Shemen is the baismat tree; Berosha means juniper; Berati is the teak; and Te’asah is the cypress.

The Gemara asks: But these are seven species of cedar, not ten. When Rav Dimi came from Eretz Yisrael to Babylonia he said: They added to the list of cedars allonim, almonim, and almugim. Allonim refers to pistachio trees [butnei]; Almonim are oaks [balutei]; and Almugim refers to coral trees [kasita]. There are those who say that the other three are as follows: Aronim, armonim, and almugim. Aronim refers to laurel trees [arei], Armonim to plane trees [dulevei], and Almugim to coral trees [kasita].
Talmud, in tractate Tema is stated in the Torah (Deuteronomy 26:1–11) and is called First fruits. From the fact that the Temple in Jerusalem received a small amount of first fruits, one-third of the harvest, before the Temple was destroyed, it is separated from the teruma and is known as the first fruits.

And if the trees died he has possession of the ground. In fact, one might have thought that his acquisition of the ground is due to the trees. However, this is not so from the halakha as it was sold along with the trees. If they grew, he may cut down their branches, as it is sold as a piece of land along with the trees, not his entire field. And that which grows out of the trunk and out of the roots is his, i.e., it belongs to the owner of the trees. And if the trees died, the owner of the trees still has possession of the ground, as it was sold along with the trees.

With regard to one who buys two trees in the field of another, he brings the first fruits but does not recite the passages of thanks to God that appear in the Torah (Deuteronomy 26:1–11), as the land does not belong to him and therefore he cannot state: “I have brought the first of the fruit of the land, which You, Lord, have given me” (Deuteronomy 26:10). Rabbi Meir says: He brings the first fruits and also recites the passage.

Rav Yehuda says that Shmuel says: Rabbi Meir would obligate even one who buys fruit from the marketplace to bring first fruits, not only one who grew the fruits on his own tree. From where did he derive this halakha? From the fact that the tanna teaches an apparently superfuous mishna. Since Rabbi Meir already taught in the mishna here that the owner of two trees has possession of the ground, isn’t it obvious that he brings first fruits and recites the passage? What is added by his statement in the mishna in Bikurim?
Rather, learn from the mishna in Bikkurim that Rabbi Meir would obligate even one who buys fruit from the marketplace to bring first fruits to the Temple. Rabbi Meir is saying that even if the halakha is in accordance with the opinion of the Rabbis that one who buys two trees does not own the ground between them, he still must bring the first fruits and recite the passage of thanks.

The Gemara asks: But isn’t it written: “Which you shall bring in from your land” (Deuteronomy 26:2)? This verse indicates that the fruit must be the produce of your land, not land that belongs to another. The Gemara answers: That verse serves to exclude land that is outside of Eretz Yisrael, which is not the land of the Jewish people. It does not exclude land that does not belong to that specific individual.

The Gemara asks: But isn’t it written: “The choicest first fruits of your land you shall bring” (Exodus 23:19)? The Gemara answers: This serves to exclude fruit bought by a Jew that was grown on the land of a gentile in Eretz Yisrael. The Gemara asks: But isn’t it written: “I have brought the first of the fruit of the land, which You, Lord, have given me” (Deuteronomy 26:10)? If he purchased the fruit, then the land on which it grew was not given to him by God. The Gemara answers that the phrase “which You have given me” can mean that You have given me money, and with that money I bought this fruit.

Rabba raises an objection to the opinion of Shmuel from a baraita: One who buys one tree in the field of another brings first fruits but does not recite the passage, as he did not acquire any land; this is the statement of Rabbi Meir. This is a conclusive refutation of Shmuel’s opinion, as he said that according to Rabbi Meir even one who simply purchases fruit is obligated to bring first fruits to the Temple.

Apropos the discussion of the obligation to bring first fruits of one who buys a tree in the field of another, Rabbi Shimon ben Elyakim said to Rabbi Elazar:

**HALAKHA**

One who buys fruit from the marketplace – חַלֹּקָה פְּרוֹת מֵעָלֶה יְתֵירָא: One who buys detached fruit and the land where it grew brings the first fruits to the Temple, as he owns both the land and its fruit. If he bought only the fruit he does not bring first fruits, even if they were attached to the tree, as he does not own the land. Similarly, the seller does not bring the first fruits; as he does not own the fruit. If the seller repurchased the fruit from the buyer, he does bring the first fruits to the Temple, since he owns the land, as stated in the Jerusalem Talmud (Bikkurim 16; Rambam Sefer Zera’im, Hilkhot Bikkurim 2:4).

Outside of Eretz Yisrael – חַלֹּקָה נְוֵיה: By Torah law, the mitzva of first fruits applies only in Eretz Yisrael. By rabbinic law it also applies to some of the area of present-day Jordan, as well as Syria. If one brings first fruits outside of Eretz Yisrael, they do not have the halakhic status of first fruits (Rambam Sefer Zera’im, Hilkhot Bikkurim 2:5).

Outside of Eretz Yisrael, the purchase of fruit is considered as if it was purchased in Eretz Yisrael. Therefore, if one buys detachable fruit in Eretz Yisrael and takes it to the marketplace in order to sell it, it becomes forbidden because it was purchased in Eretz Yisrael, as the Gemara explains here (Kesef Mishne, Sefer Zera’im 15a).

Background

Conclusive refutation (teyun): An amoraic statement can be refuted on the basis of a tannaitic source that contradicts the statement of the amora. The word teyun is one of several terms based on the same Aramaic root. For example, where one amora raises an objection to the opinion of another amora by citing a tannaitic source, the expression used is eitzor, meaning one Sage raises an objection to another Sage’s opinion. Where an amora raises an objection against an unattributed amoraic opinion by citing a tannaitic source, the expression employed is motiv, i.e., a Sage raised an objection. In the case cited here, where the Gemara itself raises the objection to the statement of an amora by citing a tannaitic source, the expression used is motive. When there is no response to the objection, it is deemed a conclusive refutation and the term teyun is used; often it is repeated both before and after the name of the amora, effectively disqualifying his opinion.
What is the rationale of Rabbi Meir that in the case of one tree, an individual is obligated to bring first fruits but does not recite the passage, and what is the rationale of the Rabbis that in the case of two trees, an individual is obligated to bring the first fruits but does not recite the passage? If one owns the ground and is obligated to bring the first fruits to the Temple, he should also recite the passage of thanks. If he does not own the ground and therefore is not obligated to recite the passage, why does he bring the first fruits to the Temple? Rabbi Elazar said to Rabbi Shimon ben Elyakim: Do you ask me publicly, in the study hall, about a matter for which the early Sages did not give a reason, in order to embarrass me? In other words, I do not know the reason, as not even the early Sages explained this matter.

Rabba said: What is the difficulty? Perhaps Rabbi Meir is uncertain, in the case of an individual who purchases one tree, whether or not the buyer owns the ground, and the Rabbis are uncertain, in the case of an individual who purchases two trees, whether or not the buyer owns the ground. Due to this uncertainty, the owner of the tree must bring the first fruits to the Temple, as he might be obligated in this mitzva. He does not recite the passage of thanks because it is not definitely established that he is obligated to bring the fruits.

The Gemara asks: And is Rabbi Meir really uncertain whether the buyer owns the ground? But it teaches: Since he did not acquire any land; this is the statement of Rabbi Meir. Rabbi Meir states definitively that the owner of the tree does not own the ground. The Gemara answers: Say that the baraita should be emended as follows: Perhaps he did not acquire any land.

The Gemara asks: But let us be concerned that perhaps these fruits are not first fruits, and he is bringing non-sacred fruit to the Temple courtyard, which is prohibited. The Gemara answers: The case is where he consecrates them. The Gemara asks: But the priest is required to eat first fruits, and he cannot do so if they are consecrated. The Gemara answers: The case is where the priest redeems them. The Gemara asks: But perhaps they are not first fruits, and thereby he removes them from the obligation of teruma and tithes, as one does not separate teruma and tithes from first fruits. The Gemara answers: The case is where he separates teruma and tithes from the fruits, due to the uncertainty over their status.

HALAKHA

In the case of two trees, etc. — If one buys two trees in a field belonging to another, he brings the first fruits of the trees to the Temple but does not recite the passage of thanks. Beforehand, he must consecrate the fruits for Temple maintenance to ensure that he is not bringing non-sacred fruit to the Temple courtyard. He also separates tithes, but gives them only to priests, in case the fruits are first fruits that may be eaten only by priests (Rambam Sefer Zera'im, Hilkhot Bikkurim 4:4).

BACKGROUND

Teruma — Ṭullan ber: Whenever this term appears without qualification it is referring to teruma gedolá, the portion of the produce designated for the priest. The Torah commands that “the first fruit of your oil, your wine, and your grain” be given to the priest (Numbers 18:12). The Sages extended the scope of this mitzva to include all produce; the mitzva applies only in Eretz Yisrael. After the first fruits have been separated, a certain portion of the produce must be set aside for the priests. The Torah does not specify the amount of teruma that must be given; one may theoretically fulfill his obligation by separating even a single kernel of grain from an entire crop. The Sages established the following measures: One-forth for a generous gift, one-fiftieth for an average gift, and one-sixtieth for a miserly gift. Nowadays, teruma is not given to the priests because they have no definite proof of their priestly lineage. Nevertheless, the obligation to separate teruma still applies, although in practice only a small portion of the produce is separated.
The Gemara asks: Granted, the teruma gedola that he separates from these fruits he gives to a priest,⁷ and the priest may partake of it, as it has the halakhic status of either first fruits or teruma gedola, both of which are eaten by a priest. It is understood with regard to the second tithe⁸ as well; he gives it to a priest, who eats it in Jerusalem, either as first fruits or as second tithe. If it is the third or the sixth year of the Sabbatical cycle, when instead of second tithe one is obligated to give the poor man’s tithe,⁹ here too, he gives it to a poor priest, who eats it as either first fruits or poor man’s tithe. But with regard to first tithe,¹⁰ which is given to a Levite, to whom can he give it? A Levite may not eat first fruits.

The Gemara answers: The case is where he gives it to a priest, in accordance with the opinion of Rabbi Elazar ben Azarya. As it is taught in a baraita: Teruma gedola is given only to a Levite; this is the statement of Rabbi Akiva. Rabbi Elazar ben Azarya says: First tithe may also be given to a priest.¹¹ The Gemara asks: But perhaps they are in fact first fruits and require recitation¹² of the passage of thanks, and yet the owner does not recite it due to the uncertainty. The Gemara answers: The recitation is not indispensable, i.e., one can perform the mitzva of bringing first fruits without the recitation.

The Gemara asks: And is the recitation not indispensable? But doesn’t Rabbi Zeira say in the context of offerings: For any measure of flour that is suitable for mixing¹³ with oil in a meal-offering, the lack of mixing does not invalidate the meal-offering. Even though there is a mitzva to mix the oil and the flour ab initio, the meal-offering is fit for sacrifice even if the oil and the flour are not mixed. And for any measure of flour that is not suitable for mixing with oil in a meal-offering, the lack of mixing invalidates the meal-offering. The principle is: Ab initio requirements prevent the fulfillment of a mitzva in situations where they are not merely absent but impossible. Accordingly, first fruits that are unfit for recitation should not be brought to the Temple.

Second tithe — שכר על teruma תרומה. Second tithe is one-tenth of the produce that remains after teruma and first tithe have been separated. Second tithe is separated during the first, second, fourth, and fifth years of the Sabbatical cycle. After the second tithe is set aside, it is brought to Jerusalem to be consumed there by its owner. If the journey to Jerusalem is too long, so that it would be difficult to carry all the second tithe produce there, or if the produce becomes ritual impure, it can be redeemed for an equivalent sum of money. If the owner redeems his own produce, he is obligated to add one-fifth of its value. This redemption money is brought to Jerusalem, where it can be spent only on food. Nowadays, as people are considered ritually impure, one redeems the second-tithe produce for a small amount of money.

Poor man’s tithe — שכר על teruma תרומה. This is a tithe set aside from agricultural produce and distributed to the poor. During the third and sixth years of the Sabbatical cycle, after the teruma and the first tithe have been set aside, one-tenth of the remaining produce is then set aside and distributed to the poor. This tithe is called the poor man’s tithe. During the other years of the Sabbatical cycle, second tithe is set aside, not poor man’s tithe. Poor man’s tithe is not sacred, but if it has been set aside the produce is deemed unhitched produce (tevel) and may not be eaten.

First tithe may also be given to a priest — שכר על teruma תרומה. According to the Rashbam’s version of the text, the Gemara states: First tithe is given to the priest. The Rashbam explains that this is referring to the period after Ezra penalized the Levites for not ascending with him to Jerusalem. According to Rabbi Elazar ben Azarya, he punished them by instituting that they would receive no tithes, which would all be given to the priests. By contrast, most early commentators explain that Rabbi Elazar ben Azarya and Rabbi Akiva are disagreeing as to what is the halakha by Torah law. They disagree with regard to whether priests are included in the category of Levites, as priests; too, descend from the tribe of Levi (Ramban, Tosafot).

The commentators note that the first tithe must be given to Levites to separate tithes from other fruits to exempt these fruits, on the condition that these fruits are not first fruits (Tosafot). They add that this solution is necessary according to the opinion of Rabbi Meir, as Rabbi Meir holds in accordance with the opinion of Rabbi Akiva that first tithes can be given only to a Levite. Some explain that the Gemara did not find it necessary to suggest this option, as the suggested resolution works well for the majority opinion of the Rabbis (Ramban).

For any measure of flour that is suitable for mixing, etc. — שכר על teruma תרומה. This halakha was stated with regard to one who brings a meal-offering of more than sixty issur of flour. The Sages require it to be divided into two separate offerings, as it is too large to be mixed with the amount of oil that would be required for such a quantity. In this context, Rabbi Zeira says that although there is no requirement to mix the flour and oil, since an offering that has not been mixed is valid, it must be suitable to be mixed thoroughly. If it is impossible in practice to mix the meal-offering, it is invalid.

This principle is subsequently applied to other areas of halakha, i.e., there are cases in which part of a mitzva must be potentially feasible, despite the fact that this procedure is not indispensable to the rite. The reasoning is that if it is impossible to perform that part of the mitzva, it is as though the individual actively eliminated that aspect of the mitzva. In the Jerusalem Talmud this principle is explicitly applied to the recitation of the passage of first fruits.
Harvested the fruits and sent them – בין שני אילנות וכופ. The passage is not recited until the taking and the bringing of the first fruits are performed by one person, and that is not the case here. Rav Aḥa, son of Rav Avya, said to Rav Ashi: Since the passage is composed of verses, let him read them. What is objectionable about reciting verses from the Torah?

Rav Ashi said to him: The problem is due to the fact that this practice has the appearance of falsehood, because he issues a declaration before God that is possibly untrue, as he might not own the ground. Rav Mesharshiyya, son of Rav Hyya, said: The declaration is not recited lest he come to remove the fruits from their obligation of teruma and tithes, if they are treated entirely as first fruits. For this reason one does not recite the passage, to ensure that their unique status is maintained.

The mishna teaches: With regard to one who buys two trees in the field of another, if the trees grew, the owner of the field may not cut down their branches. The mishna further teaches: That which grows out of the trunk belongs to the owner of the tree, but that which grows out of the roots belongs to the owner of the ground. The Gemara asks: What are the circumstances in which something is considered to be growing out of the trunk, and what are the circumstances in which it is considered to be growing out of the roots?

Is composed of verses – הישנהא טרומתocation. It is true that one must be careful not to take God’s name in vain. Yet, as the declaration of first fruits is composed of complete verses from the Torah, it is unclear why one should not say them, as it is always permitted to recite verses from the Torah.

That it has the appearance of falsehood – והאמר ביבהל. Since he recites the verses in the Temple while bringing the first fruits, it is clear that he is reciting them as relating to his bringing the first fruits, not merely to recite verses from the Torah. For this reason, it has the appearance of falsehood, which one must take care to avoid when standing and issuing a declaration before God.

Lest he come to remove the fruits – והאמר ביבהל. The concern is that someone else might see him treating the fruits, whose status is uncertain, as first fruits, and later, when the other person finds himself in a similar situation, he will assume that the fruits have the status of first fruits in every respect and will not separate teruma and tithes from them (Rashbam). Alternatively, this refers to the owner of the fruits himself: if he does not distinguish between these and fruits that are definitely first fruits, in the future he will not be concerned that they might not be first fruits, and he will not separate tithes (Rabbeinu Gershom Meor HaGola).

The Gemara answers: The case is where he renders them exempt from the obligation of recitation, in accordance with the opinion of Rabbi Yosei bar Hanina, who says: If one harvested the fruits and sent them in the possession of an agent, and the agent died on the way, the owner or any other person brings the first fruits but does not recite the passage of thanks. What is the reason? As it is written: And you shall take, and you shall bring. The Gemara is citing from the following verse with a slight variation: “And you shall take of the first of all the fruit of the ground, which you shall bring in from your land that the Lord your God gives you” (Deuteronomy 26:2).
Rabbi Yoḥanan said: With regard to anything that sees the face of the sun, i.e., which is visible and above ground, this is considered to be growing out of the trunk. And with regard to that which does not see the face of the sun but is concealed in the earth, this is considered to be growing out of the roots.

The Gemara asks: But if everything that is visible belongs to the owner of the tree, no matter how close it is to the ground, let us be concerned that perhaps the land is covered with sediment from flowing water, and some of the tree’s trunk will be covered, in which case the branches that grow from the trunk will appear as though they are separate trees; and the owner of the trees will say to the owner of the field: You actually sold me three trees and I therefore have ownership over the ground. Rather, Rav Naḥman said: That which grows from the trunk belongs to the owner of the tree, but he must cut it down. And Rabbi Yoḥanan himself likewise said: The owner of the tree must cut it down. 109

Rav Nahman said: We hold by tradition that a palm tree bought from another has no trunk. Rav Zevid thought to say this means that the owner of the palm tree has no right to that which grows from the trunk. 10 The reason is that since it stands ready to be dug up and uprooted, as when the tree dies its owner is not entitled to plant another in its place, he diverts his mind from that which grows from the trunk.

Rav Pappa objects to this: But this is comparable to one who buys two trees in a field belonging to another, as the trees stand ready to be dug up and uprooted because their owner has no right to plant new trees in their place when they die; and yet it is taught in the mishna that he has the right to that which grows from the trunk. Rather, Rav Pappa said: The statement of Rav Nahman means that the owner of a palm tree, in contrast to owners of other types of trees, has no right to that which grows from the trunk, since a palm tree does not produce branches from its trunk. 11

That which grows out of the trunk...he must cut down – הַיְּיָמִי, מִשְׁרַשׁ. If one bought two trees in a field belonging to another, he is obligated to cut down without delay any branches that later grow from the trunk or from the roots (Tah). This is due to a concern that the new branches will appear like separate trees, allowing the owner of the tree to claim that he purchased three trees and therefore has ownership of the ground. When he cuts down the branches, those branches that grow from the trunk, i.e., the visible ones, belong to him, while the branches that grow from the roots, which are concealed in the earth, belong to the owner of the field. The halakha is in accordance with the opinion of Rabbi Yoḥanan (Rambam Sefer Kinyan, Hilkhot Mehikha 246:7; Shulḥan Arukh, Hoshen Mishpat 216:10).

A palm tree – מִיָּה: A palm tree does not usually produce shoots from its trunk. Therefore, anything that grows from the tree belongs to the owner of the field, even if it does not appear to grow from its roots (Rambam Sefer Kinyan, Hilkhot Mehikha 247; Shulḥan Arukh, Hoshen Mishpat 216:10, and see Sna there).

NOTES

109 Some commentators explain simply that anything that grows from a part of the tree that is visible is considered to grow from the trunk, whereas that which grows from parts that are concealed in the ground is classified as growing from the roots (Rashbam). An alternative version of the text states: This is the trunk, instead of: This is the trunk. The Ramban explains that if certain roots are visible, that which grows from them is considered part of the trunk, not part of the roots.

11 Since it does not grow from the trunk – מִן הַגֶּזַע. A palm tree usually does not produce new branches after being cut down. Its producing new branches is such a rare occurrence that no one takes this possibility into account (Rashbam; Ramah). Similarly, if the tree is cut down its buyer cannot say to the seller that he should leave the trunk in case it grows new branches, as this would almost certainly not happen (Rabbeinu Gershon Meor HaGola). Alternatively, as it does not produce branches from its trunk, anything that grows from the palm tree is considered as growing from its roots, even though it appears to grow from the trunk (Ri Migash; Ramah; R‘ava). Yet others explain that Rav Pappa is not establishing a halakha but is instead explaining a natural occurrence. The consequence of his statement that the palm tree does not produce branches from its trunk is that the general halakha in this case is not relevant with regard to a palm tree (Ramian, citing Rifi).
Since a palm tree does not grow again once it is cut down, the owner is composed of verses – יָ וֹץ שֶׁרוֹאֶה ׳ְּנֵי חַמָּה וְכֵופ
does not derive benefit from them, it is not permitted for him to leave them on the tree. Some commentators note that the owner of a palm tree must purchase the right to pass through the other field. Moreover, if he does not have as basic a right as a path to his field, he certainly does not have the right to an area of land sufficient for the gatherer and his basket, which is less essential, as a gatherer could climb up the tree or gather the fruit from underneath it (Rashbam). Alternatively, if he receives no path despite the fact that this would cause no loss to the owner of the field, who could still sow the land, the buyer certainly does not receive an area of land for gathering his fruit, as the owner of the field then be unable to utilize that land (Ri Migash).

From the statement of our teacher – דְּאָמַר שְׁמוּאֵל מַרְבּוּ תּוֹרָה: This is referring to Rabbi Elazar, who indicated that the ground acquired by the owner of the trees is considered a separate field. One can infer from here that if the buyer bought only two trees and did not acquire the ground beneath them, he has a right to a path (Rashbam; Ramah). Other commentators contend that Rabbi Elazar did not say that the ground acquired by the owner of the trees is considered a separate field. Rather, the statement: The ground he acquired along with the trees is considered another land, was issued by the Gemara to explain how Rabbi Zeira reaches his conclusion (Rabbeinu Tam). Alternatively, the Gemara infers from the case of a sale of two trees, where the owner of the field may not cut down extending branches, that the owner of the trees has a right to an area sufficient for a gatherer of fruit and his basket. Since Rabbi Elazar says that the right to a path is more fundamental than the privilege of standing by the tree to collect the fruits, it follows that the buyer in this case also has a right to a path (Tosafot). Some commentators note that Tosafot accept a version of the text that omits the explanation that the ground acquired by the owner of the trees is considered a separate field, as this point is entirely unnecessary according to their interpretation (Maharshal).

The Gemara asks: But according to the opinion of Rav Zevid, who maintains that Rav Nahman is referring to all types of trees, does the mishna as referring to a situation where the owner of the trees bought the trees for five years and stipulated that he may plant new trees in place of the original trees in the event the original ones are cut down.

The Gemara answers: Rav Zevid interprets the mishna as referring to a situation where the owner of the trees bought the trees for five years and stipulated that he may plant new trees in place of the original trees in the event the original ones are cut down.

The Gemara asks: And how much of the field does he acquire? Rabbi Hiyya bar Abba says that Rabbi Yohanan says: This buyer has acquired the ground along with the trees, and the area between them, and with regard to the space outside of the trees and their branches,

He has no path, etc. – דְּאָמַר לֵיהּ רַבֵּיהוּ, דְּאָמַר שְׁמוּאֵל מַרְבּוּ תּוֹרָה: Since he acquires the ground along with the trees, it is as though he owns a field adjacent to the field of another. In order to access his field he must purchase the right to pass through the other field. Moreover, if he does not have as basic a right as a path to his field, he certainly does not have the right to an area of land sufficient for the gatherer and his basket, which is less essential, as a gatherer could climb up the tree or gather the fruit from underneath it. Alternatively, if he receives no path despite the fact that this would cause no loss to the owner of the field, who could still sow the land, the buyer certainly does not receive an area of land for gathering his fruit, as the owner of the field would then be unable to utilize that land (Ri Migash).

In the case of two three trees he has a path – מַרְבּוּ תּוֹרָה: Although one who buys two trees in a field belonging to another does not acquire the ground, he is entitled to use a path in the field so that he may collect the fruits. The halakha follows the inference of Rabbi Zeira. The buyer also receives an area sufficient for a gatherer of fruit and his basket to stand, as well as the ground under the trees, so that he can collect his fruit. The Tur, citing Tosafot, rules that he can prevent the owner of the field from sowing this land (Shulhan Arukh, Hoshen Mishpat 216:5).

The Gemara elaborates: He has no path, even though he has no other means of gaining access to the trees, as the ground he acquired along with the trees is considered another land and is not part of the rest of the field. Why, then, would he have possession of an area for a gatherer and his basket?

Rabbi Zeira says: From the statement, i.e., the objection, of our teacher, we learn that it is in the case of three trees that the owner of the trees has no path, as the buyer acquired a separate piece of land along with the trees. But in the case of two trees the buyer has a path, as he says to the owner of the field: My trees are standing on your land, and as I am allowed to use your field to tend to my trees I have the right to walk through your land to reach them.

Rav Nahman bar Yitzĥak said to Rava: Shall we say that Rabbi Elazar does not accept the opinion of Shmuel, who was his teacher? As Shmuel says: The halakha is in accordance with the opinion of Rabbi Akiva, who says: One who sells, sells generously. According to Rabbi Akiva, one sells in a manner that is advantageous for the buyer, and is presumed to have included in the sale even items that were not explicitly specified. In this case, as he has sold a tree that remains on his property, the seller grants the buyer the right to access its tree.
Rava said to him: Even if Rabbi Elazar himself agrees with Rabbi Akiva, the mishna cannot be explained in accordance with the opinion of Rabbi Akiva. Rather, the mishna must be in accordance with the opinion of the Rabbis, who hold that one who sells does so sparingly, and the difficulty that Rabbi Elazar raised against Rabbi Yohanan is predicated on the fact that the mishna is in accordance with the opinion of the Rabbis.

From where does Rava derive that the mishna is not in accordance with the opinion of Rabbi Akiva? From the fact that the mishna teaches: If the three trees grew, the owner of the land may cut down the branches that extend into his field. And if it enters your mind that the mishna is in accordance with the opinion of Rabbi Akiva, why may he cut them down? Doesn’t Rabbi Akiva say that one who sells, sells generously?

Doesn’t Rabbi Akiva concede in the case of a tree that leans out into the field of another, in which the owner of the other field cuts down the branches until the full height of an ox-goad, the handle that protrudes over a plow? Since the extending branches impede his efforts to plow his field, it is permitted for him to cut them down. This indicates that even according to Rabbi Akiva one does not grant privileges that are detrimental to his own interests. If so, the mishna can be explained even in accordance with the opinion of Rabbi Akiva, which indicates that Rabbi Elazar does not accept his ruling.

The Gemara points out: It is taught in a baraita in accordance with the statement of Rabbi Hiyya bar Abbai: If one buys three trees in a field belonging to another, this buyer has acquired the ground that is found underneath the trees, and the area between them, and outside of the trees and their branches an area sufficient for a gatherer of figs and his basket.

Abaye said to Rav Yosef: Those areas around the trees that are designated for a gatherer of figs and his basket are used for this purpose only at specific times. Who sows that land during the rest of the year, the owner of the trees or the owner of the field? Rav Yosef said to him: You learned the answer in a mishna (99b): If one owns a garden that is surrounded by the garden of another, the owner of the inner garden has a right to a path through the outer garden. Even so, the owner of the outer garden may sow the path.

Abaye said to him: Are the cases comparable? There, in the case of the outer and inner gardens, there is no loss suffered by the buyer when the owner of the outer garden sows the path, as he can still pass through it. But here, there is a loss for the buyer, as the one who bought the trees says to the owner of the field: The fruits that fall from the trees will become soiled.

HALAKHA

Those areas designated for a gatherer...and his basket, who sows – הָא דַעְתָּךְ רַבִּי עֲ. If one buys two or three trees in a field belonging to another, neither the owner of the tree nor the owner of the field may sow the land designated for the gatherer of fruit and his basket without the permission of the other. This halakha is in accordance with the statement of Abaye. With regard to the ground between and beneath the trees, if one buys three trees he acquires this land and only he may sow this land. If one buys two trees, the owner of the tree may not sow this land, as it does not belong to him, and the owner of the field may not sow it either, as it is designated for the use of the owner of the tree (Rambam Sefer Kinyan, Hilkhat Mekhina 242; Shulhan Arukh, Hoshen Mishpat 216:6, 9).
This case is similar only to the last clause of that mishna, which states: If the owner of the inner garden is given a side path, so that he suffers a loss of some kind because he cannot take the shortest path to reach his garden, both this owner of the inner garden and that owner of the outer garden are not permitted to sow the path. Similarly, here too, neither the owner of the trees nor the owner of the field are permitted to sow the place designated for the gatherer of figs and his basket.

The Gemara comments: It is taught in a *baraïta* in accordance with the opinion of Abaye: This buyer has acquired the ground that is found underneath the trees, and the area between them, and outside of the trees and their branches an area sufficient for a gatherer of figs and his basket. And both this owner of the field and that owner of the trees are not permitted to sow it.

The Gemara inquires: And how much space must there be between the three trees for them to be considered one unit, which means that the land is acquired by the owner of the trees? Rav Yosef says that Rav Yehuda says that Shmuel says: The distance between the trees must be from four cubits to eight cubits. Rava says that Rav Nahman says that Shmuel says: It must be from eight cubits to sixteen cubits. Abaye said to Rav Yosef: Do not disagree with Rav Nahman, as we learned in a mishna in accordance with his opinion.

As we learned in a mishna (*Kilayim* 4:9): One who plants his vineyard sixteen cubits by sixteen cubits, i.e., he leaves sixteen cubits between each row of vines, is permitted to bring other species of seeds to the empty spaces between the rows and sow them there. This is not considered a violation of the biblical prohibition with regard to sowing diverse crops in a vineyard, which is one of the prohibitions of diverse kinds.

Rav Yehuda said: There was an incident in the city of Tzalmon, where one individual planted his vineyard sixteen by sixteen cubits. And he would turn the branches of two rows that were facing each other to one side, so that there was a space of sixteen cubits between the two rows, and sow the clearing. The following year he would turn the branches to the place that was sown the year before, and would sow the land that had been left uncultivated the previous year, as it had been filled with the branches from the vines. And the incident came before the Sages and they permitted it. This demonstrates that sixteen cubits between plants is required for them to be considered separate units.

Rav Yosef said to him: I do not know about this, but there was a similar incident...

**NOTES**

Sixteen cubits, etc. — ידוהי: For a grove of grapevines to be considered a vineyard with regard to the prohibition against sowing diverse crops in a vineyard, it must be in the format of a vineyard, i.e., it must consist of at least two rows, each with three grapevines, while at least two vines on each row are directly opposite each other. A single row of grapevines is not considered a vineyard. This is halakhically relevant in that one must distance other crops from a single vine only by the amount of space that is necessary to attend to the vine, which is six handbreadths according to the Rabbis or three handbreadths according to Rabbi Akiva. This mishna states that if the rows of grapevines are sixteen cubits apart, each is considered a separate row.

And he would turn, etc. — מי כלא רכוש הקדש: He would leave the space required to attend to the vines, and then plant the rest of the clearing. The reason that this owner would not sow underneath the branches, despite the fact that the roots of the rows of vines were separated by sixteen cubits from one another, is that one may not sow underneath the branches of a grapevine by rabbinic law, even if they extend far out (Tosafot, Risd).
A person may not plant, etc. — Rav Yehuda: One may not plant a tree alongside trees belonging to another, or plant a grapevine near the grapevines of another, unless he places it at a distance of four cubits, as this is the space required for plowing between the plants. If it is not the custom in that place to plow between plants it is not necessary to distance one’s plant half of this distance (Rema, citing Arub. 155:25). Others say that even greater distance is required in this case (Rema, citing Tura). If there is a fence between the two fields there is no need to preserve any distance (Rambam Sefer Kineyun, Hilkhot Shekhemim 10:18; Shulhan Arukh, Hoshen Muvrat 155:25).

One who plants his vineyard, etc. — Rabbis: If one who plants a vineyard leaves a space of at least eight cubits between each row of vines, excluding the place of the vine itself, it is permitted for him to plant other seeds inside this space at a distance of six handbreadths from the grapevines, as this is not considered a violation of the prohibition of diverse kinds. This halakha follows the opinion of Rabbi Meir and Rabbi Shimon, in accordance with the ruling in the Jerusalem Talmud. Some hold that this is the halakha in a vineyard that has two rows of vines, whereas in a vineyard containing three rows of vines the minimum distance that they can be planted close together is as we learned in a mishna (Kilayim 5:2): A vineyard that is planted in consecutive rows with less than four cubits between the rows is not classified as a vineyard, because the rows are planted too close together. This is the state-ment of Rabbi Shimon. And the Rabbis say: It is considered a vineyard, and one views the middle vines if they are not there, as they are slated to be uprooted.

In a village of shepherds — The Gemara does not provide the details of the incident that occurred in this village, nor does it explain how this serves as a proof for Rav Yosef’s opinion, specifically his ruling that eight cubits is the maximum distance. According to some commentators the incident involved one who sold three trees, and it was known that there was a space of less than eight cubits between them (Rabbi Shimon and Rabbi Shimon). Tosafot suggest other possibilities, which do not rely on the supposition that the trees were separated by less than eight cubits. One explanation is that the ruling in that incident serves as proof for the first part of Rav Yosef’s statement, that the minimum distance is four cubits, and from the fact that the minimum measurement of Rav Nahman is incorrect it is assumed that his maximum measure is also rejected. Alternatively, Rav Yehuda rules with regard to the minimum four cubits in accordance with the opinion of Rabbi Shimon, and Rabbi Shimon maintains the maximum space is eight cubits. Others suggest that this proof follows the logic stated in the continuation of the Gemara’s discussion that it is reasonable to assume the maximum space is double the minimum space (see Rambam and Riva’ad).

There is also another interpretation: Rav Yehuda said the seller must measure for each separate tree a space for the ox and its vessels, whereas in a vineyard containing three rows of vines the minimum that they can be planted close together is as we learned in a mishna (Kilayim 5:2). In a village of shepherds — the incident serves as proof for the first part of Rav Yehuda’s statement, as follows:

The Gemara comments: Granted, according to the analysis of Rav Yosef stated in accordance with the opinion of Rabbi Shimon, we hear about the maximum distance that the trees can be scattered, and we hear about the minimum distance that they can be planted close together. The distance that the trees can be scattered is that which we said, i.e., eight cubits. The minimum distance that they can be planted close together is as we learned in a mishna (Kilayim 5:2): A vineyard that is planted in consecutive rows with less than four cubits between the rows is not classified as a vineyard, because the rows are planted too close together. This is the state-ment of Rabbi Shimon. And the Rabbis say: It is considered a vineyard, and one views the middle vines if they are not there, as they are slated to be uprooted.

HALAKHA
HALAKHA

From four cubits... less, etc. – From four cubits... less, etc. – one measures the distance from the vine in the context of the prohibition of diverse kinds, where it is permitted to sow diverse kinds of plants if there is a distance of sixteen cubits, an indication that they are considered to be planted in two separate plots.

Many early commentators maintain that the sixteenth cubit is included. They explain that the measure of distance for diverse kinds is larger than in the case of sales, i.e., the cubit used for diverse kinds is slightly larger than the standard cubit (Tosafot). The commentators add that larger cubits are used with regard to diverse kinds in case one makes a mistake, whereas in the case of sales, because either the seller or the buyer will incur a loss if an incorrect measure is used, they both take care to measure carefully and therefore will use precise cubits (Ramah). Furthermore, with regard to sales it is necessary to be exact so that neither party loses out, but with regard to prohibitions the halakha is stringent to ensure that one does not commit a transgression.

And the trees – The layered branch: There are three different explanations of this term. According to some commentators, rekhuva is referring to grafting (nirkuva), and the mishna is discussing one who grafts a branch from a young grapevine onto an old grapevine. One does not measure from the contact point of the branch with the old grapevine but from its second joint (Rashbam). Others claim that rekhuva means an old grapevine (ittelva). Alternatively, rekhuva refers to layering a branch of an old grapevine and covering it with earth, so that it will strike new roots (pavarkha) and produce a new grapevine. The end of the old grapevine becomes the root of the new grapevine, which is referred to by the mishna as the second root (Tosafot; Rabbeinu Yona).

Yet others explain that rekhuva refers to a grapevine that is bent like a leg is bent at the knee (arkhuva), and does not grow straight, i.e., the vine rises a bit, becomes bent down, and grows alongside the ground, before rising in another spot. In this case, one does not measure from the first root but from the bend (Rambam; Rabban). Some infer from the mishna that one does not measure from the narrow or the wide part but from an average section (Rashbam; Rabbeinu Hananel; Ramah), while others maintain that the word: Root, proves that one measures from the thick part, from the actual root (Tosafot; Rambam; see Rabbeinu Yona).

But according to the analysis of Rav Nahman stated in accordance with the opinion of the Rabbis, we hear the maximum distance that the trees can be scattered, i.e., sixteen cubits, as in the incident in Taalmon. Concerning the minimum distance that they can be planted close together, did we hear this distance? The Gemara answers: This is based on logical reasoning; from the fact that according to Rabbi Shimon the minimum distance is half of the maximum distance, according to the Rabbis as well, the minimum distance is half of the maximum, i.e., eight cubits.

Rava says: The halakha is that one who buys three trees acquires the land if the distance between the trees is anywhere from four cubits to sixteen cubits. This ruling is a combination of the two opinions, which is favorable to the buyer. It is taught in a baraita in accordance with the opinion of Rava: How close may they be? Four cubits. And how far apart may they be? Sixteen cubits.

If one bought three trees planted in this manner, this one has acquired the land and the small trees that are between them. Therefore, if the tree dried up or was cut down he has ownership of the land. If the distance between the trees was less than this or more than this, or if he bought the trees one after the other, this buyer has not acquired either the land or the trees that are between them. Therefore, if the tree dried up or was cut down he has no ownership over the land.

Rabbi Yirmeya raises a dilemma: When one measures the distance between the trees, does he measure from the narrow place on the trunk of the tree or does he measure from the wide place? Rav Geviha of Bei Khatil said to Rav Ashi: Come and hear a proof, as we learned in a mishna (Kilayim 7:1): When one comes to measure from the layered branch of the vine he measures only from the second root, as this is the average, not the widest part of the vine.

NOTES

To sixteen – According to some commentators, this means up to but not including sixteen cubits. This ruling is derived from the halakhot of diverse kinds, where it is permitted to sow diverse kinds of plants if there is a distance of sixteen cubits, an indication that they are considered to be planted in two separate plots.

Many early commentators maintain that the sixteenth cubit is included. They explain that the measure of distance for diverse kinds is larger than in the case of sales, i.e., the cubit used for diverse kinds is slightly larger than the standard cubit (Tosafot). The commentators add that larger cubits are used with regard to diverse kinds in case one makes a mistake, whereas in the case of sales, because either the seller or the buyer will incur a loss if an incorrect measure is used, they both take care to measure carefully and therefore will use precise cubits (Ramah). Furthermore, with regard to sales it is necessary to be exact so that neither party loses out, but with regard to prohibitions the halakha is stringent to ensure that one does not commit a transgression.

And the trees – According to some commentators, this is referring to small trees, seedlings, which are not counted when calculating the distance between trees in the context of sales (Rashbam). Others explain that it is referring to barren trees that will be uprooted (Rabbeinu Yona; see Ramah).

From the narrow place – Some explain that this is referring to the narrow part of the trunk, i.e., its top, whereas the wide place refers to the widest part of the trunk. Alternatively, the narrow place is the trunk, and the wide place is the treetop (Rashbam). Others indicate that the expression: From the narrow place, means from the place where the distance between the two trees is shortest, i.e., from where their trunks are thick, whereas the wide place is from the spot where the distance is the widest, the upper part of the trunk (Rabbeinu Hananel).
Three branches from one tree – רַבּוּעַ בַּדֵּי אִילָן. Some explain that this is referring to a tree with three branches that extend away from each other in such a manner that there are at least four cubits of space between them. At some point a sandbank covered the ground, hiding their joint trunk, and therefore at the time of the sale they appear to be three separate trees (Rashbam; Ramah). Others say that this is referring to a buyer who purchased three branches, each from a separate tree, and the question is whether this is akin to buying three actual trees (Rabbeinu Gershom Meor HaGola). Alternatively, this refers to an individual who bought three separate, spread-out branches from one tree, but did not buy the tree itself (Ri Migash).

Rav Yirmeya raises a dilemma: If the owner of the field sold to someone three branches that grew from one tree, and its trunk was covered with earth so that the branches appeared to be three separate trees, what is the halakha? Are they considered three trees, which would mean that their owner acquires the ground between them?

And one situated on its border – בַּדֵּי אִילָן וְאִם לָאו. The commentators explain that as the height of the border differs from that of the field, and special halakhot pertain to the border between fields, the question arises as to whether two trees in the field combine with the third tree on its border to be considered a sale of three trees (Rambam). According to the Rashbam’s version of the text, the Gemara subsequently asks: And if you say that they are considered a unit of three trees, what is the halakha if the third tree is situated across the border, in someone else’s field?

Notes:

And one situated on its border – בַּדֵּי אִילָן וְאִם לָאו. The commentaries explain that as the height of the border differs from that of the field, and special halakhot pertain to the border between fields, the question arises as to whether two trees in the field combine with the third tree on its border to be considered a sale of three trees (Rambam). According to the Rashbam’s version of the text, the Gemara subsequently asks: And if you say that they are considered a unit of three trees, what is the halakha if the third tree is situated across the border, in someone else’s field?

Two trees in the field of one person, etc. – תֵּאֵזוּ בַּדֵּי אִילָן. According to some commentators, this is referring to one who sold two trees from his field together with another tree that he owned, along with its ground, which was situated in a field of another. The question is whether the buyer is considered to have purchased a unit of three trees (Rambam). Others claim that this is referring to one who buys two trees in a field belonging to one person, and a third nearby tree and its ground from the field of another. If so, the question is whether the seller can claim that because he sold only two trees he did not intend to sell the land between them, or whether the buyer can convincingly argue that he intended to buy three trees along with the land, and the seller must grant it to him (Rabbeinu Yehonatan of Lunel).
A pit, etc.—דב ה: If one buys three trees that are separated by a pit, a stream of water, or a public thoroughfare, he has not acquired the ground underneath and between the trees or the trees planted between them. If the trees dry out, he may not plant new ones in their place. If he wants to do so, the burden of proof rests upon the owner of the trees to prove that he has a right to the ground. Since the Gemara leaves these dilemmas unresolved, the burden of proof rests upon the claimant, as in all uncertain monetary cases (Rambam Sefer Kinyan 8:4; Shulhan Arukh Hilkhot Mekhira 24:1, 24:3; Sefer Kinyan 216:6, and see Beler HaGola and Sma).

There was a cedar between them—דב ה: If one buys three trees in a field, if he acquires the ground between the trees, he also acquires all of the trees found between them (Rambam Sefer Kinyan, Hilkhon Mekhira 24:3; Shulhan Arukh, Hoshen Mishpat 216:6, and see Beler HaGola and Sma).

In the form of a tripod—טעומא: One who buys three trees in a field acquires the ground between the trees only if the trees are planted in the form of a tripod. This is in accordance with the statement of Shmuel, as the halakha is ruled in accordance with his opinion in his disputes with Rav regarding monetary matters (Rambam Sefer Kinyan, Hilkhon Mekhira 24:3; Shulhan Arukh, Hoshen Mishpat 216:7).

Hillel raises a dilemma before Rabbi Yehuda HaNasi—דב ה: If a cedar grew between the three trees that one bought, what is the halakha? The Gemara asks: If it grew, then it emerged in his domain, as he already owns the ground, and therefore it is obvious that the cedar belongs to him. Rather, the dilemma is as follows: If, when one bought three trees, there already was a cedar between them, what is the halakha? Is it considered a division between the three trees? Rabbi Yehuda HaNasi said to him: Since he bought the trees, he has thereby acquired the cedar and acquired the land between them.

The Gemara asks: In what manner must the three trees be positioned for the buyer to acquire the ground between them? Rav says: They may be planted in a straight line, and Shmuel says: They must be planted in the form of a tripod. The Gemara notes: According to the one who says that the trees may be positioned in a straight line, all the more so one acquires the ground when the trees are planted in the form of a tripod. But according to the one who says they must be positioned in a tripod, the buyer acquires the ground only in this case; but if the trees were planted in a straight line, he does not acquire the ground. What is the reason? It is because when the trees are planted in the form of a straight line one can sow between them, and therefore the seller would not relinquish his right to the ground between the trees.

Rav Ashi raises a dilemma: In the case of a pit situated between the trees, what is the halakha with regard to the possibility that it divides between the trees, and therefore the owner of the trees does not acquire the ground? Similarly, in the case of a stream of water, what is the halakha with regard to the possibility that it divides between the trees? With regard to the public thoroughfare that divides between trees, what is the halakha? Finally, in the case of a line of palm trees, what is the halakha? No answer is found for these problems, and the Gemara states that the dilemmas shall stand unresolved.

Hillel—דב ה: Apparently, this Hillel is referring to the Sage who is sometimes called Rabbi Hillel, the grandson of Rabbi Yehuda HaNasi and the younger brother of Rabbi Yehuda Neisa. This is not the famous Hillel who engaged in disputes with Shammi. There are only a few passages that in the Talmud that refer to this Rabbi Hillel, and not many halakhot are cited in his name. It seems that he did not live a very long life, which may be the reason that so few of his statements are cited in the Talmud.
MISHNA One who sells the head of a large domesticated animal has not sold along with it the forelegs, as each part is considered important in its own right. All the more so, if one sold the forelegs he has not sold the head. Similarly, if one sold the windpipe and the lungs he has not sold the liver, despite the fact that they are sometimes attached, and if he sold the liver he has not sold the windpipe and lungs. But in the case of small domesticated animals, if one sold the head he has sold the forelegs, although if one sold the legs he has not sold the head. Likewise, if one sold the windpipe and lungs he has sold the liver, but if he sold the liver he has not sold the windpipe and lungs.

There are four basic cases with regard to sellers  and buyers. If the seller sold him wheat and said that the wheat was good, and it is found to be bad, the buyer, but not the seller, can renege on the sale. If the seller sold him what he thought was bad wheat and it is found to be good, the seller can renege on the sale but the buyer cannot. If he sold bad wheat and it is found to be good, or bad wheat and it is found to be good, neither one of them can renege on the sale, as the condition of the sale was met.

NOTES

Roman [romany] thorny shrubs – מַסְכָּנִית: An alternative interpretation of the term romany is tall [rammin] thorny shrubs (Rabbeinu Gershon Meor HaCola). In any event, the Gemara is referring to thorny shrubs whose branches have extended greatly or shrubs that have grown and look like trees (see Meiri). Some explain that here too, the bushes are planted in the form of a triangle (Ri Migash), while others claim that they could also be planted in a line, as one cannot sow between them in any case due to their thorns (Rashbam; see Ritva). The conclusion of the Gemara is that purchasing them does not include the acquisition of the ground underneath them, not only because they are insufficiently important for the ground to be considered subordinate to them (Ramah), but also due to the fact that they are grown only to be uprooted and used for kindling (Ri Migash).

Said it was good and it is found to be bad – נָעֲמָא פְּרֵי. Some commentators explain that this is not considered a mistaken transaction, which would mean that either side can renege on the sale, as the buyer wanted to buy wheat and was in fact sold wheat. Nevertheless, since there is a difference in quality it is considered exploitation with regard to the price, and therefore the buyer can renege on the sale (Rashbam). Although in certain situations involving exploitation the transaction is valid and only the difference in price is returned, specifically if the overcharge was one-sixth of the value, here there is another justification for canceling the sale, as the seller misled the buyer. Some explain that the Rashbam holds that this is an actual case of monetary exploitation, as the bad wheat is worth less than the good wheat (Rabbeinu Tam in Sefer Holilshah). Rabbeinu Tam disputes this claim, maintaining that there was no exploitation in terms of the price, as the bad wheat was sold for its real price. Rather, since everyone wants good wheat, this is considered a type of mistaken transaction, as the condition of the sale was not met. The same is true in the case of bad wheat that turned out to be good, as the seller says that the sold wheat was not the wheat that he intended to sell. Alternatively, one can simply say that in the first two cases the exploitation was more than one-sixth of the value, and therefore the transaction is nullified (Meiri).

Said it was bad and it is found to be good – נָעֲמָא פְּרֵי יָכָו. The commentators ask how the seller could make a mistake of this kind, as he supposedly knows what he is selling (Ritva). The Ritva explains that the bag was tied and the seller did not know what was inside. Alternatively, the Ritva suggests that the seller came from outside of the city, and the buyer told him that this wheat was comparable to the bad wheat sold in the city, and it turned out that the wheat was similar to the best wheat found there.
If the seller sold reddish-brown\(^n\) wheat\(^n\) and it is found to be white, or white wheat and it is found to be reddish-brown, and similarly, if he sold olive wood and it is found to be wood of a sycamore, or he sold wood of a sycamore and it is found to be wood of an olive tree, or if the seller sold him wine and it is found to be vinegar,\(^n\) or vinegar and it is found to be wine, in all of these cases both the seller and the buyer can renege on the sale. Since the sale was for a different item than that which was delivered, the transaction can be nullified even if there was no mistake with regard to the price.

### GEMARA

Rav Hisda says: If the seller sold him an item that was worth five dinars for six dinars,\(^n\) and the item became more expensive and its value stood at eight dinars, and the seller wished to return the money and cancel the sale because the item’s value had increased, who was exploited here? The buyer; therefore, the buyer, but not the seller, can renege on the sale, despite the fact that in such a situation the seller loses out. This is because

### NOTES

**Reddish-brown wheat, etc.** — הָיָה אֶרֶז בֵּינֵיהֶן

The mishna first cites an example in which the difference between the two items is minor, as reddish-brown wheat and white wheat are both good wheat, although some people prefer one to the other. The mishna continues with straightforward examples of different types of wood and substitutions between wine and vinegar. The principle is that if the sale was supposed to be of a different item, no transaction has occurred. This is in contrast to the earlier clause of the mishna with regard to the sale of good wheat in place of bad, where the transaction is effective and the discussion concerns only the details of the sale (Rashbam). The commentators note that the difference between reddish-brown wheat and white wheat goes beyond their appearance, as reddish-brown wheat produces more flour, but of a lower standard, than that which is produced by white wheat (Nimmuke Yosef).

**Reddish-brown wheat and it is found to be white…wine and it is found to be vinegar, etc.** — שְׁוֵה חָמֵשׁ בְּשֵׁשׁ

In cases where the halakha is that only the seller or the buyer or neither can renege on the transaction, this is because the seller sold the same type of item he had promised, albeit of a better or worse quality than he had specified. But if the seller said that he was selling one type of item and actually sold a different type, then this is not considered a sale and either party can renege on it. For example, if the seller sold white wheat instead of red, or the reverse, either party can renege on the sale. Even if the second item is better and more expensive than the item promised at the time of the sale, either party can say that he was interested only in the agreed-upon item (Rambam Sefer Kinyan, Hilkhot Mekhira 17:2; Shulhan Arukh, Hoshen Mishpat 233:1, and Sm’ha there).

**Worth five for six — שְׁוֵה חָמֵשׁ בְּשֵׁשׁ**

In a case where a seller sold an item for more than an additional one-sixth of its value, and the item appreciated in value so that it was now worth more than the price for which it was sold, only the buyer can renege on the sale. This is because if there had been no exploitation the seller could not have reneged on the sale, and he should not benefit from his transgression. The halakha is in accordance with the opinion of Rav Hisda. If the seller sold an item worth five dinars for six, the halakha is in accordance with the opinion of Rava elsewhere (Bava Metzia 49b) that even the buyer cannot renege on the sale unless he bought an item for more than an additional one-sixth of its value. If he bought it for precisely one-sixth more than its value, the seller must pay back the additional sixth (Rambam Sefer Kinyan, Hilkhot Mekhira 12:13, 15; Shulhan Arukh, Hoshen Mishpat 227:10, 12).

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The buyer can say to the seller: If you had not exploited me,\(^n\) you would not be able to renege on the sale, and I would receive the profit. Now that you have exploited me, can you renege on the sale and benefit? And similarly, the tanna of the mishna also taught:\(^n\) If the seller sold him wheat while claiming that the wheat was good, and it is found to be bad, the buyer can renege on the sale. This implies that the buyer can renege but not the seller, even in a situation where the seller would want to renege on the sale, e.g., if the item became more expensive.
And similarly, Rav Hisda says: If he sold him an item that was worth six dinars for five dinars, and its price was reduced and its value now stood at three dinars, who was exploited in this case? The seller, therefore, the seller, but not the buyer, can reneg on the sale. The reason is that the seller can say to him: If you had not exploited me, you would not be able to reneg on the sale. Now that you have exploited me, can you reneg on the sale? And similarly, the faņna of the mishna also taught: If the seller sold him bad wheat and it is found to be good, the seller can reneg on the sale, but not the buyer.

The Gemara asks: What is Rav Hisda teaching us? It is all already taught in the mishna. The Gemara answers: If the halakha were derived from the mishna alone, I would say that perhaps in the cases brought by Rav Hisda, both the buyer and the seller are able to reneg on the sale. The reason is that this is a case of exploitation, as the item was sold for more than its value, and therefore as long the buyer can reneg on the sale, the sale is not complete. Consequently, as the seller lost out as well, he can also reneg on the sale. And as for the mishna, it comes to teach us that if the seller said that he is selling good wheat and it is found to be bad, the buyer can reneg on the sale, as this is considered a case of exploitation.

It is necessary to teach this, as it might enter your mind to say that this is not a case of exploitation because it is written: “It is bad, it is bad, says the buyer; but when he is gone his way, then he boasts” (Proverbs 20:14). In other words, it is the usual manner of sellers to praise their merchandise, while buyers disparage it. Therefore, the mishna teaches that the buyer can reneg on the sale if the item was found to be bad, and the seller can change his mind if it was found to be good.

What is he teaching us – לְפִיכְךָ אָמִינָא: What does Rav Hisda add to the mishna, which clearly intends to teach the principle that the one who is guilty of exploitation can never reneg on the sale? It is true that when the mishna lists several cases not every example includes a novel concept, but even so, some of the cases must be teaching a novelty. One cannot explain that the mishna here teaches the latter clause, that of one who sells bad wheat and it is found to be bad, or good wheat and it is found to be good, for no real purpose to parallel the first clause, if the earlier clause, that of one who sells wheat and said that the wheat was good, and it is found to be bad, also contains no novelty (Tosafot).

Perhaps in the cases brought by Rav Hisda – אָמִינָא: The early commentaries have two versions of the Gemara here. Some commentators say that both versions appear in the text as different formulations cited by the Gemara itself. The alternative version of the text serves to reject the comparison between the mishna and Rav Hisda’s statement (Ri Migash; Rabbeinu Gershom Meor HaGola; Rabbeinu Barukh). Some accept this version and therefore reject Rav Hisda’s opinion. If one follows the standard version, this passage clarifies Rav Hisda’s statement in greater detail (Rashbam; Tosafot). In other words, the Gemara is simply explaining why one might have thought that there is a difference in halakha between the cases of the mishna and those discussed by Rav Hisda, for which reason Rav Hisda found it necessary to teach that there is, in fact, no such difference.

Either way, the passage addresses the difference, theoretical or accepted, between the examples that appear in the mishna and those cited by Rav Hisda. Some explain that the distinction is between monetary exploitation and exploitation involving the type of merchandise. With regard to monetary exploitation, it can be assumed that both seller and buyer agree that it was a mistaken transaction, and therefore it can be argued that they should both be allowed to change their minds. By contrast, in the cases of wheat and the like, only one party was mistaken while the other knew exactly what he was buying or selling. He complained afterward only because it is the manner of a buyer to criticize the item that he purchases, just as it is the way of a seller to praise it. Therefore, he should not be allowed to reneg on the sale (Ri Migash).

Others claim that the mishna is discussing a case where there is no exploitation with regard to the price, and if one who was deceived does not want to renge on the sale, he claims: “It is bad, it is bad” (Proverbs 20:14). That is, he himself assumed that the actual state of the produce would differ from their agreement. By contrast, in the case of monetary exploitation one cannot claim that he intended to buy or sell at a loss, and as the time during which one can reneg on a sale has yet to pass (see Bava Metzia 51a), either party can reneg on the sale (Rashi). Yet others suggest that in the case of the mishna, everyone knows that it is the manner of sellers to praise their merchandise and of buyers to insult it, and therefore one might have thought that neither party can reneg on the sale. But with regard to the statement of Rav Hisda, the validity of the transaction is not dependent on what the buyer or the seller said, but on the objective value of the merchandise, and therefore there is more reason to think that they can both reneg on the sale (Tosafot).
The mishna teaches that if the seller said that he was selling reddish-brown [shehkimah] wheat and it is found to be white, both the seller and the buyer can renge on the sale. The Gemara assumes that shehkimah means the color of the sun [hamah]. Therefore, Rav Pappa said: From the fact that the mishna teaches: White, in contrast to shehkimah, and there are two types of wheat, one white and the other red, conclude from the mishna that this sun is red, not white. Know that this is the case, as it redens in the morning and evening. And the reason that we do not see the red color all day is because our eyesight is not strong and we cannot discern the redness of the sun.

The Gemara raises an objection to this claim: With regard to a verse that speaks of lepsoy: “And, behold, if its appearance is deeper than the skin” (Leviticus 13:30), the Sages explain: This means that it is like the appearance of the sun, which is deeper than the shadow. But there, lepsoy is white and it is likened to the sun. The Gemara answers: There, it means that it has an appearance like the sun in certain respects, but it is not like the appearance of the sun in all respects. It is like the appearance of the sun in that it is deeper than the shadow, and it is not entirely like the appearance of the sun, as there the lepsoy spot is white, and here the sun is red.

The Gemara asks: And according to that which entered our mind initially, that the sun is red, doesn’t it redder in the morning and evening? The Gemara answers: In the morning it becomes red as it passes over the site of the roses of the Garden of Eden, whose reflections give the light a red hue. In the evening the sun turns red because it passes over the entrance of Gehenna, whose fires redden the light. And there are those who say the opposite in explaining why the sun is red in the morning and the evening, i.e., in the morning it passes over the entrance of Gehenna, while in the evening it passes over the site of the roses of the Garden of Eden.

The mishna teaches: If the seller sold wine and it is found to be vinegar, both the seller and the buyer can renge on the sale. The Gemara suggests: Shall we say that the mishna is in accordance with the opinion of Rabbi Yehuda HaNasi and not in accordance with the opinion of the Rabbis? As it is taught in a baraita:

Wine and vinegar are one type of food, which means that if, for example, one separated teruma from one of these with the intention that it should exempt the other, his action is effective. Rabbi Yehuda HaNasi says: They are two types of food. Apparently, the mishna is not in accordance with the opinion of the Rabbis in the baraita. The Gemara rejects this claim: You may even say that the mishna is in accordance with the opinion of the Rabbis, as the Rabbis disagree with Rabbi Yehuda HaNasi only with regard to the issue of whether one can separate tith and teruma from wine to redeem vinegar and vice versa. And the Rabbis hold in accordance with the opinion of Rabbi Ela.

## Background

The sun is red: איה אמשניא סומתא סומתא Since the light of the sun is white but the sun itself never looks white, the Sages thought it reasonable to inquire whether the light of the sun is actually reddish and it appears otherwise because its color cannot be perceived properly due to its radiance, or whether it is actually white. Deeper than the shadow: תחשה סומתא סומתא The perception of darker areas as signifying greater depth is apparently influenced by modern artistic conventions. By contrast, the Sages judged the appearance of the bright sun as deeper than that of shadows.

### Notes

**Perek V Daf 84 Amud b**

One type of food: איה אמשניא סומתא סומתא Wine and vinegar are considered one type of food primarily with regard to teruma and tithes, i.e., one may separate tithes from one in order to render the other permitted. Some add that they are also considered one type of food with regard to an admission to part of a claim. In other words, if one claims that another owes him wine and vinegar, and the defendant admits that he owes him vinegar, he has admitted to part of the claim and is obligated to take an oath concerning the wine (Rashbam; Meiri).

Tithe and teruma, and in accordance with the opinion of Rabbi Ela: איה אמשניא סומתא סומתא Most commentaries understand that separating tithes from vinegar in order to render wine permitted is similar to separating tithes from poor-quality produce in order to render superior-quality produce permitted, and therefore it is prohibited to do so ab initio. Some maintain that according to the Rabbis, wine and vinegar are considered the very same type of food. They hold that not only is separating tithes from one for the other effective, but it is permitted to do so ab initio, and this is not akin to separating tithes from poor-quality produce for superior-quality produce. The reason is that wine and vinegar are used differently, and neither one is considered superior to the other (Rambam).

Wine and vinegar are one type of food, which means that if, for example, one separated teruma from one of these with the intention that it should exempt the other, his action is effective. Rabbi Yehuda HaNasi says: They are two types of food. Apparently, the mishna is not in accordance with the opinion of the Rabbis in the baraita. The Gemara rejects this claim: You may even say that the mishna is in accordance with the opinion of the Rabbis, as the Rabbis disagree with Rabbi Yehuda HaNasi only with regard to the issue of whether one can separate tith and teruma from wine to redeem vinegar and vice versa. And the Rabbis hold in accordance with the opinion of Rabbi Ela.
As Rabbi Ela says: From where is it derived with regard to one who separates teruma from poor-quality produce for superior-quality produce, i.e., in order to fulfill the obligation of separating teruma from the high-quality produce, that his teruma is valid teruma? As it is stated: “And you shall bear no sin by reason of it, seeing as you have set apart from it its best” (Numbers 18:32).

The verse is understood as indicating that one who sets aside inferior produce has sinned. It also demonstrates that if one did, in fact, set aside teruma from poor-quality produce in order to render permitted superior-quality produce, his action is effective and the inferior produce is sanctified as teruma. The reason is that if the inferior produce is not consecrated, why would one bear a sin? It should be considered as though he did nothing. From here it is derived with regard to one who separates teruma from poor-quality produce for superior-quality produce, that his teruma is valid teruma. The Rabbis agree and hold that in the case of one who separates vinegar in order to redeem wine, his teruma is valid despite the difference in quality, as wine and vinegar are considered a single type of food.

But with regard to buying and selling, everyone, including the Rabbis, agrees that wine and vinegar are two types of food, as they have different uses. There are those for whom wine is preferable and vinegar is not preferable, and there are those for whom vinegar is preferable and wine is not preferable.

MISHNA This mishna discusses several methods of acquiring movable property. With regard to one who sells produce to another, if the buyer pulled the produce but did not measure it, he has acquired the produce through the act of acquisition of pulling. If he measured the produce but did not pull it, he has not acquired it, and either the seller or the buyer can decide to rescind the sale. If the buyer is perspicacious and wants to acquire the produce without having to pull it, and he wishes to do so before the seller could change his mind and decide not to sell, he rents its place, where the produce is located, and his property immediately effects acquisition of the produce on his behalf.

With regard to one who buys flax from another, because flax is usually carried around this purchaser has not acquired it until he carries it in his possession from place to place and acquires it by means of the act of acquisition of lifting. Pulling the flax is ineffective. And if it was attached to the ground, and he detached any amount, he has acquired it, as the Gemara will explain.

GEMARA The mishna mentions several modes of acquisition without elaboration. It does not explain in which domain the act takes place, whether on the property of the seller or in the public domain. Likewise, it does not specify who performs these actions. The Gemara clarifies these details. Rabbi Asi says that Rabbi Yohanan says: If the seller measured the produce and placed it in an alleyway, which is not the public domain but a location where people can keep their belongings, then even if the buyer did not pull the produce, he acquires it.

HALAKHA

One who separates teruma from poor-quality produce for superior-quality produce – הָלָּקַח מִמָּשַׁךְ וְלֹא מָדַד. One should not separate teruma from poor-quality produce in order to render superior-quality produce permitted ab initio, even if both are the same type of food. Rather, one should separate teruma from poor-quality produce for poor-quality produce, and from superior-quality produce for superior-quality produce. After the fact, if one separated teruma from poor-quality produce for superior-quality produce, his teruma is valid, in accordance with the opinion of Rabbi Ela (Rambam, Sefer Zera’im, Hilkhot Terumat 53:3; Shulhan Arukh, Yoreh De’ah 313:3).

He rents its place – בטַשׁ בַּסְתָּן עַד הַלּוֹ. If one is buying movable property and does not want to, or is unable to, lift it up or pull it, he should rent or borrow ownership rights to the place where the items are located through one of the formal modes of acquisition. Since the items are now on his property, he acquires them, and neither party can renege on the sale. This option is effective if the location is considered a secured courtyard for the buyer (see Shakh) or if the buyer is standing alongside the item (Rambam, Sefer Zeriyan, Hilkhot Mekhibhah 3:17; Shulhan Arukh, Hoshen Mishpat 198:3).

One who buys flax…until he carries it – מי מַקְרַךְ. Movable property that is normally lifted and carried can be acquired only through the act of lifting, not by pulling. How is lifting performed? Some say that the buyer must lift the item three handbreadths. Others say that it is enough to lift it one handbreadth (Rambam, Sefer Zeriyan, Hilkhot Mekhibhah 3:1; Shulhan Arukh, Hoshen Mishpat 198:3).

For whom is vinegar preferable – מי מְצַווֹת. The Rashbam explains the difference between this example and the case of good and bad wheat. In the case of wheat, everyone ideally would prefer good wheat, but on occasion one will make do with bad wheat. By contrast, one who wants wine is not interested in vinegar, and one who wants vinegar has no desire for wine.

If he pulled the produce but did not measure it, etc. – מְצַווֹת וּלְאָמַר יִדֵּךְ יִדֵּךְ. The commentators agree that these methods of acquisition are effective only after both parties have agreed to a price for each piece of merchandise. Some commentators add that if there was a set price for this merchandise in that place, the acquisition is effected even if the buyer and seller did not explicitly agree on a price (Ri Migash on 86a; see Meir).

He carries it – מי מַקְרַךְ. In other words, he must lift the flax slightly. The mishna states that he must carry it because one usually lifts an item for the purpose of carrying it away (Rambam). The reason it is necessary to lift the flax to acquire it is that it is typically carried in one’s hands rather than pulled along the ground. Some commentators rule that one cannot acquire flax by means of pulling (Rambam).

If he measured the produce and placed it, etc. – מְצַווֹת וְלְאָמַר יִדֵּךְ יִדֵּךְ. The seller measured the produce in his own vessel and afterward placed it in an alleyway. This is considered as though the seller had placed the produce in the buyer’s domain, as the buyer is permitted to keep his belongings in the alleyway (Rambam). Some commentators maintain that the same halakha applies if the buyer was the one who measured the produce (Ravad).

Alleyway (simtah) – סינטָה: Most commentators define a simtah as a small alleyway that runs adjacent to the public domain. There are several specific halachot that pertain to an alleyway, which is considered neither a public nor a private domain in all respects. The general public does not usually walk through an alleyway, and anyone may keep their belongings there (second explanation of Rashbam; Tosafot). Some contend that an alleyway is a road used by individuals (first explanation of Rambam; Rabbi Avraham Av Beit Din). Others state that in this context a simtah is a place that belongs only to the buyer and the seller (Rabbeinu Gershom Meor HaGola), which differs from a courtyard belonging to partners in that it is not enclosed (Rabbeinu Barukh).
Only with regard to one who measures into his basket – אמַר לֵיהּ חֲצַר הַשּׁוּתָּ: Most commentaries explain that this is referring to a seller who measures into the basket of the buyer. In some versions of the text this is stated explicitly (Rabbeinu Yona). Some claim that the reference is to a buyer who measures into his own basket (Ra’avad; see Shita Mekubetzet). Some add that the buyer’s vessels effect acquisition on his behalf irrespective of their location. If he measured it into his basket, is it necessary to say – אין – Tosafot: Some explain that Rav Asi rejects the opinion of Rav Pappa on 8a, as he maintains that according to Rabbi Yoĥanan, the buyer’s vessels effect acquisition on his behalf irrespective of their location. Since they effect acquisition on behalf of their owner even in the public domain, there is certainly no need to state this halakha with regard to vessels situated in an alleyway (Rani). The commentaries add that the buyer’s vessels effect acquisition on his behalf even in the seller’s domain (Rashbam). Others add that even if the seller measures into the vessels of the buyer, the acquisition is effective (Ra’avad).

Come and hear, as Rabbi Yannai said, etc. – אֲמַר לֵיהּ חֲצַר הַשּׁוּתָּ: Some explain that Rav Asi rejects the opinion of Rav Pappa on 8a, as he maintains that according to Rabbi Yoĥanan, the buyer’s vessels effect acquisition on his behalf irrespective of their location. Since they effect acquisition on behalf of their owner even in the public domain, there is certainly no need to state this halakha with regard to vessels situated in an alleyway (Rani). The commentaries add that the buyer’s vessels effect acquisition on his behalf even in the seller’s domain (Rashbam). Others add that even if the seller measures into the vessels of the buyer, the acquisition is effective (Ra’avad).

The Gemara asks: Did Rabbi Zeira accept this claim from Rabbi Asi, or did he not accept it from him? The Gemara suggests: Come and hear a proof, as Rabbi Yannai says: Since Rabbi Yehuda HaNasi says: With regard to a courtyard belonging to partners, they acquire no difference between placing items on the ground and in their basket, as a partner acquires an item even when it is placed upon the ground, in accordance with the statement of Rabbi Asi? The Gemara rejects this suggestion: No, this is referring to a case where the item is measured into the basket of the buyer.

The Gemara points out: So, too, Rabbi Zeira’s statement is reasonable, as Rabbi Ya’akov says that Rabbi Yoĥanan says: If one measured and placed an item in an alleyway, the buyer has not acquired it. Apparently, these two halakhot cited in the name of Rabbi Yoĥanan are difficult, as they contradict each other, since earlier it was stated that according to Rabbi Yoĥanan the buyer can acquire an item in this manner. Rather, isn’t it correct to conclude from this apparent contradiction that here, i.e., in the statement cited by Rabbi Asi, he is referring to one who measures into the basket of the buyer, which effects acquisition; and there, i.e., in the statement of Rabbi Ya’akov, he is referring to one who measures onto the ground, which does not effect acquisition. The Gemara affirms: Learn from it that this is the case.

The Gemara suggests: Come and hear a proof from the mishna: If he measured the produce but did not pull it, he does not acquire it. What, is it not referring to one who did so in an alleyway, which indicates that placing produce on the ground of an alleyway does not effect acquisition, in accordance with the statement of Rabbi Zeira? The Gemara rejects this proof: No, the mishna is referring to one who did so in the public domain. The Gemara asks: If that is so, say the first clause: If the buyer pulled the produce but did not measure it, he has acquired the produce. But does pulling in the public domain effect acquisition?

But don’t Abaye and Rava both say that passing effects acquisition in the public domain and in a courtyard that does not belong to either of them; pulling effects acquisition only in an alleyway or in a courtyard that belongs to both of them, but not in the public domain; and lifting effects acquisition in every place, even in the seller’s domain? This demonstrates that pulling in the public domain does not effect acquisition.

HALAKHA

On a gemara in Bava Ṭrita (98b) the question is raised whether the pull of a produce that is measured into a vessel of the buyer can make it come under possession of the buyer. The Gemara considers the issue in the public domain, in a courtyard that belongs to both of them, and in an alleyway. Rabbi Zeira said to Rabbi Asi: Perhaps my teacher heard this halakha from Rabbi Yoĥanan only with regard to one who measures into his basket, i.e., that of the buyer, in which case his possessions effect acquisition of the produce for him. But if the produce is placed on the floor of the alleyway, the buyer does not acquire the produce. Rabbi Asi said to him: This one of the Sages, i.e., Rabbi Zeira, seems like one who has not studied halakha. If he measured it into the basket of the buyer, is it necessary to say that he acquires it? If an item is placed in the buyer’s basket it is clearly acquired by him, regardless of the location of the basket. Rather, Rabbi Yoĥanan’s statement with regard to an alleyway must be referring to items placed on the floor of the alleyway.
The Gemara answers: What is the meaning of the phrase: If he pulled it, that is taught in the mishna? It means that he pulled it from the public domain into an alleyway. The Gemara asks: If that is so, say the latter clause: If the buyer is perspicacious he rents its place, i.e., where the produce is located. The Gemara explains the difficulty: But if the mishna is referring to a spot in the public domain, from whom can he rent the place where the produce is located? The Gemara answers: The latter clause is referring to a separate halakha, and this is what the mishna is saying: And if the produce is in a domain that has an owner, if he is perspicacious he rents the place where the produce is located from the owner.

The Gemara continues to discuss the manner in which an acquisition takes place. Rav and Shmuel both say:

A person’s vessels\(^1\) effect acquisition of any item placed inside them for him, in any place\(^2\) in which they are situated, except for the public domain.\(^3\) And Rabbi Yoĥanan and Rabbi Shimon ben Lakish both say: Even in the public domain, one’s vessels effect acquisition of items placed in them.

Rav Pappa said: These amora‘im do not disagree: Here, when Rav and Shmuel state that one’s vessel does not effect acquisition for him, they are speaking of a vessel placed in the public domain; there, when Rabbi Yoĥanan and Reish Lakish state that his vessels effects acquisition on his behalf, they are referring to a vessel located in an alleyway.\(^4\) And why do they call an alleyway the public domain? The reason is that an alleyway is not a private domain.

The Gemara points out: So, too, it is reasonable to interpret Rabbi Yoĥanan’s statement in this manner, as Rabbi Abbahu says that Rabbi Yoĥanan says: A person’s vessels effect acquisition for him\(^5\) in any place where he has permission\(^6\) to keep them.

It can be inferred from here: In a location where he has permission to keep them, yes, his vessels effect acquisition for him. But in a place where he does not have permission to keep his vessels, they do not effect acquisition for him, and one has permission to keep his vessels in an alleyway but not in the public domain. The Gemara affirms: Conclude from this statement that when Rabbi Yoĥanan referred to the public domain he meant an alleyway.

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\(^1\) A person’s vessels – מָדַד וְהִנִּיחַ: In other words, once the item is placed in the buyer’s vessel, it is acquired by him. The comments add that this is the case only if the seller and buyer have agreed on the price of the item. In that situation, it remains necessary only to establish the precise moment of transfer to the buyer (Rashbam).

\(^2\) In any place – בְּמוֹדֵד לְתוֹךְ: The wording here indicates that even when the buyer’s vessels are in the seller’s domain, if the seller tells him that he should acquire the item by means of his vessels, the acquisition is effective.

\(^3\) Except for the public domain – לְתוֹךְ שֶׁיֵּשׁ לוֹ רְשׁוּת: The comments add that the same is true of a domain that belongs to neither of them (Rashbam). The reason is that the same issue that applies to the public domain is equally applicable to a domain that does not belong to either of them, as neither of them have permission to keep their vessels there. If the owner of the courtyard grants them permission, in this regard the courtyard is considered like an alleyway or a courtyard that belongs to both of them.

\(^4\) There, in an alleyway – לְתוֹךְ שֶׁיֵּשׁ לוֹ רְשׁוּת: An alleyway is a type of public domain, except that people are permitted to keep their belongings there. The Gemara here indicates that one can acquire an item in an alleyway only if the item is placed in his vessel, not on the ground. Yet, some commentators maintain that if the buyer arrived in the alleyway before the seller, then even if the produce is placed on the ground he acquires it by virtue of the four cubits that surround him. In this scenario, this alleyway is considered like the buyer’s courtyard with regard to this acquisition (Rashi; see Ritva).

\(^5\) Where he has permission, etc. – לְתוֹךְ שֶׁיֵּשׁ לוֹ רְשׁוּת: This includes an alleyway, property that he jointly owns, and the property of the seller.

\(^6\) See page 86a; see Meiri).
The Gemara suggests: Come and hear a difficulty from a baraita: There are four cases with regard to sellers, i.e., four methods through which merchandise is acquired. When the seller measures merchandise for the buyer, before the measuring vessel has been filled the merchandise in the vessel still belongs to the seller and he can change his mind and cancel the sale. Once the measuring vessel has been filled the merchandise belongs to the buyer. In what case is this statement said? It is said when the seller measures with a measuring vessel that does not belong to either of them.

But if the measuring vessel belonged to one of them, the buyer acquires the items of sale one by one as they are placed in the measuring vessel.

### NOTES

Four cases (middot), etc. – Some commentaries explain that these four cases refer to four different domains: the public domain and a courtyard that belongs to neither of them, the seller’s domain, the buyer’s domain, and the baillee’s domain (Rabbeinu Gershom Meor HaGola). The Rashbam disagrees with this division, since the same halakha applies to the baillee’s domain as it does to the seller’s domain. In both cases the acquisition is effective if the owner agrees to designate the place to be used by the buyer. The Rashbam therefore explains the four middot as a statement of the halakha in four circumstances: First, a case where merchandise is transferred before the measuring vessel is filled; or a case where the measuring vessel is filled but it belongs to neither of them. Second, a case where the measuring vessel is acquired little by little, as it is measured, when the measuring vessel belongs to one of them. Third, a case where the buyer acquires the merchandise as soon as it is measured, when the measuring vessel belongs to one of them. Fourth, a case where the buyer acquires the merchandise as soon as the seller agrees to the sale, which is while the merchandise is in the buyer’s domain. Fourthly, the halakha of lifting and taking out the merchandise, or renting the place where the merchandise is located, or designating for the use of the buyer the place where the merchandise is located, in a case when the merchandise is in the domain of the seller or a bailee (see also Rabbi Avraham Av BeT Din; Nimruke Vessel).

Others accept the claim that the reference is to four domains, and with regard to the Rashbam’s difficulty they suggest that there is a difference between the baillee’s property and that of the seller, as the option of accepting upon himself to designate for the use of the buyer the place where the merchandise is located applies only to a bailee, not a seller (Rambam; Rabbeinu Yona; Ril). Some add that these cases refer to four domains but include five halakhot, as two different halakhot are taught with regard to an alleyway (Ran). The first ruling refers to a situation where the measuring vessel belongs to neither of them, in which case the buyer acquires the merchandise when the measuring vessel is filled. The second halakha applies when the measuring vessel belongs to one of them, as the merchandise is acquired as soon as it is placed in the measuring vessel. It can be explained that both halakhot are based on the same principle, as in both cases the buyer acquires ownership as soon as the measuring vessel that contains the merchandise is considered to belong to him.

Before the measuring vessel has been filled, the merchandise belongs to the seller – דע כי לא חמקה המידה למדק – The merchandise belongs to the seller, whether this is to his benefit, e.g., when the price rises and he wants to renege on the sale, or to his detriment, e.g., if the merchandise spills or is lost (Rashbam).

Once the measuring vessel has been filled – אַרְבַּע מִדּוֹת כְּכָה: Since it is explained later that the measuring vessel does not belong to either of them but to a middiman, this must be referring to a case where the middleman lends it to the seller while the merchandise is being measured and subsequently to the buyer once the measuring vessel has been filled (Rashbam).

Belonged to one of them – בַּמּוֹכֵר וְלֹא בַּמּוֹכֵר: Some commentaries explain, in accordance with the plain meaning of the Gemara, that the measuring vessel belonged to either the seller or the buyer (Rashbam). Accordingly, the Rashbam has no choice but to explain that the continuation of the baraita, which states: He acquires the items of sale one by one, is likewise referring even to a case where the measuring vessel belongs to the seller. He interprets this to mean that if the measuring vessel belongs to the seller, the merchandise in the measuring vessel stays in his possession, as whether he measures part of it or the entire amount, it is transferred to the buyer only by means of pulling or lifting, as explained earlier. If the measuring vessel belongs to the buyer, he acquires each item as it is placed in the vessel. Other commentaries explain that the expression: Belonged to one of them, refers solely to the buyer. The baraita uses a phrase that could refer to either party despite the fact that it is referring to a particular individual because it used a similar phrase beforehand: Does not belong to either of them (Rabbeinu Yona; Rashba).

### HALAKHA

Before the measuring vessel has been filled… that does not belong to either of them – דע כי לא חמקה המידה דוד – The wine or oil remains in possession of the seller and he can cancel the sale until the measuring vessel is filled. Once it is filled, the produce belongs to the buyer and neither party can nullify the transaction (Rambam Sefer Kinyan, Hilkhot Mekhira 4:8; Shulhan Arukh, Hoshen Mishpat 10:39).

If one sold wine or oil in an alleyway or a courtyard that belongs to both the buyer and the seller, or if the sale takes place in the domain of the buyer and the measuring vessel belongs to an intermediary who loaned it to both of them (Taz),
In what case is this statement said? It is said when the seller measures the items in the public domain or in a courtyard that does not belong to either of them. But if it happens in the domain of the seller, the buyer does not acquire the merchandise until he lifts the measuring vessel or until he moves it out of the domain of the seller. If it is in the domain of the buyer, once the seller accepts upon himself to sell, the buyer acquires it. If the merchandise is located in the domain of this individual with whom it had been deposited, the buyer does not acquire it until the bailee accepts upon himself to designate a place where the merchandise is to be stored for the buyer, or until the buyer rents from the bailee the place where the merchandise is situated.

In any event, this baraita teaches with regard to a transaction in the public domain or in a courtyard that does not belong to either of them that if the measuring vessel belonged to one of them, the buyer acquires the items of sale one by one as they are placed in the vessel.

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**HALAKHA**

In the domain of the seller – בירה אישה מבוקשת שיאסף שמעות: A buyer acquires movable property that is located in the domain of the seller by lifting it or pulling it into his domain or into an alleyway. If the seller rents him the place where the items are located, or if he gives the buyer ownership over the domain through one of the modes of acquisition, the buyer acquires the items by means of his property. If none of these occur, the buyer does not acquire the items, even if the seller says: My courtyard should acquire these items on the behalf of this buyer. In this case, the bailee must acquire these items on behalf of this buyer (Rambam Sefer Kinyan, Hilkhot Mekhira 4:6; Shulhan Arukh, Hoshen Mishpat 200:2).

In the domain of the buyer – בירה מבוקשת שיאסף ש评议ינא: In his own domain a buyer acquires movable property from the instant the seller agrees to sell it, even if it still requires measurement. This is the case when the items are located in the buyer’s courtyard, i.e., a location that is secured on behalf of the buyer, or when he is standing alongside the courtyard (Netivot HaMishpat). Some say that he must be standing inside it (Rema, citing Maggid Mishne). If the courtyard is secured only on behalf of the seller, the buyer does not acquire the merchandise by virtue of its being in the courtyard. In a case where movable property is deposited with a bailee, a buyer acquires it if he lifts up the merchandise, or pulls it and moves it into his domain or an alleyway. Similarly, if the bailee rents the location of the merchandise to him or if he gives the buyer the domain of the merchandise through one of the acts of acquisition, the buyer acquires the merchandise by means of his property. Furthermore, if the seller said to the bailee: Acquire this merchandise on behalf of this buyer (see Shakh), the buyer acquires it, despite the fact that this is merely a statement and not an action (Rambam Sefer Kinyan, Hilkhot Mekhira 4:6; Shulhan Arukh, Hoshen Mishpat 200:2).

In the domain of the seller, the buyer does not acquire – בירה אישה מבוקשת שיאסף ש评议ינא: He does not acquire the merchandise whether it is placed in a vessel that belongs to the seller or to someone else. The Gemara later (86b) discusses the status of merchandise placed in the buyer’s own vessel.

In the domain of the buyer – בירה מבוקשת שיאסף ש评议ינא: If the seller brings the merchandise into the domain of the buyer, there is no need for the buyer’s vessel to effect acquisition. Rather, once the pair agree to the sale and set a price, the buyer’s courtyard effects acquisition of the merchandise on his behalf.

In the domain of this individual with whom it had been deposited – בירה מבוקשת ש评议ינא ש评议ינא ש评议ינא ש评议ינא: It is assumed that as the bailee allowed the seller to deposit his produce there, he also granted him permission to use his courtyard for the purposes of this transaction (Rashbam).

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**NOTES**

Until the bailee accepts upon himself – בירה מבוקשת ש评议ינא: In order for the buyer to acquire the merchandise, the bailee must agree to designate for his use or rent to him the place where it is located (Rashbam). According to some commentaries, this means that the bailee must agree to acquire the merchandise by means of his courtyard on behalf of the buyer (Rid). Some claim that the buyer can acquire the merchandise in the same fashion in the seller’s own domain, if the seller agrees to designate or rent to the buyer the place where the merchandise is located (Rashba). The reason that this option is stated only with regard to the bailee is because typically the seller does not want the merchandise to remain in his domain, but prefers that it be removed immediately. Others contend that if the merchandise is in the seller’s domain, a verbal agreement is insufficient. Rather, the buyer must rent the place where the merchandise is located with money or by means of another act that acquires land, in order to gain possession of the movable property along with the land (Tosafot).
The Gemara answers: 398

What, is it not stating that a buyer’s vessels effect acquisition of items on his behalf even in the actual public domain,7 which contradicts Rav Pappa’s explanation? The Gemara answers: No, the baraita is referring to an alleyway, not the actual public domain. The Gemara asks: How can this be what the baraita means? But the baraita teaches that it is similar to a courtyard that does not belong to either of them, i.e., a location to which neither of them have any rights, whereas they both have some rights in an alleyway. Consequently, this must be referring to the actual public domain, not an alleyway.

Rav Sheshet raises a dilemma before Rav Huna: If the vessels of the buyer are in the domain of the seller, does the buyer acquire the merchandise once it is placed in his vessels or not? Rav Huna said to him: You learned the answer already in a mishna (Gittin 77a): A wife is divorced when her husband hands her a bill of divorce or places it in a manner that is considered equivalent to handing it to her, etc., placing in her courtyard. Accordingly, if the husband threw the bill of divorce to her into her lap or into her basket [kalath],8 this woman is divorced9 even if she was in her husband’s domain at that time. By the same token, even if the buyer’s vessels are in the domain of the seller, they effect acquisition of the sold items on his behalf.

Rav Nahman said to Rav Huna: What is the reason that you resolved Rav Sheshet’s dilemma from that mishna, which has already been struck with one hundred strikes of a hammer [uklei be’ukela]?10 In their analysis of this mishna, the Sages have already inserted so many qualifications that it cannot be understood in a straightforward manner.

Rav Pappa’s dilemma: The baraita apparently indicates that the buyer’s vessel effects acquisition on his behalf even in the actual public domain. This presents a difficulty for all those who maintain that in the public domain the buyer’s vessels do not effect acquisition at all (Rashbam). Alternatively, the question is that if the buyer’s vessels effect acquisition in the public domain, evidently the buyer acquires merchandise placed on the ground in an alleyway. This is in accordance with the opinion of Rabbi Asi, citing Rabbi Yoĥanan (84b), and in contradiction to that of Rabbi Zeira (Rabbeinu Gershom Meor HaGola).

This woman is divorced – מַאי לָאו בִּרְשׁוּת הָרַבִּים מַמָּשׁ? לָא,

The baraita teaches: Woman with a carrying basket on her head

Is it similar to a courtyard that does not belong to either of them? It also refers to shared property, specifically a courtyard shared by partners, which does not belong to this one entirely and does not belong to that one entirely, but rather it is the property of both of them. Consequently, this courtyard is comparable to an alleyway.
As Rav Yehuda says that Shmuel says: This halakha of the mishna in Gittin applies only if her basket was hanging* from her body, so that it is considered on her or in her hand. And Reish Lakish says: It is sufficient if it was tied to her, even though it is not hanging from her, but resting on the ground. Rav Adda bar Avah says: The mishna is referring to a case where her basket was placed between her thighs. Although it is not hanging from her, since it is placed on her body it serves to acquire the bill of divorce on her behalf. Rav Mesharshiyya, son of Rabbi Ami, says: This is referring to a case where her husband was a basket seller.* Since he is not particular about the place where the basket into which he placed the bill of divorce is located, as his entire courtyard is full of baskets, it is considered as though he expressly granted her the right to make use of its location.

Rabbi Yohanan says: The place of her lap, i.e., the place within her husband’s property where she stands or sits, belongs to her, and the place of her basket is acquired to her. Rava said: What is the reason behind the statement of Rabbi Yohanan? It is because a person, including a husband, is not particular neither about the place of her lap nor about the place of her basket, as she requires these areas and they do not take up much space. It is evident from all of these qualifications that one cannot infer a halakhic principle from here with regard to a buyer’s vessels in a seller’s domain.

Rather, resolve the dilemma from that which was taught in a baraita: If the merchandise was in the domain of a seller, the buyer does not acquire the merchandise until he lifts it or until he removes it from the domain of the seller. What, is it not referring to merchandise placed in the vessels of the buyer, which proves that the buyer’s vessels do not effect acquisition of the merchandise on his behalf when they are in the seller’s domain? The Gemara answers: No, this does not serve as proof, as it is referring to merchandise placed in the vessels of the seller.* That is why the buyer must lift or pull the merchandise to acquire it.

The Gemara asks: But from the fact that the first clause is referring to the vessels of the seller, as currently understood, the latter clause must also be referring to the vessels of the seller. Say the latter clause: If the merchandise was in the domain of the buyer, once the seller accepts upon himself to sell an item, the buyer acquires it. And if this is referring to merchandise in the vessels of the seller, as in the earlier clause, why does the buyer acquire it? The Gemara answers: In the latter clause, we come to a different scenario, which involves the vessels of the buyer.

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**NOTES**

A basket seller – רעה תֶּלֶת. Since the husband sells baskets and has an area set aside for his products, he does not care that this basket is taking up space (Rashbam, citing Rash). Alternatively, the wife had just purchased this basket from her husband and lifted it (Ri Migash).

Since she acquired it, he grants her permission to use the space because he benefits from the transaction (Ri Migash; Ramah; Rabbeinu Gershon Meor Haggola; Rabbeinu Barukh). Others explain that as the husband is a basket seller, it is in his interest that his wife’s basket be in his domain, so that if he sells all his merchandise and requires another basket, he can sell his wife’s (Rabbeinu Yona). Others write similarly that it is in the interest of a seller to have his store filled with merchandise (Ritva).

The commentators question how she acquires the bill of divorce, as her husband merely permits her to rest her basket in his domain, but he does not transfer ownership of the courtyard to her for this purpose (Tosafot). Tosafot answer that this is similar to the case of an alleyway: Once the recipient has permission to keep his belongings in the location, his vessels effect acquisition on his behalf.

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**HALAKHA**

A basket seller – רעה תֶּלֶת. If one bought a vessel and lifted it for the purpose of acquiring it, and afterward he left it in the domain of the seller and then returned and bought produce from the seller, once the produce is placed in this vessel the buyer acquires it. This is the halakha despite the fact that in general a buyer’s vessels cannot effect acquisition of items on his behalf in the domain of the seller, because in this case the seller is pleased about the transaction, and therefore he is not particular about the place of the vessel in his domain. This halakha is in accordance with the opinion of Rav Mesharshiyya, as explained by Ri Migash (Rambam Sefer Kinyan, Hilkhot Mekhira 4:1, and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 200:4).

In the vessels of the seller, etc. – רעה תֶּלֶת. If one seeks to buy movable property from another, but the items are located in the vessels of the seller, the buyer does not acquire them at that point, even if they were located in the domain of the buyer, unless the seller measures them (Netivot HaMishpat). Some say that even if the seller says to the buyer: Go and acquire it, the buyer does not acquire it, as it is not sufficient for the seller merely to give him permission. Rather, the buyer must formally acquire the vessel, which he cannot do through this statement (Ri, citing Rabbeinu Yona and Rashi). According to this opinion, even if the seller measured the merchandise, the buyer does not acquire it (Netivot HaMishpat). If the seller measured the merchandise and placed it in his vessel, and the buyer pulled the vessel in the seller’s presence, he acquires it, despite the fact that the seller’s vessels do not effect acquisition on behalf of the buyer. This is in accordance with the statement of the baraita: Until he moves it out of the domain of the seller (Rambam Sefer Kinyan, Hilkhot Mekhira 4:2, Shulhan Arukh, Hoshen Mishpat 2005:6).
The Gemara asks: But if the clauses of the baraita are addressing different cases, why was it stated without qualification? The Gemara answers: The normal way of things is that in the house of the seller the vessels of the seller are commonly found, and in the house of the buyer the vessels of the buyer are commonly found. In sum, the dilemma cannot be resolved from the baraita.

Rava said: Come and hear a resolution from a baraita: If one pulled his donkey drivers, thereby dragging along with them the donkeys laden with goods, and likewise, if he pulled his laborers, who were carrying merchandise he wished to purchase, and he brought them into his house, whether he fixed a price before he measured, or the buyer's vessels cannot effect acquisition of the merchandise, the sale has not been unloaded from the laborers or the donkeys.

But why was it stated without qualification – בָּאָסָא הָעָשָׁא; מְעַסֵּא וְלָתוֹת. This Gemara uses this expression when two clauses of the same mishna or baraita are expressed as referring to two different sets of circumstances. This point will be explained further.

His donkey drivers and his laborers – רַע לוֹ מָעָב וְלָתוֹת. Some commentaries maintain that the possessive suffixes in the terms hammarav and ufoalav, meaning his donkey drivers and his laborers, are an error, and the text should state: The donkey drivers or laborers. Tosafot explain that the possessive indicates that they belong to the buyer, in which case the buyer should acquire the merchandise when they take it for him. Others uphold the standard version of the text and explain that the buyer had previously given produce to his donkey drivers or laborers in exchange for their labor, and he now wishes to buy it back from them. Some say that although they are the buyer's donkey drivers or laborers, they were not instructed to acquire the merchandise on his behalf but only to bring it to his house, where he would decide if he wanted to buy it. Alternatively, they are the donkey drivers and laborers of the seller, not the buyer. Some commentators, accepting the version of the text that does not have the possessive, suggest an entirely different explanation, that the seller brought the donkey drivers or laborers to his house in order to sell his merchandise to them.

Whether he fixed a price before he measured, or the buyer measures the merchandise and brought it into his house, they were not instructed to acquire the merchandise on his behalf but only to bring it to his house, where he would decide if he wanted to buy it. Others maintain that if he both fixed a price and measured the merchandise, he does not acquire it because he still must unload the goods. Maggid Mishne explains that in this case the seller has not agreed on a price in order to sell his merchandise to the buyer. The act of measuring, placing, or even pulling the merchandise does not effect acquisition if the seller has not agreed to the transaction. Yet others hold that the buyer measured the merchandise in the public domain or in the seller's domain. If he had also agreed to a price he would acquire it through the act of measuring, which is a form of lifting, as the Ri Migash explains. But in a case where he unloaded the merchandise from them and brought it into his house, if he fixed a price before he measured the merchandise, both parties are no longer able to renege on the sale. If he measured the merchandise before fixing a price, both of them are able to renege on the sale. The Gemara comments: And from the fact that the vessels of the seller when in the domain of the buyer do not effect acquisition of the merchandise for the seller, i.e., they do not prevent the buyer from acquiring the merchandise, one can derive that the vessels of the buyer in the domain of the seller do not effect acquisition of the merchandise on his behalf as well.
Rav Naĥman bar Yitzḥak said: The merchandise was not placed in the domain of the buyer in vessels belonging to the seller. Rather, the baraita is referring to a case where he emptied the vessels on the ground. Conversely, if the merchandise remains in the seller’s vessels, the buyer does not acquire it. Rava became angry with Rav Naĥman bar Yitzḥak at his rejection of Rava’s proof, and retorted: Does the baraita teach: He emptied them? No; it teaches: He unloaded them, i.e., he kept the goods in vessels belonging to the seller. Rather, Mar bar Rav Ashi says: This proof can be rejected by means of a different interpretation, as the halakha of the baraita does not refer to vessels full of goods but is stated with regard to bundles of garlic that were tied together. Therefore, they are unloaded straight onto the floor in the buyer’s domain.

With regard to the matter itself, Huna, son of Mar Zutra, said to Ravina: Since the baraita teaches: He unloaded them, which indicates that unloading the merchandise constitutes the act of acquisition, what difference is there to me if he fixed a price, and what difference is there to me if he did not fix a price? Ravina said to him: If he fixed a price he has made up his mind to sell, and therefore the transaction can take place. If he did not fix a price, he has not made up his mind to sell and the transaction does not occur. In any event, no convincing proof has been found with regard to the halakha in a case where the vessels of the buyer are in the domain of the seller.

Ravina said to Rav Ashi: Come and hear a resolution, as Rav and Shmuel both say: A person’s vessels effects acquisition for him of any item placed inside it, in any place that it is situated. What is added by the phrase: In any place? Does it not serve to add the domain of the seller? Rav Ashi answered: There, it is referring to a specific case, where the seller said to him: Go and acquire it. In that situation, the buyer does acquire the merchandise. This does not refer to a standard case where the buyer’s vessels are located in the domain of the seller.

§ We learned in a mishna elsewhere (Kiddushin 26a): Property that is guaranteed, i.e., land, is acquired by means of money, or by means of a bill, or by taking possession of it. And property that does not have a guarantee, i.e., movable property, can be acquired only by means of pulling. In Sura they taught this following halakha in the name of Rav Hisdia, while in Pumbedita they taught it in the name of Rav Kahana, and some say in the name of Rava: They taught that movable property is acquired by means of pulling only with regard to items that are not typically lifted due to their weight or for some other reason. But in the case of items that are typically lifted, then yes, they are acquired by means of lifting, but they are not acquired by means of pulling.

NOTES

Rava became angry – קרא רava: Since Rava cited the proof from this halakha, he grew angry with Rav Naĥman bar Yitzḥak for rejecting it without good cause (Rashiham).

It teaches he unloaded them – מימין: This indicates that he unloaded the items in their original state, i.e., while they were still in the seller’s vessels (Rashiham).

With regard to bundles of garlic – ב굛: The garlic was not inside a container, and therefore the merchandise was acquired by virtue of being in the buyer’s domain.

Where he said to him, go and acquire it – וינא המש: Some early commentators explain that the seller, by means of this statement, lends the buyer the place where the vessels are located, and therefore at that moment the vessels are in the buyer’s domain (Rashiham; Rabbi Avraham Av Beit Din). Others maintain that the statement grants the buyer permission to leave his vessels there and use them to effect acquisition of the merchandise. Consequently, the fact that the vessels are in the seller’s domain no longer prevents the acquisition from taking place. Without explicitly saying that the buyer should acquire the merchandise, it is not enough for the seller simply to grant permission for the buyer to leave his vessels on his property (Ranah). Alternatively, the seller transfers the ground underneath the vessel to the buyer, without which the buyer cannot acquire the merchandise. If so, the novelty is that although in general one must pay or perform an act of acquisition in order to acquire or rent land, in the case of a buyer’s vessel situated in the seller’s domain, this statement of acquisition is sufficient (Rosh). That are not typically lifted – לנהוגים: They are not usually lifted due to their weight. Instead, they are generally dragged from place to place or loaded onto one’s shoulder (Rabbeinu Yona).

HALAKHA

Where he emptied the vessels – מומע: If merchandise is unloaded in the buyer’s domain and is not inside a vessel that belongs to the seller, once a price is fixed it is acquired by the buyer, even if it was not measured (Tur). This is in accordance with the ruling of the baraita and the explanation of Rav Naĥman bar Yitzḥak. According to the Maggid Moten, this is also the opinion of the Rambam (Tur, Hoshen Mishpat 202; Shulhan Arukh, Hoshen Mishpat 2002 and 206, and Sma there).

If he fixed a price he has made up his mind – פסוקה מה הוא: A buyer does not acquire movable property until a price has been set, even if it is in his domain or in his vessels and even if he lifts or pulls it. Only once the seller and buyer agree on a price can the sale be completed. If a seller is selling items that have an established price, the buyer acquires them even if they did not decide on the price. If the seller said to the buyer: I am selling you the merchandise for the price decided by experts, or the price decided by one expert who appraises its value (Sma, citing Rashba), and he performs one of the acts of acquisition (Shakah), the buyer acquires the merchandise even if its price has not yet been set (Rambam Sefer Kinyan, Hilkhot Mekhira 419; Shulhan Arukh, Hoshen Mishpat 2003). The domain of the seller—go and acquire it – יחיה: If a buyer’s vessels are located in the domain of the seller, they do not effect acquisition of movable property on his behalf unless the seller says to him: Go and acquire it with this vessel. Some say that this is the halakha even if he did not explicitly state this directive but simply gave the buyer permission to place his vessels there (Rambam Sefer Kinyan, Hilkhot Mekhira 419; Shulhan Arukh, Hoshen Mishpat 2003; and see Shaĥ and Netivot Hal Mishpat there).

Property that is guaranteed – הפרש: Land, and everything attached to the ground, is acquired by means of money, a bill, or by taking possession of it. It is also acquired by means of a cloth, i.e., the act of acquisition of exchange, which formalizes the transfer of ownership (Rambam Sefer Kinyan, Hilkhot Mekhira 13; Shulhan Arukh, Hoshen Mishpat 190). And property that does not have a guarantee— which are not typically lifted – לנהוגים: By Torah law, movable property is acquired by means of money. The Sages established that movable property should be acquired only by lifting, while items that are not generally lifted are acquired by means of pulling. Once the buyer lifts or pulls the item, he acquires it even if he has not yet paid any money (Rambam Sefer Kinyan, Hilkhot Mekhira 31; Shulhan Arukh, Hoshen Mishpat 1981, 4).
One who steals a purse on Shabbat is liable – נְדוֹרָה בְּמִידֵי דְּבָעֵי מִיתְנָא: That is, he is liable to pay for the purse he steals (Rashbam). Some write that he is obligated in the double payment for theft, like any other thief (R. Migash).

As the prohibition of performing labor on Shabbat, etc. – בִּמְשִׁיכָה בְּמִידֵי דְּבָעֵי מִיתְנָא: Since at the same time, and by means of the same action, he both steals and violates a prohibition that is punishable by death, he is not both punished for the theft and executed for violating the prohibition relating to Shabbat. He is liable to receive only the greater punishment of the two.

An item that requires a rope – בִּמְשִׁיכָה בְּמִידֵי דְּבָעֵי מִיתְנָא: It does not matter whether there actually was a rope attached to the purse. The point is that the baraita is referring to a large purse, one that is only dragged and not carried.

The Gemara suggests: Come and hear: If the merchandise is in the domain of the seller, the buyer does not acquire the merchandise until he lifts it or until he removes it from the domain of the seller. Apparently, with regard to an item that can be lifted, if he so desires he acquires it by lifting, and if he so desires he acquires it by pulling. Rav Nahman bar Yitzhak said: This is not a proof, as it can be explained that the tanna teaches it disjunctively, i.e., the two options are referring to two different cases: In the case of an item that can be lifted, he acquires it by lifting, whereas with regard to regard to an item that can be pulled, he acquires it by pulling.

The baraita continues: If he did not lift the purse but was dragging it on the ground and exiting the private domain, continuously dragging and exiting, he is exempt, as the prohibition of performing labor on Shabbat and the prohibition of theft are violated simultaneously the moment he drags the purse out of the owner’s property into the public domain. Therefore, he receives only the greater punishment, death, for carrying on Shabbat.

Rav Adda bar Mattana explains his objection: But a purse is an item that can be lifted, and even so it is apparent from the baraita that one acquires it by means of pulling. How then can it be stated that items that are typically lifted are not acquired by pulling? Abaye said to him: The baraita is referring to a case where the thief pulled the purse with a rope. Rav Adda bar Mattana thought that Abaye meant that the thief happened to drag it with a rope, and he responded: I also state my question even in a case where he pulled the purse with a rope, as it is still evident that one can acquire the purse by means of pulling instead of lifting. Abaye said to him: I meant that the baraita is referring to an item that requires a rope: It is a purse that is so large that it cannot be lifted and must be pulled, therefore it is acquired by means of pulling.
Large bundles – שָׁאָה. A large bundle of small produce, such as nuts, almonds, or peppers, which cannot be lifted, is acquired through pulling (Rambam Sefer Kinyan 3:2; Shulhan Arukh, Hoshen Mishpat 198:1).

Flax – כּוֹר. A large bundle of flax or wood is not acquired through pulling despite the fact that one cannot lift it, as it is possible to untie the bundle and lift up each piece individually (R. Migash). Others hold that wood is acquired even through pulling when it is tied in a large bundle, as it requires a great deal of effort to untie the bundle and lift each piece (Rambam Sefer Kinyan, Hilkhot Mekhira 3:2; Shulhan Arukh, Hoshen Mishpat 198:1, and in the comment of Rema).

Domesticated animals are acquired – זוֹקֵנִים. Both large and small domesticated animals can be acquired through pulling. They should be acquired through lifting ab initio, but the Sages were lenient and permitted the acquisition to take place by means of pulling, as domesticated animals cling to the ground when one tries to lift them (Rambam Sefer Kinyan, Hilkhot Mekhira 3:5; Shulhan Arukh, Hoshen Mishpat 197:3).

One kor for thirty se’a, each se’a for one se’la – כּוֹר בֵּית לְשֵׁלַשִׁים שְׁאָה, סְאָה בְּסֶלַע. If a seller said: I am selling you one kor for thirty se’a, and each se’a for one se’la, and the buyer acquires the produce in its entirety, the seller cannot renege on the sale in the middle of the transaction. This is because the buyer acquires each se’la individually.
The commentaries explain that domesticated animals grip the ground with their feet, which renders it difficult to lift them (Rashbam). Alter the work of a laborer during the harvest is worth a ***sela***, the equivalent of four silver dinars, for each day, it is prohibited to derive benefit from him, i.e., one may not employ the laborer under these conditions. The reason is that this is akin to taking interest, as the laborer works and receives less than he is entitled to in exchange for early payment. But if one hires him already from now to work for one ***dinar*** a day for an extended period of time, including the harvest season, and the work of a laborer during the harvest is worth a ***sela***, this is permitted.

The Gemara raises another difficulty. Come and hear: One who hires a laborer in the winter or the spring to work for him in the harvest, for one ***dinar*** a day,8

The Gemara raises a difficulty from the *baraita* cited on 83a. Come and hear: If the measuring vessel belonged to one of them,9 the buyer acquires the items of sale one by one. And since this halakha is stated in general terms, it indicates that the buyer acquires each item as it is placed in the measuring vessel, even though the measuring vessel was not filled.10

The Gemara answers: The *baraita* is referring to a case where the seller said to him: I am selling you one ***hin***, a liquid measure equivalent to twelve ***log***, for twelve ***sela***, each ***log*** for one ***sela***. And this is in accordance with an observation that Rav Kahana says: In the Temple there were markings on the vessel that measured ***hin***, with which one could measure the different libations. Here too, there were markings on the measuring vessels, and since the measuring vessel indicates at which point each ***log*** had been filled, the buyer acquires it. This is comparable to the case of one who sells each ***se’ah*** individually.

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One ***hin*** for twelve ***sela***—markings, etc.—11: With regard to one who sells a specific amount of produce for a set price (Waggid Mishne), and he measures it in a vessel belonging to the seller or buyer that had markings for amounts within the vessel, once the produce reaches a marking, the produce up to that mark is acquired by the buyer, even though the entire measuring vessel has not been filled. The reason is that each mark on the vessel is considered a measuring vessel by itself. Others say that if the vessel used for measuring belongs to the seller, the buyer acquires the produce only once it is emptied from it (Rambam). Sefer *Kiynan*, Hilkhot *Mekhira* 4:10, Shulĥan Arukh *Yoreh De’a* 87, and in the comment of Rema, and see Taz there).

One who hires a laborer—12: If one hires a laborer in the winter to work for him in the summer and pays him in advance one ***dinar*** a day, and the payment for one day’s work in the summer is one ***sela***, he violates the prohibition of taking interest. If he said to the laborer: Work for me from today and until such a time for one ***dinar*** a day, and this span of time included the summer, it is permitted, as this does not have the appearance of early payment (Rambam, Sefer *Mishpat Hilkhot*, Hilkhot *Maive Ve-loveh* 7:12; Shulhan Arukh, *Yoreh De’a* 176:8).

And during the harvest it is worth a ***sela***, the equivalent of four silver dinars, for each day, it is prohibited to derive benefit from him, i.e., one may not employ the laborer under these conditions. The reason is that this is akin to taking interest, as the laborer works and receives less than he is entitled to in exchange for early payment. But if one hires him already from now to work for one ***dinar*** a day for an extended period of time, including the harvest season, and the work of a laborer during the harvest is worth a ***sela***, this is permitted.

The reason for the discrepancy in a worker’s wages during the harvest and during the winter is that in the winter there is not much work, whereas during the harvest there is a great demand for laborers. In this case, the laborer agrees to be paid less in exchange for receiving his wages in advance.

The measuring vessel belonged to one of them—13: The reason why it was not filled—14: This indicates that although it was not known precisely how much merchandise entered the vessel, the buyer acquires it, as his vessel effects acquisition of it on his behalf irrespective of the specific amount that enters. This contradicts the statement of Rav and Shmuel. In the harvest for one ***dinar*** a day—15: In other words, he pays the laborer his wages at this point, long before the harvest, and he agrees to pay him one ***dinar*** a day for every day of work.

HALAKHA

**BACKGROUND**

Log—ח’ל: This is the basic liquid measure used by the Sages. It is equivalent to the volume of six eggs, one quarter of a *kav*, or one twenty-fourth of a ***se’ah***. A range of modern opinions estimates this volume to be 300–600 ml.

**LANGUAGE**

Dinar—דינר: The source of this word is the Latin denarius, meaning ten, as a denar was worth ten *sela*. The dinar was a coin used widely in the Roman Empire.

**NOTES**

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The Gemara raises another difficulty. Come and hear: One who hires a laborer in the winter or the spring to work for him in the harvest, for one ***dinar*** a day,

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And during the harvest it is worth a ***sela***, the equivalent of four silver dinars, for each day, it is prohibited to derive benefit from him, i.e., one may not employ the laborer under these conditions. The reason is that this is akin to taking interest, as the laborer works and receives less than he is entitled to in exchange for early payment. But if one hires him already from now to work for one ***dinar*** a day for an extended period of time, including the harvest season, and the work of a laborer during the harvest is worth a ***sela***, this is permitted.

The reason for the discrepancy in a worker’s wages during the harvest and during the winter is that in the winter there is not much work, whereas during the harvest there is a great demand for laborers. In this case, the laborer agrees to be paid less in exchange for receiving his wages in advance.

It is prohibited to derive benefit from him—17: Most commentaries accept a version of the text that simply states that this is prohibited, i.e., one may not establish this type of arrangement with a laborer. According to the standard version of the text, which states that it is prohibited to derive benefit from him, this means that the owner of the field is prohibited from deriving benefit from the laborer’s work in the summer. Likewise, it is prohibited for the laborer to take this money, as this arrangement is tantamount to interest, and it is prohibited both to give interest and to accept it.

The reason why it was not filled—14: This indicates that although it was not known precisely how much merchandise entered the vessel, the buyer acquires it, as his vessel effects acquisition of it on his behalf irrespective of the specific amount that enters. This contradicts the statement of Rav and Shmuel.

In the harvest for one ***dinar*** a day—15: In other words, he pays the laborer his wages at this point, long before the harvest, and he agrees to pay him one ***dinar*** a day for every day of work.

The Gemara answers: The *baraita* is referring to a case where the seller said to him: I am selling you one ***hin***, a liquid measure equivalent to twelve ***log***, for twelve ***sela***, each ***log*** for one ***sela***. And this is in accordance with an observation that Rav Kahana says: In the Temple there were markings on the vessel that measured ***hin***, with which one could measure the different libations. Here too, there were markings on the measuring vessels, and since the measuring vessel indicates at which point each ***log*** had been filled, the buyer acquires it. This is comparable to the case of one who sells each ***se’ah*** individually.
Therefore, during the harvest he effectively pays the worker less than his work is worth because he paid him in advance.

The text of the Gemara makes it apparent that a sale that involves exploitation, despite the fact that it is akin to taking interest, is still allowed. The Gemara explains: In the first clause, as the laborer does not work with him from now on, it has the appearance of payment for waiting, i.e., advancing the money to the laborer. In the latter clause, as the laborer works with him from now on, it does not have the appearance of payment for waiting.

The mishna teaches: And if the flax was attached to the ground and he detached any amount, he has acquired it. The Gemara asks: Is it correct to say that due to the fact that he detached any amount, he acquired it? If he does not perform an act of acquisition with all of the flax, how can he acquire all of it? Rav Sheshet said: Here we are dealing with a case where the seller said to him: Go and clear for yourself any amount of land, and thereby acquire everything that is on it. When the buyer clears the land by detaching the flax from the ground, he is considered to be renting the land and thereby acquires all the flax that grows on it.

For one dinar a day, etc. – Rav Sheshet said: With regard to a field that has dry flax still attached to the ground, although it was fully ripened, if the owner said to another: Clear any amount of the ground and acquire all that is upon it, then once the buyer detaches any amount of the flax he acquires all of it, due to this stipulation. Some explain that he acquires the land, and by means of the land he acquires the flax that is attached to it (Rambam, Sefer Kinyan, Hilkhot Mekhira 3:18, and Maggid Misheh there).

And if it enters your mind, as Rav and Shmuel claim, that if a seller said: I am selling you one kor for thirty sela, each sela for one sela, he cannot fully renege on the sale in the middle of the transaction, as the buyer acquires each sela one by one as it is measured, then the halakha in this case should be different. Here too, as he does not agree to one large sum but fixes a price for each day, one by one, it is akin to taking interest, as the laborer works and receives less than he is entitled to in exchange for early payment. And therefore, it should be prohibited to derive benefit from him. Whereas the baraita states: If one hires him from now to work for one dinar a day over an extended period of time, including the harvest, and one day of a laborer’s work during the harvest is worth one sela, this is permitted. Why is it permitted? But isn’t payment for waiting, i.e., advancing the money to the laborer?

Rava said: And how can you understand the baraita in that manner? Is it prohibited for one to lower his hiring price and receive lower wages in order to ensure that he is employed? This arrangement is not a form of interest and violates no prohibition. The Gemara asks: If this is not considered taking interest, then what is different in the first clause, where the laborer is not employed immediately and this arrangement is prohibited, and what is different in the latter clause, where it is permitted?

The Gemara explains: In the first clause, as the laborer does not work with him from now on, it has the appearance of payment for waiting, i.e., advancing the money to the laborer. In the latter clause, as the laborer works with him from now on, it does not have the appearance of payment for waiting.

Notes

For one dinar a day, etc. – Rav Sheshet said: The text of the Gemara here is apparently unnecessarily repetitive, and it is probably a combination of two versions of the exact same question. Some commentaries adjust the text so that it states only one question (Rashba). In any case, the difficulty is as follows: Certainly if he had hired the laborer with a set wage for an extended period of time, e.g., a certain amount of money for six months, this arrangement would be permitted. But in this case he states explicitly how much he will pay him for each separate day. Moreover, as the laborer can stop working for him at any point, he is not hired for one long period of time but by individual one-day units. Therefore, during the harvest he effectively pays the worker less than he works worth because he paid him in advance.

Lower his hiring price, etc. – Rav: Rava is explaining why this is not classified as interest by Torah law, as it is not a loan that must be repaid with interest. It also cannot be categorized as a sale that involves exploitation, despite the fact that the laborer is paid less than the standard price. The reason is that there is no absolute value to a laborer’s work, as one might work for less than the usual rate if he is in need of money (Rashbam). Others explain that the halakha here is no different than that of one who sells an item on the condition that he will deliver it at a later point in time. In that case, although he lowers the price to reflect the late delivery of the product, this is not considered interest because the item belongs to the buyer at the time. So too, here the laborer sells his labor to the owner of the field at this point in time and receives his wages even though he will provide his services only at a later stage. Since the sale of his labor is effective immediately, the labor that he later provides is not akin to paying interest (Rabbeinu Yona).

It has the appearance of payment for waiting – Rav Sheshet said: Here we are dealing with a case where the seller said to him: Go and clear for yourself any amount of land, and thereby acquire everything that is on it. When the buyer clears the land by detaching the flax from the ground, he is considered to be renting the land and thereby acquires all the flax that grows on it.

Due to the fact that he detached, etc. – Rava: The commentaries explain that at this point, the Gemara does not assume, as Rav Sheshet will, later in the discussion, that the mishna is referring to an action that involves the ground itself. Rather, this is an act of acquisition to acquire the flax. The Gemara therefore asks how detaching a bit of the flax can cause one to acquire all of the flax that is attached to the ground (Rashbam). Others add that the mishna is referring to flax that is ready to be detached, i.e., that has finished growing. In this case, although it is still attached to the ground, it is treated as movable property (Rif; Rashbam; Ramban). The Gemara’s question is how the buyer can acquire all of the flax without performing a full-fledged act of acquisition upon all of it, as he apparently pulls only some of the flax.
MISHNA With regard to one who sells food or drink that has an established price, such as wine and oil, to another, and the price rises or falls and the buyer or the seller wishes to renegotiate the sale, the price must be re-established. If the price changed before the measuring vessel is filled, the merchandise still belongs to the seller and he can cancel the sale. Once the measuring vessel is filled, the merchandise belongs to the buyer, and the seller can no longer cancel the sale. And if there was a middleman (sarsur) between them and the barrel belonging to the middleman, being used to measure the merchandise, broke during the transaction and the merchandise is ruined, it broke for the middleman, i.e., he is responsible for the ruined merchandise.

GEMARA The Gemara clarifies the mishna’s statement that the sale occurs once the measuring vessel is filled. This measuring vessel, to whom does it belong? If we say that the measuring vessel belongs to the buyer, why does the mishna teach that before the measuring vessel is filled the merchandise still belongs to the seller? Since it is the measuring vessel of the buyer, he should acquire whatever that is placed in his vessel, whether or not it is filled. But if we say that the measuring vessel belongs to the seller, why does the mishna teach that once the measuring vessel is filled the merchandise belongs to the buyer? Since it is the measuring vessel of the seller, the merchandise has yet to enter the possession of the buyer.

Rabbi Ela says: The mishna is referring to a case where the measuring vessel belongs to the middleman. The middleman lends it to the seller, and once it is filled it is loaned to the buyer so that he can transfer its contents into his vessels. The Gemara asks: But from the fact that the latter clause teaches: And if there was a middleman between them and the barrel broke, it broke for the middleman, it may be inferred that in the first clause we are not dealing with a middleman. The Gemara answers: The first clause addresses a measuring vessel belonging to a middleman without the presence of the middleman at the transaction, whereas the latter clause is concerned with a middleman himself, who is present at the sale and therefore accepts responsibility for the barrel and its contents.

HALAKHA One who sells wine and oil to another, etc. – מֵאָרוּם יִרְשָׁם אֲדֹנָי: ברוך פָּרָשָׁה חַיָּי. With regard to one who sells wine or oil in an alleyway, or a courtyard belonging to both buyer and seller, or in the buyer’s domain, and the measuring vessel belonged to a middleman who loaned it to both of them (TBD), if the measuring vessel has not yet been filled the merchandise belongs to the seller and he can renegotiate the sale. Once it is filled, it belongs to the buyer, and the seller can no longer renegotiate the sale. This is in accordance with the explanation of Rabbi Ela in the Gemara (Rambam Sefer Kinyan, Hilchot Melchita 4:8; Shulhan Arukh, Hoshen Mishpat 200:7).

There was a middleman between them – אָדֹנָי: ברוך פָּרָשָׁה חַיָּי. If a middleman sells an item and while it is still in his possession it is lost, broken, or stolen from him, not due to circumstances beyond his control, he must repay the owner. The reason is that he is considered a paid bailee, as he receives payment for his services. This halakha is in accordance with the Riva’i’s explanation of the Gemara (Rambam Sefer Kinyan, Hilchot Sheluvin Veshutuah 2:7, and see Haggahot Maimoniyot and Kesef Mishne there; Shulhan Arukh, Hoshen Mishpat 185:7).

Three drops – יִשְׁתֶּה: If a homeowner sells a liquid, after emptying the vessel used for measuring it into the buyer’s vessel he must leave it there until those three drops drip out. A storekeeper is not required to do so (Shulhan Arukh, Hoshen Mishpat 213:7).
The mishna teaches that if he turned the barrel on its side and drained out the last bits of liquid within it, this liquid belongs to the seller. The Gemara relates: When Rabbi Elazar ascended from Babylonia to Eretz Yisrael, he found Ze’erii and said to him: Who here is the tanna to whom Rav taught this halakha with regard to measures? Ze’erii showed him Rav Yitzhak bar Avdimi. Rav Yitzhak bar Avdimi said to Rabbi Elazar: What is it about this halakha that poses a difficulty for you? Rabbi Elazar said to him that the problem is that we learned in the mishna: If he turned the barrel on its side and drained out the last bits of liquid within it, that liquid belongs to the seller.

**Notes**

Due to the desirp of the owner — Many early commentators explain that in principle the remnants are considered part of the measured liquid. Therefore, in the case of teruma, the basic halakha that dictates that all the contents of the barrel are teruma is implemented (Rabbeinu Hananel; Rashbam Commentary). Tosafot point out that the Gemara could have stated that there is a separate reason for this stringency in the case of teruma. Since it is unknown from the outset which drops will remain behind, every drop becomes consecrated as teruma.

With regard to the desirp of the owner in the case of the sale of liquid, the commentators explain that the owner does not want to wait until the last bits of liquid are extracted from the vessel, and therefore he forgives his rights to it (Rashbam). Alternatively, each buyer knows that the seller will immediately use the vessel to measure for another customer and there will be no way of determining what belongs to him (Rabbeinu Barukh). This consideration is irrelevant in the case of teruma, as these last bits of liquid are already forbidden to a non-priest. Furthermore, because it is not known which priest will become the owner of the teruma at that point in time, there is no one to desirp of this amount (Rabbeinu Gershom Meor HaGola).

Referring to the first clause, etc. — According to the commentators who accept the version of the text presented here, the question is whether Rabbi Yehuda is teaching a leniency in the case of any seller on Shabbat eve, or imposing a stringency on storekeepers during the rest of the week (Rashbam). According to those whose version of the text states that even a storekeeper is obligated to drip three drops, the question is as follows: Does Rabbi Yehuda refer to the first clause, which states that the remnant in the vessel belongs to the seller, and he rules stringently that this is the case only on Shabbat eve? Or is he referring to the three drops, and rules leniently that a storekeeper is exempt from dripping these drops on Shabbat eve (Ri Migash)?
With regard to one who sends his son⁷⁹ to a storekeeper with a pundeyon,¹ a coin worth two issar, in his hand,⁸ and the storekeeper measured oil for him for one issar¹⁰ and gave him the second issar as change, and the son broke the jug and lost the issar, the storekeeper must compensate the father, as he gave the jug and coin to one who is not halakhically competent. Rabbi Yehuda exempts him from liability, as he holds that the father sent his son in order to do this, i.e., to bring back the jug and coin. And the Rabbis concede⁸⁰ to Rabbi Yehuda with regard to a case when the jug is in the hand of the child and the storekeeper measured the oil into it that the storekeeper is exempt if the child breaks the jug.

GEMARA

Granted, with regard to the issar and the oil, one can explain that they disagree over this matter: As the Rabbis hold that the father sent his son to inform the storekeeper that he needed oil but did not intend for the storekeeper to send the oil with the boy. For this reason, if the storekeeper gave the child the oil he is liable for its loss. And Rabbi Yehuda holds that he sent his son so that the storekeeper would send him back with the oil, and therefore the storekeeper is exempt from liability. But if the child broke the jug, why do the Rabbis hold that the storekeeper is responsible for it? It is a deliberate loss on the part of the father, as he entrusted the jug to his young son, who is not responsible enough to care for it.

Rav Hoshaya said: Here we are dealing with a proprietor who sells jugs, and the father sent his son with a jug in case the store owner might want to buy it. And this is a case where the storekeeper took the jug in order to examine it,¹¹ and the ruling is in accordance with a statement of Shmuel. As Shmuel says: With regard to one who takes a vessel from a craftsman in order to examine it and buy it if he chooses, and an accident occurred while it was in his possession and it broke, he is liable to pay restitution for the vessel. He has the halakhic status of a borrower, and therefore he bears financial responsibility for the loss.

The Gemara asks: Shall we say that the opinion of Shmuel is subject to a dispute between tannaim? Since Rabbi Yehuda disagrees with the Rabbis, his opinion evidently differs from that of Shmuel. Rather, Rabbba and Rav Yosef both say that the disagreement in the mishna should be explained as follows: Here, we are dealing with a storekeeper who sells jugs, and the father sent his son to buy from him a jug filled with oil. And Rabbi Yehuda follows his line of reasoning, as explained above, that the father sent his son to bring back the merchandise, and the Rabbis follow their line of reasoning, that the father sent the son to inform the storekeeper what he needed, but not to carry it back.

The Gemara asks: If that is so, say the last clause: The Rabbis concede⁸⁰ to Rabbi Yehuda in a case when the jug was in the hand of the child, and the storekeeper measured the oil into it, that the storekeeper is exempt. Why would the Rabbis rule that the storekeeper is exempt? But you said that the father sent his son only to inform the storekeeper of his order, but he did not intend for the storekeeper to give anything to his son. Rather, Abaye bar Arin and Rabbi Ḥanina bar Arin both say that the disagreement in the mishna should be explained as follows: With what are we dealing here?

NOTES

With regard to the despair of the owner in the case of the sale of liq, the Gemara answers: Come and hear a resolution of this dilemma, as it is taught in a baraita that Rabbi Yehuda says: On Shabbat eve at nightfall a storekeeper is exempt because the storekeeper is busy. This proves that Rabbi Yehuda was referring to the latter clause of the mishna, i.e., he exempts the storekeeper from dripping the drops only on Shabbat eve.

MISHNA

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The mishna is referring to a case where the storekeeper took the jug from the child in order to measure with it, and because he took it in his hands, he is liable in the event of an accident, in accordance with the opinion of Rabbi. As Rabbi says: With regard to the obligation to return lost animals, even in a case where the finder is exempt from caring for the animal and returning it to its owner, e.g., if he is an elderly person and it is beneath his dignity, if he struck the animal in order to lead it, then he becomes obligated to return it. Likewise, the Rabbis here maintain that the storekeeper’s action renders him liable for the jug.

The Gemara asks: You can say that Rabbi says his statement with regard to animals, as the finder taught them to take steps away, i.e., he worsened the situation, as he causes them to stray even further from their owner. Nevertheless, in a case like this, where the storekeeper took the jug from the child, did Rabbi say that the storekeeper is liable? The storekeeper’s action does not make it any more likely that the jug will break.

Rather, Rava said: I and the lion of the group explained it. And who is this great Sage, referred to as a lion? It is Rabbi Zeira, and the explanation is as follows: Here we are dealing with a case where the storekeeper took the jug from the child in order to measure with it for others, without the knowledge of the father.

And the Rabbis and Rabbi Yehuda disagree with regard to a borrower who takes an item without the owner’s knowledge. One Sage, Rabbi Yehuda, holds that the storekeeper is considered like any other borrower and once he returns the jug to the child, he is no longer responsible for it. And one Sage, i.e., the Rabbis, holds that someone who borrows without the owner’s knowledge is a robber and is obligated to return the item to its owner. Therefore, the storekeeper must pay for the jug that the child broke before it reached the father.

The Gemara returns to the matter itself. Shmuel says: With regard to one who takes a vessel from a craftsman in order to examine it, and an accident occurred while it was in his possession and it broke, he is liable to pay restitution for the vessel. The Gemara explains: And this statement applies only in a case where the monetary value of the vessel is fixed, because he examines the vessel merely to ensure there is nothing wrong with it, and it is assumed that if he finds no defect he will buy it.

HALAKHA

If he struck the animal – רבי: Some commentaries explain that if one finds an animal and strikes it to prompt it to move, he is obligated to care for it and return it to its owner, even if it is beneath his dignity to do so, as he is considered to have begun performing the mitzva of returning a lost item (Rambam). Some infer from this ruling that the same is true with regard to any item that one has begun to return (Ran). By contrast, others claim that the ruling applies only with regard to animals, as the one who strikes them teaches them to stray, and that the Rambam agrees with this ruling (Rambam Sefer Nezikin, Hilkhot Gezalia VaAvada 1:14; Shulhan Arukh, Hoshen Mishpat 263:2, and see Sm’a there).

A borrower who takes an item without the owner’s knowledge – רבי: One who borrows an item without the owner’s knowledge is considered a robber, and all of the halakhot pertaining to a robber are applicable to him. If one takes a vessel from a young son or slave of the owner and uses it, he is likewise considered a borrower who takes an item without the owner’s knowledge, and is liable to pay for it. He has the status of a robber until the stolen item is returned to the owner. Therefore, if the borrower returns the vessel to the owner and it is lost or destroyed, he is liable to pay for it (Rambam Sefer Nezikin, Hilkhot Gezalia VaAvada 3:15; Shulhan Arukh, Hoshen Mishpat 359:5).

One who takes a vessel from a craftsman in order to examine it – רבי: If one takes for examination a vessel that has a fixed price from a craftsman and he lifts it with the intention of buying it if he likes it, he acquires that item and the seller cannot renege on the sale. If an accident occurs, the buyer is liable to pay for it. If the seller wishes to sell it as soon as possible, the vessel continues to belong to the seller until a price is agreed upon. Subsequently, the buyer acquires it by lifting or through another mode of acquisition (Rambam Sefer Kinyan, Hilkhot MeKhibban 3:14, 15, and Maggid Mishne there; Shulhan Arukh, Hoshen Mishpat 263:7, 8, and Sm’a there).

PERSONALITIES

Rabbi Zeira – רבי זֵירָא: Born in Babylonia, Rabbi Zeira, known in the Jerusalem Talmud as Rabbi Zeira, became one of the most prominent third-generation amoraim of Eretz Yisrael. His father, a tax collector for the Persian government, was praised as one of the few who performed that function honestly. When Rabbi Zeira ascended to Eretz Yisrael, he decided to identify himself entirely with the Torah of Eretz Yisrael. The Gemara relates that he undertook one hundred fasts to forget the Torah he studied in Babylonia.

NOTES

The storekeeper took the jug in order to measure with it – רב: There is no assumption here that the mishna is referring to a case where either the father or the storekeeper is a seller of jugs. Rather, as was initially supposed, the mishna is dealing with the case of a father who sent his son to a shop to purchase oil, and provided him with a jug to measure the liquid (Rashbam). In such a case, if the child holds the jug while the storekeeper measures the oil, the storekeeper is exempt, because this is considered a deliberate loss on the part of the father. By contrast, once the storekeeper takes the jug and uses it for measuring, he becomes liable for any accident.

As the finder taught them to take steps away – רבי: The finder is obligated to return the lost animal not because he struck it, but because by hitting the animal he caused it to stray from its usual path. If he had done nothing, the animal might have returned to its owner, but since he caused it to stray, its owner is less likely to recover it. The Rashbam notes that the Gemara could have raised as an objection that this explanation would leave Rabbi’s ruling as the subject of a dispute between tanna’im, but chose to raise a different challenge instead. Others explain that Rabbi Yehuda agrees with the opinion of Rabbi that if the finder strikes a lost animal he is obligated to return it to its owner. It is only here, where the storekeeper who took the jug attempts to return it to its owner by giving it back to the child, that Rabbi Yehuda maintains that he is not liable for its loss (Rambam).

He is a robber – רבי: Although the borrower does not intend to steal the item, since he takes it without its owner’s knowledge to use for his own purposes, his act is tantamount to robbery. He is therefore required to return it to its owner, not to the place from which he took it. The commentators note that according to this opinion, the Rabbis concede to Rabbi Yehuda only in a case where the shopkeeper took the jug to measure oil for the child. By contrast, if he took it for any other purpose, he is held responsible (Rashbam).

Where the monetary value of the vessel is fixed – רבי: Since the buyer and seller do not need to agree on a price, and since both parties are interested in the sale, when the buyer takes the vessel in order to purchase it, he is considered to have completed the purchase and the buyer is liable for any mishap that occurs to the vessel. Some commentators explain differently, that the buyer lifted the item only to examine it; if the item has a fixed value and is offered for sale, it is as though the seller has told the buyer that he may acquire this item, and consequently the seller cannot renege on the sale. Nevertheless, the buyer can renege (Ri Migash).

With regard to the concept of a fixed value of the vessel, some explain that this means the seller has explicitly set the price of the item (Rambam, citing Rif). Others hold that this refers even to items that have a set market price (Ramat El, Ran).
They are hereby consecrated – שם וקמ"ק: Seeing that everyone was taking his pumpkins, the seller feared that many of them would not pay him. In his anger, he consecrated the pumpkins (Rashbam).

One who wishes to buy vegetables – הולך וקמ"ק: This seller is an am haaretz, one who is not trusted to have tithed his produce. Consequently, the buyer is obligated to tithe the produce himself. This obligation comes into effect only once the sale is complete and the produce enters his possession. In this case, the buyer has not yet paid for the vegetables (Rambam, citing Jerusalem Talmud).

He selected and placed – נווה וקמ"ק: There are various interpretations of this phrase, which affect the meaning of the entire passage. One explanation is that the buyer selected superior-quality vegetables and placed them in one side, in order to select from among them the ones he wished to buy (Rashbam Commentary; Rid).

Alternatively, he was busy lifting one and putting down another because he could not decide which one to choose (Rabbeinu Gershon Meor HaGola). Some explain that the buyer selected the vegetables he chose to buy and returned to the seller the vegetables he did not want (Ramah). Others say that the buyer did not actually lift the vegetable (Rashash, citing Rabbi Shimon of Saens on Demai 32).

As he would then lower their monetary value – יקנף וקמ"ק: Some commentaries explain that tithing the vegetables reduces the quantity of the remaining produce (Rashbam). Others add that if the seller wanted to sell the tithed produce to someone who is careful about tithes and correctly stated that it is already tithed, he would not be believed, since he is an am haaretz. Consequently, the new buyer would pay less for the produce, on the assumption that he himself would have to tithe it (B. Miquros). The early commentaries note that although the buyer must pay this seller if he separated teruma of the tithe or the second tithe, he would not be believed, since he is an am haaretz.
A wholesaler [hasston] must clean his measuring vessels, which are used for measuring liquids such as oil and wine, once every thirty days, because the residue of the liquids sticks to the measure and reduces its capacity. And a homeowner who sells his goods must clean his measuring vessels only once every twelve months. Rabban Shimon ben Gamliel says: The matters are reversed. In the case of one who is constantly using his vessels for selling merchandise the residue does not adhere to the measuring vessel, and therefore a wholesaler must clean his measures only once a year. But in the case of a homeowner, who does not sell as often, the residue adheres to the measuring vessel; therefore, he must clean them every thirty days.

A storekeeper, who constantly sells merchandise in small quantities, cleans his measuring vessels twice a week and cleans his weights once a week; and he cleans the pans of his scales after each and every weighing, to ensure that no merchandise has adhered to the pans, thereby increasing their weight. Rabban Shimon ben Gamliel said: In what case is this statement, that it is necessary to clean a measuring vessel, said? With regard to moist items, which are likely to adhere to the measuring vessels. But with regard to dry goods, which do not adhere to the measuring vessels, one does not need to clean his measuring vessels.

Determined to buy, he acquires it and becomes obligated in tithes – רָאָשׁ גַּם מְמוֹלָכָהּ מְמוֹלָכָהּ מְמוֹלָכָהּ מְמוֹלָכָהּ. Some explain that according to the baraita the potential buyer acquires the vegetables if he determined to buy them when he was holding them in his hand (Ranah). The Ri Migash explains the Gemara’s question as follows: When Shmuel states that the buyer is responsible for the item once he lifts it, this applies only if it becomes damaged. It does not mean that he actually purchases the item, and he can still renounce on the sale. Why, then, is he obligated in tithes? Yet others contend that according to the baraita he acquires the vegetables that he has already placed to the side, and the Gemara asks: Since he did not lift the vegetables with the intention of acquiring them, how can he acquire them by means of thought alone? (Rd; see Rabbeinu Gershon Meor HaGola).

The matters are reversed – פרֵקֶת הָאָרֶץ. Most commentaries explain the reasons for these opinions as follows: The Rabbis maintain that since a homeowner very rarely sells merchandise, very little residue adheres to his measuring vessels, whereas in the case of a wholesaler, who sells constantly, more residue adheres to his measuring vessels. By contrast, Rabban Shimon ben Gamliel holds that the reverse is true. There is no buildup of residue in the case of the wholesaler, as he constantly sells merchandise and reuses his measuring vessels, and therefore nothing is left in them. But in the case of a homeowner, the residue adheres to the measuring vessels and will remain there if they are not cleaned.

Alternatively, the homeowner is someone who produces wine or oil and sells in bulk to the wholesaler, who in turn sells to storekeepers. According to this explanation, since the wholesaler sells to many storekeepers, who also profit from their sales, they do not mind losing out on the small amount of residue that adheres to the measuring vessels. By contrast, in the case of the homeowner, who sells in bulk to one person, there is a concern of exploitation (Meir, citing Ri Migash).

A storekeeper – שֵׁהוּ נֶמֶשׁ. Some claim that this ruling as to when a storekeeper must clean his measuring vessels applies only according to the opinion of the Rabbis. By contrast, Rabban Shimon ben Gamliel maintains that since a storekeeper sells more frequently than a wholesaler he is required to clean his measuring vessels less regularly (Rashbam, citing his teachers). The Rashbam himself explains that in light of the ruling of the previous mishna that a storekeeper is not obligated to drip three drops after measuring, there is a greater concern that some residue might have settled in his measuring vessels than in the case of a wholesaler or a homeowner, who are obligated to drip the three drops. Consequently, Rabban Shimon ben Gamliel accepts this halakha. Alternatively, a storekeeper is treated more stringently because he often sells to the poor, and therefore must be especially careful not to cause them a loss (Meir).

Cleans [memeha] his weights – מְמַחֶה מְמַחֶה מְמַחֶה מְמַחֶה. Memeha means to clean (Rashbam), or to wash (Rambam’s Commentary on the Mishna). This term may indicate that one exerts himself while cleaning and does not merely wipe the item.

With regard to dry goods, one does not need – כִּי יֶדֶעַ רַבִּי יְהוֹדָעַ. The reason is that dry goods do not adhere to the measuring vessels (Rashbam). Rabbeinu Gershon Meor HaGola explains that while measuring vessels used for dry goods need not be cleaned as frequently as those used for moist items, they too must be cleaned from time to time (Rabbeinu Gershon Meor HaGola).

PERSONALITIES

Rav Safra – רַבָּא שֶׁמֶת חַכָּמִי. Rav Safra, a third- and fourth-generation Babylonian amora, engaged in halakic discourse with the greatest of the third- and fourth-generation Sages, including Rabbi and Rav Yosef. He was similarly active in the generation of their students, Abaye and Rava.

Rav Safra traveled on business to Eretz Yisrael, where he discussed halakha with various Sages, including Rabbi Abba and Rabbi Abbahu. His primary focus was the realm of Hala’ka, and he did not devote himself to the study of Bible and aggada. Rav Safra was renowned for his exemplary character, especially for distinguishing himself from all forms of dishonesty.

Since Rav Safra was an itinerant merchant, he never established his own yeshiva and was not a constant presence in the study hall. Therefore, some Sages maintained that he did not have the status of one of whom the halakha requires that all must mourn his passing.

HALAKHA

A wholesaler, etc. – אוֹמֵר רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל. A wholesaler must clean the measuring vessels he uses for liquids every thirty days. Some commentaries maintain that he must also clean any deep vessels that are used for measuring dry goods (Ranah; Sm). This halakha is in accordance with the opinion of the first tanna (Rambam Sefer Nezikin, Hilkhot Geneiva 8:18 and see Haggahot Maimoniyot and Kesef Mishne there; Shulhan Arukh, Hoshen Mishpat 231:7).

And a homeowner, etc. – אוֹמֵר רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל. A homeowner, who sells merchandise only occasionally and who must drip three drops from the measuring vessel after pouring the merchandise for the buyer, is required to clean his measures only once every twelve months, in accordance with the opinion of the first tanna (Rambam Sefer Nezikin, Hilkhot Geneiva 8:18 and see Haggahot Maimoniyot and Kesef Mishne there; Shulhan Arukh, Hoshen Mishpat 231:7).

A storekeeper, etc. – אוֹמֵר רַבָּן שִׁמְעוֹן. A storekeeper, who constantly measures small quantities of liquids and who is not required to drip three drops after pouring liquid into the vessel of the buyer, must clean his measuring vessels twice a week. If he weights liquids on a balance scale, he cleans the weights once a week and cleans the pans of the scales after each and every weighing (Rambam Sefer Nezikin, Hilkhot Geneiva 8:18; Shulhan Arukh, Hoshen Mishpat 231:12).
Let the scale tilt an extra handbreadth – ליטרא. In the case of ordinary balance scales that are not made to weigh with great precision, the heavy pan of the scales does not descend easily. Therefore, it is necessary initially to cause the scales to tilt recognizable. To ensure an advantage for the buyer, the Sages instructed that the side that is to hold the buyer’s merchandise tilt a handbreadth below the other side before adding the merchandise to that side and the weights to the other side.

And he is obligated to let the scale tilt an extra handbreadth – ליטרא. According to some commentators, this halakha applies only when the merchandise weighs less than a litra (Rashbam), although others disagree.

One may not measure with a large measuring vessel. The commentators explain that when several small measuring vessels are used the buyer benefits, as each time he receives slightly more than a full measuring vessel. Even in the case of levelled measuring vessels, the leveling does not eliminate every bit of the excess (Rashbam). Rabbeinu Gershon Meor HaGola explains that where the custom is to use a large measuring vessel, the buyer would lose out were the scale to weigh with several small measuring vessels, since the merchandise sticks to the vessel each time it is weighed. The Rashbam explains that in this case the objection is on behalf of the seller, as he cannot level the merchandise as effectively with several small measuring vessels. The Ramah adds that sometimes two small measuring vessels are not exactly equal to a measure that is supposedly twice their size.

In a place where the custom is to level the top of the measuring vessel, one may not heap, etc. – ליטרא. This is the halakha even if the price is raised in accordance with the heaped measure, or lowered due to the levelling (Rashbam; see 8a).

The mishna continues to discuss the correct method of weighing: In a place where they were accustomed to measure with a small measuring vessel, one may not measure all the items at once with a single large measuring vessel. In a place where they measure with one large measuring vessel, one may not measure with several small measuring vessels. In a place where the custom is to level, the top of the measuring vessel to remove substances heaped above its edges, one may not heap it, and where the custom is to heap it, one may not level it.

The Gemara asks: From where are these matters, that the seller must initially let the scales tilt an extra handbreadth, derived? Reish Lakish said: The source is that the verse states that one should have: “Be righteous [tzadek] weight.” (Deuteronomy 25:15), which is interpreted as an instruction to the seller: Be righteous [tzadek] with that which is yours and give it to the buyer. The Gemara asks: If that is so, say the latter clause: If the seller weighed for him exactly, he gives the buyer additional amounts. But if letting the scales tilt is obligatory by Torah law, how can he originally give him by weighing exactly?

Rather, it is not obligatory to let the scales tilt, and the first clause is referring to a place where they are accustomed to let the scales tilt an extra handbreadth. And if the statement of Reish Lakish was stated, it was stated with regard to the latter clause: Is the seller weighed for him exactly, he gives the buyer additional amounts. From where is this matter derived? Reish Lakish said that this is as the verse states: “And just [tzadek],” which indicates: Be righteous [tzadek] with that which is yours and give it to the buyer. The Gemara asks: And how much are the additional amounts that are given? Rabbi Abba bar Memel says that Rav says: In the case of liquids, one-tenth of a litra for every ten litra, i.e., one-hundredth.

The mishna teaches that the seller adds one-tenth in the case of liquids, and one-twentieth for dry goods. A dilemma was raised before the Sages: With regard to what case is the tanan of the mishna speaking? Does he mean one-tenth in the case of liquids for every ten units of liquid, and similarly one-twentieth in the case of dry goods for every twenty units of dry goods, i.e., one-four-hundredth? Or perhaps, he means one-tenth for every ten units of liquid, and similarly one-tenth for every twenty units of dry goods, i.e., one two- hundredth? The Gemara states that the dilemma shall stand unresolved.
The Gemara asks: But with regard to forbidden relations it’s not it also written: “For whosoever shall do any of these [elleh] abominations” (Leviticus 18:29)? If so, why is the punishment for using false measures considered harsher? The Gemara answers: That expression of “elleh” (Leviticus 18:29) in the context of forbidden relations does not serve to emphasize its severity. Rather, it serves to exclude one who uses deception in measures from the penalty of excision from the World-to-Come [karet].

The Gemara asks: But if the punishment is in fact less severe, what is the advantage, i.e., the greater severity, in the case of false measures? The Gemara answers that there, in the case of one who engages in forbidden relations, he has the possibility of repentance. But here, in the case of one who uses false measures, there is no possibility of repentance25 because he has no way of knowing whom he cheated, and is therefore unable to return the stolen money.

And Rabbi Levi says: Robbing an ordinary person is more severe than robbing the Most High, i.e., taking consecrated property. As with regard to this regular robber, the verse states “sin” before “me’ila”: “If any one sin, and commit a trespass [me’ila] against the Lord, and deal falsely with his neighbor in a matter of deposit, or of pledge, or of robbery, or have oppressed his neighbor” (Leviticus 5:21). And with regard to that one who misuses consecrated items, the verse states me’ila before sin: “If any one engages in misuse [timol ma’al] and sins unwittingly” (Leviticus 5:15).

And Rabbi Levi says: Come and see that the attribute of flesh and blood is unlike the attribute of the Holy One, Blessed be He. The Holy One, Blessed be He, blessed the Jewish people with twenty-two, and cursed them with only eight. Rabbi Levi explains: He blessed them with the twenty-two letters of the Hebrew alphabet, from the first letter, alef, that begins the verse: “If [im] you walk in My statutes” (Leviticus 26:3), until “upright [konemiyyot]” (Leviticus 26:13), which ends with the letter tav, the last letter of the Hebrew alphabet.

And He cursed them with eight letters, from the letter tav that begins the verse: “And if [ve’im] you shall reject My statutes” (Leviticus 26:13), until: “And My statutes were abhorred by their soul [nafsham]” (Leviticus 26:43), which ends with the letter mem. There are eight letters in the Hebrew alphabet from the letter tav to the letter mem, inclusive.

And yet Moses, our teacher, who is flesh and blood, blessed them with eight letters, and cursed them with twenty-two. He blessed them with eight letters,
According to this opinion, it is permitted to change in a place where they heap: I am hereby leveling – vehaya
balance with precision me’eyyin
me’eyyin
me’eyyin

One may not level, etc. – agardam

And from where is it derived that if the seller agrees to provide financial compensation for the buyer, nevertheless they are not permitted to agree beforehand to level the merchandise and lower the price accordingly, or to heap the merchandise and raise the price, it would be permitted to do so.

A perfect and just weight – avsheikah shel vechekah

In a place where they heap I am hereby leveling – vehaya

HALAKHA

In a place where they heap I am hereby leveling – vehaya

The Sages taught: From where is it derived that one may not level a measuring vessel in a place where they are accustomed to heap it and that one may not heap it in a place where they are accustomed to level it? The verse states: “A perfect weight” (Deuteronomy 25:15), which indicates that one must use whatever is considered a perfect measuring vessel in that locale, as this ensures that there is no deception or trickery.

And from where is it derived that if the seller said, I am hereby leveling – vehaya

The Sages taught: From where

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The Sages taught: From where

Rav Yehuda of Sura says a homiletic interpretation of the phrase: “You shall not have in your house diverse measures” (Deuteronomy 25:14): “You shall not have in your house” means that you will become a pauper, who has nothing in his house. What is the reason for this? It is due to the fact that you used diverse measures, buying with a large vessel and selling with a small one.
The purpose of market inspectors is to ensure that prices do not rise excessively. The reason the court would not involve itself in setting market prices is that if someone were selling merchandise at too high a price, the potential buyer could find someone else who was selling for a lower price (Rashbam). Alternatively, the court cannot establish a set price for an item, as it is appropriate that there should be different prices, reflecting superior-quality and lower-quality merchandise (Rabbeinu Gershon Meor Ha’Gola). Some commentaries explain that according to all opinions in the Gemara the court appoints inspectors to ensure that no one sell merchandise for more than a designated price. Rather, the dispute is with regard to whether the court should establish a minimum price. Those who oppose a minimum price do so because low prices benefit buyers (Ramah).

Due to swindlers – נמיים: Some maintain that this expression does not refer to those who sell above the market price, as such merchants are not swindlers. Rather, the term swindlers refers to merchants who sell below the market price, as by doing so they gain more customers and are ultimately able to raise their prices and thereby swindle the customers they gained (Ramah). Others explain that swindlers are those who wait until all merchandise of that type has been sold in that location at the low market price, and subsequently raise their own prices. Alternatively, swindlers are sellers who justify selling their merchandise for higher prices by pretending that they are selling superior-quality merchandise (Rashbam).

The court does not appoint market inspectors for supervising market prices – sensa paša tenei. The Sages taught that the phrase: “You shall not have in your purse diverse weights” (Deuteronomy 25:13), is interpreted in a similar fashion: “You shall not have in your purse,” i.e., you will become a pauper, who has nothing in his purse. What is the reason for this? It is due to the fact that you used diverse weights. But if you possess only “a perfect and just weight,” then “you shall have” wealth. Likewise, if you possess only “a perfect and just measure,” then “you shall have” wealth.

The phrase: “You shall not have in your purse diverse weights” (Deuteronomy 25:13), is interpreted in a similar fashion: “You shall not have in your purse,” i.e., you will become a pauper, who has nothing in his purse. What is the reason for this? It is due to the fact that you used diverse weights. But if you possess only “a perfect and just weight,” then “you shall have” wealth. Likewise, if you possess only “a perfect and just measure,” then “you shall have” wealth.

The court is obligated to appoint supervisors to inspect shops under its jurisdiction. If they find that a storekeeper keeps false measures, they can beat him or fine him, as determined by the court (Rambam Sefer Nezikin, Hilkhot Geneva 8:20 and Sefer Shotelem, Hilkhot Sanhedrin 13; Shulhan Arukh, Hoshen Mishpat 231:2).

For supervising prices – תקוטב: The court is obligated to appoint supervisors over market prices to ensure that storekeepers cannot determine their profit margins independently. See 9a for a discussion of the permitted margin of profit. These supervisors have the authority to beat or punish anyone who disregards the market price and sells merchandise at a higher price. The halakha is in accordance with the opinion of Rabbi Yitzhak (Rambam Sefer Nezikin, Hilkhot Geneva 8:16, 20 and Sefer Kinyan, Hilkhot Mekhira 141; Shulhan Arukh, Hoshen Mishpat 231:20–21).

That one sets weights – רקבא יפָּקֵד: The Sages established that the weights used in scales may be only a litra, a half-litra, or a quarter-litra. One may not weigh by means of a third-litra weight, or a weight of three-quarters of a litra, as the use of such measures would lead to errors. The halakha is in accordance with the explanation of Rabbeinu Hananel (Shulhan Arukh, Hoshen Mishpat 231:9).

Three units using a quarter-litra – אָמַר לֵיהּ רַרְנָא בְּעֵינֵיהּ מִלְוֹ חֲצִי מַעֲמִידִין אֲגַרְדָּמִין בֵּין לַמִּדּוֹת בֵּין לַשְּׁעָרִים, וְאִיהוּ כְּמַאן סָבַר? כִּי אֵימוּ שֶׁמַּעֲמִידִין אֲגַרְדָּמִין לַמִּדּוֹת, וְאֵין מַעֲמִידִין (לֹא) ״יִהְיֶה לָּךְ״ – מְלַמֵּד ״לֹא יִהְיֶה לְךָ בְּכִיסְךָ״ – מַה טַּעַם? מִשּׁוּם מַעֲמִידִין

Karna went out and taught them that one appoints market inspectors for supervising both measures and prices. Shmuel said to his student, the Sage Karna: Go out and teach them that one appoints market inspectors for supervising measures but one does not appoint market inspectors for prices.

The Gemara discusses several halakhot related to the cases of the mishina. The Sages taught: If the buyer requested from the seller a litra of a specific item, he weighs for him using a litra weight. If he asks for half a litra, he weighs for him using a half-litra weight. If he wants one-quarter of a litra, he weighs for him using a quarter-litra weight. The Gemara asks: Isn’t this obvious? What is this baraita teaching us? The Gemara explains: It teaches that one sets weights until this amount, one-quarter of a litra, but not less. If a buyer asks the seller to weigh a smaller amount for him, his request is not granted.

Furthermore, the Sages taught: If the buyer requested from him three-quarters of a litra, and there is no weight equal to this amount, the buyer may not say to him: Weigh for me three units using a quarter-litra weight, one by one, so that the seller lets the scales tilt by a handbreadth as he measures each quarter-litra weight. Rather, he weighs the merchandise all at once, as he places a litra weight on one pan of the scale, and places on the other pan of the scale a quarter-litra weight together with the meat that is being sold.
He weighs all the merchandise at the same time - אֵין מוֹחֲ ִין וכופיְּקֵין. If one buys ten litra of merchandise, the seller does not weigh him for each litra separately. Instead, he weighs all the merchandise at the same time, and lets the scales tilt once for all the merchandise (Rambam Sefer Nezikin 8:15; Shulhan Arukh, Hoshen Mishpat 231:13).

Fulcrum of a scale, etc. – נֶּ׳ֶשׁ מֹאזְנַיִם. In accordance with Rav Pappa's explanation (89b), the measurements of a scale used by sellers of large pieces of iron is as follows: The fulcrum must be suspended in the air at a distance of one handbreadth from the ceiling, and the pans of the scale must be one handbreadth above the ground. The length of the lever to which the cords are attached at its ends should be twelve handbreadths, and the length of each of the cords from which the scales are suspended is twelve handbreadths (Rambam Sefer Nezikin, Hilkhos Geneva 8:8; Shulhan Arukh, Hoshen Mishpat 231:13).

And a scale of wool-weavers and glassmakers – שֶׁגּוֹדְשִין נֶ׳ֶשׁ מֹאזְנַיִם. The fulcrum of the scales of wool-weavers and glassmakers must be suspended in the air at a distance of two handbreadths from the ceiling, and the pans of the scale must be two handbreadths above the ground.

Suspended in the air, etc. – נֶּ׳ֶשׁ מֹאזְנַיִם. There must be sufficient distance between the lever of the scale and the ceiling, and between the pans of the scale and the floor, to ensure that when one performs the weighing neither the lever nor the pan hits an obstacle, preventing it from moving as much as it should. Some explain that the baraita is referring to large balance scales, which are hung from the ceiling (Rashbam). Others maintain that it refers even to handheld balance scales, which must be placed this distance from the ceiling (Rambam).

The Sages likewise taught: In a case where the buyer requested from the seller ten litra of merchandise, the buyer may not say to him: Weigh for me each litra one by one, and let the scales tilt each time, as on every occasion that the seller does this the buyer receives more than that for which he paid. Rather, he weighs all the merchandise at the same time and lets the scales tilt once for all the merchandise.

The Sages taught: The fulcrum of a scale must be suspended in the air so that the point the lever goes through it is at a distance of three handbreadths from the ceiling, and the pans of the scale must be three handbreadths above the ground. And the scale's lever and cord, from which each pan is suspended, must be twelve handbreadths long. And the fulcrum of a scale of wool-weavers and glassmakers must be suspended in the air at a distance of two handbreadths from the ceiling, and the pans of the scale must be two handbreadths above the ground. And its lever and cord must be nine handbreadths long.

And the fulcrum of a scale of a storekeeper and of a homeowner must be suspended in the air at a distance of one handbreadth from the ceiling, and the pans of the scale must be one handbreadth above the ground. And its lever and cord must be six handbreadths long. And the fulcrums of small scales [турנאנא] used for weighing gold and silver must be suspended in the air at a distance of three fingersbreadths from the ceiling, and the pans of the scale must be three fingersbreadths above the ground. The tanna continues: But with regard to its lever and cord, I do not know their required length.

Since the function of each type of balance scale is mentioned with the exception of the first type, the Gemara asks: And that large balance scale, which is mentioned first, for what is it used?
A scale for blacksmiths (digrumei) – כיסא זעיפי. Most commentaries explain that digrumei means for blacksmiths, who use scales for weighing large and heavy lumps of metal. Others explain that this scale is used for weighing scraps of iron or glass (Rabbeinu Gershon Meor HaGola) or items such as cotton, which have a large volume (Ri Migash).

With regard to their ritual impurity – זהב במкал. Some maintain that this means that if scales were prepared with incorrect measurements they are not considered vessels and therefore are not susceptible to ritual impurity (Rashbam). Most commentaries reject this interpretation and hold that the scales of the balance are in any case considered vessels and are susceptible to ritual impurity. The question is whether they are rendered impure if the cord, lever, or fulcrum from which the scales hang becomes impure. Since a vessel can become impure through its handles, if the cord, lever, or fulcrum becomes impure it imparts impurity to the balance scale (see Ramah). Alternatively, some residue of the merchandise might adhere to the weights, increasing their weight. One should use weights that can easily be washed and that are less likely to have merchandise adhere to them (Tosafot, citing Rabbeinu Tam). With regard to small weights used for weighing silver and gold, where there is no concern about merchandise adhering to the weights, the weights are enclosed in a leather cover to prevent them from deteriorating.

Notes

The rope from which the scales are suspended – גִּיסְטְרוֹן. This term refers to the rope suspended from the ceiling to the fulcrum at the midpoint of the lever, and not to the cords by which the pans hang from the lever (see Ramah; Rid).

Metal alloy (gisteron) – בַּעַץ. From the Greek κασσίτερος, kassiteros, meaning tin. This was possibly the name of an alloy of tin and lead. Some commentaries define gisteron as a metal alloy (Arukh).

Language

Tin (ba’atz) – בצבע. Although the Aramaic word for tin is ba’atz, it is possible that ba’atz here refers to tin mixed with some other material, e.g., lead or zinc, in order to facilitate its melding.

HALAKHA

With regard to their ritual impurity – כיסא זעיפי. Just as the handles of a vessel that are necessary for its use are considered part of the vessel with regard to ritual impurity, so too the lever and the cords from which pans are suspended are considered part of the scales. This is the case only if they meet the criteria established for their lengths in that particular type of balance scale (see 89a). If the lever and cords are longer than the lengths established for them, they are not considered part of the balance scale and are not susceptible to ritual impurity. With regard to the scales used for weighing gold, high-quality purple wool, and other delicate items, which must be suspended three fingerbreadths above the ground, there is no set measure for the length of their lever and cords for the purposes of ritual impurity (Rambam Sefer Tahara, Hilkhot Kelim 20:1, 215).

One may not prepare weights of tin, etc. – אינו עושין מיש תינך, etc. One must make the weights of a scale from hard rock or glass, not from metals that rust or become worn down. This is the case whether the scale is used for measuring solids or liquids. Some say that for weighing dry goods one may make the weights from metal, and this is the accepted practice (Rema). This ruling is based on the explanation of Rabbeinu Tam that the concern is that liquid will adhere to the weights. In any event, one should cover with leather any small weights that are used for measuring gold, because a weight that deteriorates even slightly can cause a substantial loss (Rambam Sefer Nezikin, Hilkhot Geneva 8:4; Shuṭan Arukh, Hochen Miḥpat 231:10, and in the comment of Rema).

The Sages taught: One may not prepare weights of tin [ba’atz], nor of lead, nor of a metal alloy [gisteron], nor of any other types of metal, because all of these deteriorate over time and the buyer will ultimately pay for more merchandise than he receives. But one may prepare weights of hard rock and of glass.

The Gemara asks: What is this statement teaching us? We learned in a mishna (Kelam 29b): With regard to the rope from which the scales are suspended,8 if the balance scale belongs to a storekeeper or to homeowners it must be one handbreadth in length for it to be susceptible to ritual impurity. Why, then, is the statement of Rabbi Mani Bar Pattish necessary? The Gemara answers: Although the mishna in tractate Kelam discusses the rope from which the scales are suspended, it was still necessary for Rabbi Mani Bar Pattish to mention the halakha with regard to the scale’s lever and cord, which we did not learn about in this mishna.

Rav Pappa says: It is a balance scale for blacksmiths,9 who weigh heavy pieces of metal.

Rabbi Mani Bar Pattish says: Just as the Sages said with regard to the prohibition of the scales that one may not use a scale that does not meet the criteria listed in the baraita,10 so too they said that this applies with regard to their ritual impurity.11 In other words, if the cords and pole are not attached in the proper manner, they are not susceptible to ritual impurity as part of the scale.

Some say that the scale is used for weighing scraps of iron or other delicate items, which must be suspended three fingerbreadths above the ground (Bava Batra 89b). If the lever and cords are longer than the lengths established for them, they are not considered part of the balance scale and are not susceptible to ritual impurity. With regard to the scales used for measuring gold, high-quality purple wool, and other delicate items, which must be suspended three fingerbreadths above the ground, there is no set measure for the length of their lever and cords for the purposes of ritual impurity. This ruling is based on the explanation of Rabbeinu Tam that the concern is that liquid will adhere to the weights. In any event, one should cover with leather any small weights that are used for measuring gold, because a weight that deteriorates even slightly can cause a substantial loss (Rambam Sefer Nezikin, Hilkhot Geneva 8:4; Shuṭan Arukh, Hochen Miḥpat 231:10, and in the comment of Rema).

DISCUSSION

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With regard to their ritual impurity – זוּעִיף. Some maintain that this means that if scales were prepared with incorrect measurements they are not considered vessels and therefore are not susceptible to ritual impurity (Rashbam). Most commentaries reject this interpretation and hold that the scales of the balance are in any case considered vessels and are susceptible to ritual impurity. The question is whether they are rendered impure if the cord, lever, or fulcrum from which the scales hang becomes impure. Since a vessel can become impure through its handles, if the cord, lever, or fulcrum becomes impure it imparts impurity to the balance scale, provided that those parts meet the criteria listed in the baraita. If they are longer or shorter than they should be, they are not considered handles and, consequently, do not impart ritual impurity to the balance scale (Rid; Ramah). Some claim that this discussion refers specifically to the cords from which the pans are suspended, as the cord is susceptible to ritual impurity in its own right (Tosafot).
Boxwood – Buxus sempervirens. The accepted identification of the tree mentioned here is the long-leaved English box tree, Buxus longifolia, an evergreen bush that reaches a height of up to ten meters, with elongated leaves that are shiny on top. It has a narrow trunk, usually around 20 cm in diameter. The long-leaved English boxwood, fire yellow in color, was considered a particularly choice tree even in ancient times because it was dense, hard, and flexible. Boards made from this boxwood tree were very smooth and long lasting. Even nowadays, no other tree has been found with such qualities.

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The Sages further taught: One may not prepare the leverer, used to remove the excess from the mouth of a vessel, from a gourd, because it is a light material and does not level effectively, thereby causing a loss for the buyer. And it may not be made of metal, because it weighs down and removes too much of the merchandise, leading to a loss for the buyer. But one may prepare it from the wood of an olive tree, or of a nut tree, or of a sycamore tree, which are of medium weight.

The Sages taught: One may not prepare the leverer in such a manner that one of its sides is thick and one other side is thin, because in such a case the two sides will not level equally. Furthermore, one may not level all at once, by a single quick movement, as one who levels all at once acts in a manner that is bad for the seller and good for the buyer, because he removes less of the excess than one who levels in the regular fashion. And conversely one may not level little by little, i.e., with several slow movements, as this is bad for the buyer and good for the seller.

Rabban Yohanan ben Zakai said with regard to all these halakhot: Woe to me if I say them, and woe unto me if I do not say them. If I say them, perhaps swindlers will learn new methods of cheating of which they were previously unaware. And if I do not say them, perhaps swindlers will say: Torah scholars are not well versed in our handiwork. A dilemma was raised before the Sages: Did Rabban Yohanan ben Zakai decide to say these halakhot in public or did he not say them? Rav Shmuel bar Rav Yitzhak says: He said them, and he said them on the basis of this verse: “For the ways of the Lord are right, and the just walk in them; but transgressors stumble over them” (Hosea 14:10). 

From a gourd... of metal, etc. – One may not make a leverer out of a gourd because its lightness does not permit effective leveling, leading to a loss to the seller. Likewise, one may not make a leverer of metal, because its weight causes the removal of excessive merchandise, leading to a loss for the buyer. Rather, one should make a leverer from the wood of a nut, sycamore, or boxwood tree (Rambam, Sefer Nezikin, Hilkhot Geneiva 8:5; Shulhan Arukh, Hoshen Mishpat 231:5).

One of its sides is thick, etc. – One may not make a leverer in such a manner that one of its sides is thick while the other is thin (Rambam, Sefer Nezikin, Hilkhot Geneiva 8:5; Shulhan Arukh, Hoshen Mishpat 231:5 and see Smag there).

All at once, etc. – One may not level by means of several small movements, as this removes too much merchandise and causes a loss for the buyer. Likewise, one may not level with one quick movement, as this removes too little excess and leads to a loss for the seller. Some commentaries maintain that a quick movement causes a loss for the buyer, whereas several slow movements lead to a loss for the seller. In any event, one should level with one slow movement (Rambam, Sefer Nezikin, Hilkhot Geneiva 8:5; Shulhan Arukh, Hoshen Mishpat 231:5).

Because it weighs down – Some explain that a heavy leverer removes merchandise from inside the measure, causing a loss for the buyer (Rashbam). Others explain that a heavy leverer compresses the goods inside the measure, packing in extra substance (Ri Migash, citing Rif). According to the second explanation, both a light leverer and a heavy one cause a loss for the seller.

Thick... thin – Some say that this description refers to a leverer with one thin, sharp edge and one blunt edge. Since the sharp edge will remove more flour than the blunt edge, there is a concern that one would use the blunt edge when buying, since it leaves more merchandise in the vessel, and use the sharp edge when selling to others (Rashbam). The Ramah explains according to a different version of the text that the prohibition refers to a leverer that is thick in some places and narrow in others, resulting in uneven leveling.

All at once, etc. – The commentaries explain that if one levels with one quick movement he will not level properly, which causes a loss for the seller, whereas if one levels many times, it will lead to a loss for the buyer. It is therefore necessary to level with one slow movement or to level twice (Rashbam). Apparently, there is a different version of the text that states the opposite, with some commentaries explaining that because leveling with one movement causes a loss for the buyer, the action is performed with more strength than when the leveling is performed several times, but more gently (Rambam).

Perhaps swindlers will say... of a nut, or of a sycamore tree, or of a boxwood tree, which are of medium weight.

For the ways of the Lord are right, and the just walk in them; but transgressors stumble over them” (Hosea 14:10).
The Gemara further discusses weights and measures. The Sages taught: “You shall do no unrighteousness in judgment, in measure [bamiddoda], in weight, or in measure [emesura]” (Leviticus 19:35). The baraita defines these terms: “In measure [bamiddoda], this is referring to measuring land; teaching that in order to measure land in a just manner one may not measure for one person in the summer when the measuring rope has become dry and short, and for another individual in the rainy season, when the measuring rope is wet and limp, and therefore stretches more. "In weight" means that one may not cover his weights [hin] in salt; as salt erodes the weights, causing a loss for the buyer. "Or in measure [emesura]" means that one may not cause liquid he is measuring to foam by pouring it speedily, as this results in a loss for the buyer, who receives less of the liquid than the amount for which he paid.

Rav Yehuda says that Rav says: It is prohibited for a person to keep in his house a measure that is too small or too large than its supposed volume or weight, and this is the case even if he does not measure with it but simply uses it as a chamber pot for urine. Rav Pappa said: We said this prohibition only with regard to a place where measures are not stamped as well – a hin, a half-hin, a third-hin, and a quarter-hin, which is twelve log, and one log, and a half-log, and a quarter-log, and a half-tomen, i.e., one-sixteenth of a kav, and even an ulka, a smaller unit, as defined below.

This is referring to measuring land – אמתודידה חד playa: One must be exact in the measurement of land, as even a fingerbreadth of empty land is considered as important as though it were filled with expensive spices. One who misleads another with regard to the measurement of land violates the prohibition (see Leviticus 19:35). You shall do no unrighteousness in measure (Rambam Sefer Nezikin, Hilchot Geneiva 7:3, 8:2; Shulhan Arukh, Hoshen Mishpat 231:16).

One may not measure for one person in the summer, etc. – שיאתסיס חד playa: One may not cover his weights in salt (Rambam Sefer Nezikin, Hilchot Geneiva 8:7; Shulhan Arukh, Hoshen Mishpat 231:11).

That one may not cover his weights, etc. – שיאתסיס חד playa: One may not cover his weights in salt (Rambam Sefer Nezikin, Hilchot Geneiva 8:7; Shulhan Arukh, Hoshen Mishpat 231:11).

That one may not cause liquid to foam – זהה חד playa: When measuring liquids, one may not cause the liquid to foam so that the measure appears to be full. This is the halakha even with regard to a measure that is so small that the foam would cause a loss of less than one peruta (Rambam Sefer Nezikin, Hilchot Geneiva 8:2; Shulhan Arukh, Hoshen Mishpat 231:16).

A measure that is too small or too large – זהה חד playa: One may not keep an inaccurate measure in his house, even if he does not use it for measuring, and even if it serves as a chamber pot, lest someone unwittingly use it for measuring. If the custom in that location is to measure only with a vessel that is marked with a known sign, and this measure does not have that sign, it is permitted to keep it in one’s house (Rambam Sefer Nezikin, Hilchot Geneiva 7:3–4; Shulhan Arukh, Hoshen Mishpat 231:13).
He may prepare a se’a, etc. – The Sages act righteously is that they are unaware of methods of deception. According to the second explanation, both a se’a, a kav, one-half of a kav, one-quarter of a kav, one-eighth of a kav, or one-eighth of a quarter-kav. This is in accordance with the version of the text (90a) accepted by most early commentators, according to which an ukla is one-eighth of a quarter-kav, not according to the standard version of the text, which is the version of Rabbeinu Hananel (see Rashbam). One may not prepare a measuring vessel of two kav, lest it be mistaken for a measuring vessel of a quarter-se’a, which is equal to one and one-half kav (Rambam, Sefer Nezikin, Hilchot Geneiva 7:7; Shulchan Arukh, Hoshen Mishpat 231:14).

The Gemara comments: And that is not so; one is never permitted to keep incorrect measures in his house, as sometimes it happens that one measures at twilight, when people are hurried, and consequently it happens that the buyer takes the merchandise despite the fact that it was measured with an incorrect measure. This is also taught in a baraita: A person may not keep in his house a measure that is too small or too large, even if it is used as a chamber pot for urine. But he may prepare measures in accordance with the established format: Measurements of a se’a, a tarkav, which is three kav or one-half of a se’a; and a half-tarkav, which is one and one-half kav; and a kav; and a half-kav; and a quarter-kav; and a tomen, which is one-eighth of a kav; and a half-tomen; and an ukla. And how much is an ukla? It is one-fifth of a quarter of a kav. And in the case of liquid measures, one may prepare a hin, which is twelve log; and a half-hin, or six log; and a third-hin, or four log; and a quarter-hin, three log; and a log; and a half-log; and a quarter-log; and an eighth-log; and an eighth of an eighth-log, and this, the last mentioned, is a kortov.

The Gemara asks: And let one also prepare a measure equal to two kav. The Gemara answers that this measure is not used, lest people come to mistake it for a tarkav, which is three kav. The Gemara observes: Apparently, people err by one-third of a measure. If that is so, one should also not prepare a measure equal to a kav, as people may come to mistake it for a half-tarkav, which is equal to one and one-half kav. Rather, this is the reason that one may not prepare a two-kav measure: That people might come to mistake it for a half-tarkav, which is equal to one and one-half kav.

The Gemara again suggests: Apparently, people err by one-quarter of a measure. If that is so, one should also not prepare measures of a half-tomen, which is one-sixteenth of a kav, and an ukla, which is one-twentieth of a kav. Since they differ by only one-fifth, there is a concern that people might mistake one measure for the other. Rav Pappa said: People are well-versed in small measures and can distinguish between them.

And this is a kortov – Portrayed in words. In other words, this is a measure called a kortov, which is mentioned in several places in the Talmud as a minimal quantity. The Gemara here explains that this measure is not equivalent to a minimal amount denoted by the term: Any amount, but rather refers to a precise, albeit tiny, measure (see Rashbam).

People err – In words. The issue at hand is the establishment of a well-organized system of measures, in which no two measures are close enough that people might confuse one for the other. Ideally, each measure should be at least twice as large as the measure closest to it in size. But because a se’a equals six kav, as opposed to four or eight, the two systems together, one with the basic unit of a se’a, and the other with the basic unit of a kav, do not attain this ideal. The Gemara here clarifies the ruling of the baraita with regard to the amount by which two different measures must differ in order to eliminate the concern that people might mistake one for the other.

Well-versed in small measures – Portrayed in words. It is easier to discern the difference in volume between smaller measures than a proportional difference between larger measures (Rashbam). Alternatively, people constantly use the smaller measures in their own homes, and are familiar with the different types, whereas they are not instantly familiar with the larger measures, which are used only for trade.
The Gemara continues: If people err by one-quarter of a measure, then since one may prepare a measure equal to four log, one-third of a hin, let one not prepare a measure equal to three log, one-quarter of a hin. The Gemara answers: Since these measures were used in the Temple, the Sages did not decree that they not be used. The Gemara asks: In the Temple as well, let the Sages decree that they should not be used, in case the two measures are mistaken for each other. The Gemara answers: The priests who serve in the Temple are vigilant and would not commit this error.

Shmuel says: If the residents of a certain place want to change the standard of their measures and augment them by a certain fraction, they may not increase the measures by more than one-sixth, and they may not increase the value of a coin by more than one-sixth of its previous value. And one who profits from his sales may not profit by more than one-sixth. The Gemara analyzes these statements. When Shmuel said: They may not increase the measures by more than one-sixth, what is the reason for this? If we say it is because doing so causes market prices to rise, the same concern should apply to raising the prices by one-sixth, and therefore this should also not be allowed.

Rather, you will say that the prohibition is due to concern for exploitation; and they may increase the measures only by up to one-sixth, so that there will not be nullification of the transaction, as the transaction is nullified only when the disparity is more than one-sixth of the value of the item. The Gemara raises an objection: But doesn’t Rava say: With regard to any item that is otherwise subject to the halakhot of exploitation, and it is sold by measure, or by weight, or by number, even if the disparity was less than the measure of exploitation in the transaction, the transaction is reversed. A disparity of one-sixth between the value of an item and its price constitutes exploitation only in cases where there is room for error in assessing the value of an item. In a case where the details of the item are easily quantifiable, any deviation from the designated quantity results in a nullification of the transaction.

Rather, the prohibition is so that there will not be a loss suffered by the merchant, who might not realize that a new standard was issued, and sell in accordance with the old standard. Since a merchant usually enjoys a profit of one-sixth of the value of an item, if the standard is not increased by more than this amount he will not suffer a loss, as at worst he will forfeit his profit margin.

HALAKHA

They may not increase the measures — According to Shmuel. If the residents of a country wish to change the standard of their measures or weights, they may not increase them by more than one-sixth. For example, it is permitted for them to increase the measure of a log from five units to six, but no more. This halakha is in accordance with the statement of Shmuel. If they want to lower the standard of the measures, they may do so without limitation (Rambam Hilkot Geneiva 1:17; Shulhan Arukh, Hoshen Mishpat 231:5 and Smo there).

And one who profits, etc. — According to Rashi. The court must appoint supervisors of market prices to ensure that those who sell staple food items, e.g., wine, oil, and flour, do not earn a profit of more than one-sixth of the item’s value. In the case of a storekeeper who sells each item individually, his effort and expenses are taken into account in establishing this price. These restrictions apply when the court’s directives are followed by all. If all the other storekeepers ignore the directives of the court, or there are gentile storekeepers over whom the court has no authority, an individual God-fearing Jew is not required to suffer a loss (Rambam Sefer Nezikin, Hilkot Mekhira 141 and Sefer Shofetim, Hilkot Sanhedrin 1:13; Shulhan Arukh, Hoshen Mishpat 231:20 and Smo there).

Any item that is sold by measure, or by weight, or by number — According to Rambam. With regard to one who sells merchandise by measure, weight, or number, if any mistake is made the sale is valid, and the buyer or seller must make up the missing amount. For example, if one sold 100 nuts but provided the buyer with only 99, the sale is valid and the seller must give the buyer one more nut. If the seller gave the buyer 101 nuts, the sale is valid and the buyer must return the extra nut, even if many years have passed since the sale (Ri Migash).

With regard to a sale of land, if the seller cannot add on the required amount of land from adjoining fields, the sale is nullified (Smo). Even if the two performed a formal act of acquisition whereby each declared that he had nothing in his possession that belonged to the other, the extra or missing merchandise must be returned, because the formal act was performed in error (Rambam Sefer Kinyan, Hilkot Mekhira 8:6, 151–2; Shulhan Arukh, Hoshen Mishpat 232:1).

NOTES

Were used in the Temple — קָפָא וְרָמָה: The Torah states that a libation of one-half of a hin accompanies the sacrifice of an ox, a libation of one-third of a hin accompanies a ram, and a libation of one-quarter of a hin accompanies a sheep (see Numbers, chapter 15). The Gemara (Menahot 6:8) says that there were special measures in the Temple for measuring the libations, including a measure of one-third of a hin and a measure of one-quarter of a hin, or, according to another opinion, a vessel of one log with markings indicating the different fractional amounts. Some commentators explain that as these measures are mentioned in the Torah and were used from the time of Moses in the Tabernacle, and, later, the Temple, the Sages were not concerned that people might mistake one measure for the other (Meir).

In the Temple as well, let them decree, etc. —AMILIM פמחים רבי והו: Although the libations had to be measured in these quantities, the priests could have used log measurements, with which they would have measured three log or four log (Tosafot). The Gemara answers that while generally, where there is such a small difference between the measures there is a concern for error, because the priests were vigilant they would not mistake one measure for the other.

Priests are vigilant —priests: Rashi explains that the priests were typically learned in Torah and served as teachers of the Jewish people, as it states: “They shall teach Jacob Your judgments” (Deuteronomy 33:10). In addition, as there were many priests present during the performance of the sacrificial rites, there was little chance of an error, as they would remind each other not to make mistakes.

What is the reason, etc. —AMI כותב רבי: The Gemara explains that the underlying assumption of all of this discussion is that market prices would change to reflect the change in the measures (Rashbam). Some maintain that the Gemara assumes that the measures change without any corresponding adjustment in prices, and they explain the rest of the passage accordingly (Rambam).

Because doing so causes market prices to rise — כי ירדו סמך ומרא: Since the arriving merchants have to raise their prices to suit the new measures, they might take advantage and raise them more than is necessary (Rashbam). Alternatively, distributors of goods might be reluctant to provide merchandise for the merchants, because they lack confidence that they will receive appropriate compensation for the change in the size of the measures. This would cause a shortage of goods, which in turn would lead to a rise in prices (Ri Migash).

That there will not be nullification of the transaction —אך אף אין נחל الجمع: The halakha is that a transaction is nullified only when the difference between the market price and the price charged for the merchandise exceeds one-sixth of its value. If the difference in price is less than this amount, the sale is valid, although the extra money must be returned. The early commentators explain that the concern is that merchants from other places would be unaware that the standard had been increased and would sell more merchandise for the same price.

Less than the measure of exploitation in the transaction, the transaction is reversed —דרי היאך נקע בהตอบ: Many of the early commentators maintain that in this case the entire sum is returned, as the sale is entirely reversed (Rashba). Some hold that the sale itself is valid, and it is only the difference in price that must be returned, regardless of how small (Rashi; Ri Migash).
Tabernacle, and, later, the Temple, the Sages were not concerned that
although the libations had to be measured in these quantities, the
Sages did not apply, as it is unlikely that such a change would lead to mistakes.

Rather, Rav Hisda said: The prohibition is not based on logical
reasoning. Instead, Shmuel found a verse and interpreted it
homiletically: “And the shekel shall be twenty ge’ar; twenty shekels,
five and twenty shekels, ten, and five shekels, shall be your
maneh” (Ezekiel 45:12). According to this verse, the combination
of all of these numbers, sixty shekels, is equivalent to a maneh.

This Gemara notes: This explanation is also difficult, since even if
the aim is to ensure that there will not be a loss for the merchant,
does he not need to earn a profit? There is a well-known adage in
this regard. If you buy and sell without making any profit, will you
be called a merchant? A merchant must profit from his sales; there-
fore, if this decree was instituted for the protection of merchants,
the Sages should have ensured that they earn a profit.

The Gemara relates: Rav Pappa bar Shmuel instituted a new
measure of three kofzai, which is equal to three log. The Sages
said to him: But doesn’t Shmuel say that one may not increase
the measures by more than one-sixth? You have added one-third,
as there already exists a measure of a half-log, which is the equiva-
I instituted a new measure – ryot. There was no other measure
in his city whose value was within one-quarter of this one (Rashbam).
Others explain that the prohibition of one-sixth applies only to the enlargement
of an existing measure, since this will cause merchants to make mistakes, as explained previously. It is permitted to
form an entirely new measure, which is what Rav Pappa
did here, as he called it by a new name (Rabbeinu
Gershon Meir HaGola). Alternatively, Rashba claimed that in
these locations the measures of a half-takav, a takav, or a
half-kav were not used; therefore, he instituted a new
convenient measure (Rashbam).

Measure [kaz] – vyot. Some explain that vyot means idea or
advice [raz]. See the Rashbam, who rejects this expan-
nation, claiming it does not suit the wording of the Gemara.
A different version of the text reads kuz, meaning a small
vessel (Ri Migash).

This is problematic: How can a maneh consist of sixty shekels?
Since each biblical shekel is equivalent to four dinars, if a maneh
is equal to sixty shekels, a maneh is two hundred and forty dinars.
But a maneh is actually equal to twenty-five shekels, which is
one hundred dinars. Rather, one can learn from the verse three
matters: Learn from it that the sacred maneh was doubled; so
that it equaled fifty dinars, not twenty-five. And furthermore, as
Ezekiel stated that the maneh will be sixty dinars, not fifty, learn
from it that a community may increase measures, but they may
not increase them by more than one-sixth. And learn from it
that the one-sixth is calculated from the outside, i.e., it is one-sixth
of the final sum, which is one-fifth of the previous sum.

The Sages taught: Hoarders of produce, who drive up prices
by causing a shortage of available goods, and usurers, and those
sellers who falsely reduce their measures, and those who raise
market prices by selling for more than the accepted price, about
them the verse states: “You that would swallow the needy and
destroy the poor of the land, saying: When will the new moon be
gone, that we may sell produce? And the Shabbat, that we may
set forth grain? Making the measure small, and the shekel great,
and falsifying the balances of deceit” (Amos 8:4–5). And it is
written: “The Lord has sworn by the pride of Jacob: Surely I will
never forget any of their works” (Amos 8:7).
The Gemara asks: Hoarders of produce, such as whom? Rabbi Yoḥanan said: Such as Shabbtaī, the hoarder of produce, who would buy and hoard large amounts of produce and later sell it at a high price.

The Gemara relates: Shmuel’s father would sell produce during the period of the early market price, when produce is cheap, for the early market price. His son Shmuel acted differently, and would keep the produce and sell it during the period of the late market price, when produce is expensive, for the early market price. They sent a message from there, Eretz Yisrael: The practice of the father is better than that of the son. What is the reason for this? A market price that has been eased\(^2\) and starts out low will remain eased, with little increase over the course of the year. Therefore, one who makes produce available at the beginning of the season, like Shmuel’s father, aids people during the entire year. By contrast, a market price that starts out high, because people are not making their produce available at the market, is not easily lowered.

Rav says: A person may turn his own kav into a storeroom,\(^3\) i.e., he may hoard the produce of his own field and sell it only at a later stage, without violating the prohibition of hoarding produce. This is also taught in a baraita: One may not hoard\(^4\) produce of items that contain an element of basic sustenance, such as wines, oils, and flours, but in the case of spices, such as cumin and pepper, it is permitted. In what case is this statement said? It is with regard to one who buys that produce from the market to resell later; but with regard to one who brings in produce from his own field, it is permitted for any type of produce.

The baraita continues: And it is permitted for a person to hoard produce in Eretz Yisrael for these three years: The year preceding the Sabbatical Year,\(^5\) the Sabbatical Year, and the year that follows the Sabbatical Year, because the land lies fallow during the seventh year, the Sabbatical Year, and the produce of the sixth year must last through these three years, until near the end of the eighth year.

And in years of drought\(^6\) one may not hoard even a kav of carobs, because he thereby brings a curse on market prices, as everyone is fearful of selling and even a small fluctuation in supply can cause a significant rise in prices. Rabbi Yosei, son of Rabbi Ḥanina, who was living in Eretz Yisrael, said to his servant Fuga: Go and hoard produce for me for the coming three years.\(^7\) The year preceding the Sabbatical Year, the Sabbatical Year, and the year that follows the Sabbatical Year.

\(\text{§}\) The Sages taught: One may not export produce from Eretz Yisrael\(^8\) if it consists of items that contain an element of basic sustenance, such as wines, oils, and flours, because this causes them to become more expensive in Eretz Yisrael. Rabbi Yeḥuda ben Berei`a permits export in the case of wine, because this lessens licentiousness in Eretz Yisrael. And just as one may not export these types of produce from Eretz Yisrael to outside of Eretz Yisrael, so too one may not export them from Eretz Yisrael to Syria,\(^9\) as Syria is not considered part of Eretz Yisrael in this context. And Rabbi Yeḥuda ha-Nasi permits the export of produce.

One may not hoard, etc. – הָא כְּתַרְעָא חָרְנֵי שֶׁמְּמַעֵט אֶת שָׁלֹשׁ שָׁנִים וּשְׁבִיעִית, וּשְׁבִיעִית, יֵּירוֹת דְּבָרִים שֶׁיֵּשׁ מַאי טַעֲמָא? תַּרְעָא דִּרְוַוח – אוֹצְרֵי וּכְשֵׁם שֶׁאֵין מוֹצִיאִין מֵאָרֶץ דּוֹר וּמוֹצָאֵי שְׁבִיעִית; וְרַבִּי מַתִּיר יֵינוֹת, שְׁמָנִין וּסְלָתוֹת דִּלְ לְשֵׁנֵי בַצּוֹרֶת ${\text{14:6; Shulĥan Arukh Hilkhot Mekhira}}$

During the period of the early market price, etc. – הָא כְּתַרְעָא חָרְנֵי שֶׁמְּמַעֵט אֶת שָׁלֹשׁ שָׁנִים וּשְׁבִיעִית, וּשְׁבִיעִית, יֵּירוֹת דְּבָרִים שֶׁיֵּשׁ מַאי טַעֲמָא? תַּרְעָא דִּרְוַוח – אוֹצְרֵי וּכְשֵׁם שֶׁאֵין מוֹצִיאִין מֵאָרֶץ דּוֹר וּמוֹצָאֵי שְׁבִיעִית; וְרַבִּי מַתִּיר יֵינוֹת, שְׁמָנִין וּסְלָתוֹת דִּלְ לְשֵׁנֵי בַצּוֹרֶת

Market price that has been eased – וְרַבִּי מַתִּיר יֵינוֹת, שְׁמָנִין וּסְלָתוֹת. If there is an abundance of produce at a low price when the goods first appear on the market, its price will not rise greatly over the course of time, as most people buy the produce they need when it first arrives. By contrast, Shmuel’s actions caused produce to become more expensive to some extent when it first appeared in the market, and although he later caused a reduction in the price, it was still higher than what it would have been had he sold it at the beginning of the season. The early commentators also explain that even if a market price drops in the middle of the season due to a temporary flooding of the market, it drops only for a limited amount of time, and then rises again. Consequently, Shmuel’s behavior provided only temporary benefit (see Rashbash, Ri Migash, and Ramah).

His kav into a storeroom – חָרְנֵי שֶׁמְּמַעֵט אֶת שָׁלֹשׁ שָׁנִים וּשְׁבִיעִית. Some explain that the expression: His kav, means one’s own produce. It is called a mere kav for reasons of modesty. If so, Rav’s statement means that storing one’s own produce and refraining from selling immediately is not considered hoarding (Rashbash; Ri Migash). Others explain that: His kav, means for his own needs, i.e., one may store enough produce for his own requirements (Rabbeinu Barukh).

To Syria – דִּלְ לְשֵׁנֵי בַצּוֹרֶת. With regard to certain matters, the halakhic status of Syria is somewhere between that of Eretz Yisrael proper and that of outside of Eretz Yisrael. Although most of Syria was conquered by King David, that is considered an individual conquest as it was not performed by the order of the court and the Urim VeTummim (Rashi on Avoda Zara 21a). Elsewhere (Gittin 88b) Rashi explains that the conquest of Syria was considered an individual conquest because it was performed for King David’s own purposes, not by the nation for the good of the collective whole. Alternatively, a conquest of this sort sanctifies the conquered land only if it is performed after the entirety of Eretz Yisrael is conquered, and there were still parts of Eretz Yisrael, e.g., the land of the Philistines, which were not under Jewish control when King David conquered Syria (Tosafot).
One may not earn a profit in Eretz Yisrael, etc. – קיסר הַרְכְּיָא. In Eretz Yisrael the sale of basic food staples is not conducted in the usual manner, in which storekeepers serve as middlemen for producers and consumers. Rather, each individual sells the produce that he grows, in order to foster low prices on these items. If there is an abundant supply of oil, or any other product (Rambam; Meiri), it may be sold through a middleman, like a Torah scholar and an extremely wealthy man. Azarya supplied his brother Shimon, one of the Sages, who for this reason is referred to as Shimon, brother of Azarya. Rabbi Elazar ben Azarya was from a family of priests that descended from Ezra the Scribe, and there are traditions that draw parallels between these two figures. The Gemara describes how Rabbi Elazar ben Azarya’s knowledge, wealth, and family lineage led to his selection by the Sages to replace Rabbi Yehuda HaNasi as leader of Eretz Yisrael. From province to province – הַרְכְּיָא. This phrase refers to the adjoining provinces on the border of Eretz Yisrael and Syria. Since they are adjacent, it is permitted to export goods from one to the other (Rashbam). Some commentaries understand Rabbi Yehuda HaNasi’s statement to be referring to two provinces within Eretz Yisrael, and learn by inference that the other annanim, with whom Rabbi Yehuda HaNasi disagrees, would hold that it is forbidden to export these items even in that circumstance (Rav Hai Gaon in Sefer HaHakkat Yehadim; see Rashbam). One may not earn a profit – שִׁכְחָא מְלַטְיָא. In other words, one may not serve as a middleman for basic food staples, buying from a producer and selling to consumers. Rather, the producer himself should sell directly to the consumer, to eliminate the increase in cost due to the middleman. The early commentaries point out that this prohibition applies only to items that are purchased in their original state. There is no prohibition against buying grain and selling it as bread, as the additional cost is for the labor (see Rashbam).

Double – מַטְיָא וַאֲ. According to some commentaries, a merchant may not charge twice as much as he paid for the eggs (Rashbam). Some cite an alternative version of the text, according to which the merchant may not charge more than another half of what he paid (Ritva). Although with regard to the sale of basic food items a seller may generally profit only by one-sixth, eggs are not considered indispensable for sustenance. Additionally, since their sale requires additional exertion, a merchant is permitted to make more of a profit (Rashbam). Alternately, the prohibition against profiting by more than one-sixth applies only to large business transactions. Others explain that in addition to earning one-sixth as profit, a seller is allowed to raise the price to cover the expense of his labor. The Gemara here establishes that the price charged may not be more than double the original price of the item (Tosafot, citing Rivam). Tosafot, citing Rabbi Shimshon of Saens, further states that the same limitation applies to the owner of the hen himself, i.e., he may not sell the eggs for more than double the production cost. One merchant may not sell to another merchant – בְּשַׁבָּת הַרְכְּיָא. When prices drop this dramatically, it is assumed that not only are the merchants barely making a profit, but they are actually selling at a loss.
And Rabbi Shimon ben Yoĥai would likewise say: Elimelech and his sons Mahlon and Chilion were prominent members of their generation and were leaders of their generation. And for what reason were they punished? They were punished because they left Eretz Yisrael to go outside of Eretz Yisrael, as it is stated concerning Naomi and Ruth: “And all the city was astir concerning them, and the women said: Is this Naomi?” (Ruth 1:19). The Gemara asks: What is the meaning of the phrase: “Is this Naomi?” How does this indicate that her husband and sons were punished for leaving Eretz Yisrael? Rabbi Yitzĥak has said that the women said: Have you seen what befell Naomi, who left Eretz Yisrael for outside of Eretz Yisrael? Not only did she not escape tribulations there, but she lost her status entirely.

And Rabbi Yitzĥak also says with regard to this passage: That very day when Ruth the Moabite came to Eretz Yisrael, the wife of Boaz died, i.e., from the moment of their arrival the possibility was created for Ruth’s eventual marriage to Boaz. This explains the adage that people say: Before the deceased dies, the person who will next be in charge of his house arises, as in this case Boaz’s new wife, Ruth, arrived as his previous wife died.

Apropos the story of Ruth the Gemara adds: Rabba bar Rav Huna says that Rav says: The judge Izban of Bethlehelm (see Judges 12:8–10) is Boaz. The Gemara asks: What is he teaching us? The Gemara explains that this comment is in accordance with the other statement of Rabba bar Rav Huna, as Rabba bar Rav Huna says that Rav says: Boaz prepared one hundred and twenty feasts for his children at their weddings. As it is stated, concerning Izban: “And he had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in from abroad for his sons. And he judged Israel seven years” (Judges 12:9). The verse indicates that he had sixty children.

And at each and every wedding he prepared for his children, he made two feasts, one in the house of the father of the groom and one in the house of the father-in-law of the groom. And he did not invite Manoah, the future father of Samson, whose wife was barren (see Judges 13:2) to any of them, as he said: It is not worth inviting him; he is a sterile mule, how will he pay me back? Manoah will never invite me in return, as he has no children.

A Sage taught: And all of the children of Izban died during his lifetime. And this explains the adage that people say: Why do you need the sixty, the sixty children that you beget during your lifetime? Go to the trouble and beget one who will be more diligent than sixty. This adage refers to Boaz, who had sixty children who died, and yet his last child, born from Ruth, is his glory, as King David was born from this line.

The Sages taught: One may not leave Eretz Yisrael to live outside of Eretz Yisrael unless the price of two se’.ot of grain stood at a sela, which is double its usual price. Rabbi Shimon said: When does this exception, permitting one to leave Eretz Yisrael under certain circumstances, apply? It applies when one is unable to find produce to buy, as he has no money. But when one has money and is able to find produce to buy, even if the price of a se’ot of grain stood at a sela, he may not leave.

The Gemara provides a mnemonic for the ensuing statements that Rav Hanan bar Rava said that Rav said: Melech; Abraham; ten years; when he died; and He alone was exalted. Rav Hanan bar Rava says that Rav says: With regard to Elimelech, and Boaz’s father, Salmon, and So-and-so, the unnamed relative who was a closer relative to Elimelech than Boaz (Ruth 4:1), and Naomi’s father, all of these are descendants of Nahshon, son of Amminadab, the head of the tribe of Judah (see Ruth 4:20–21 and Numbers 2:3). The Gemara asks: What is he teaching us by this statement? He is teaching that even in the case of one who has the merit of his ancestors to protect him, this merit does not stand for him when he leaves Eretz Yisrael to go outside of Eretz Yisrael, as Elimelech died on account of this sin.

The Gemara asks: Why does one say: When he died; and He alone was exalted. Rav Hanan bar Rava said that Rav said: Melech; Abraham; ten years; when he died; and He alone was exalted. But when one has money and is able to find produce to buy, as he has no money. But when one has money and is able to find produce to buy, even if the price of a se’ot of grain stood at a sela, he may not leave.
And your mnemonic... while a kar is pure, etc. — Kashrut. The mnemonic is based on the fact that kar can mean a sheep, which is a kosher animal (Rashbam). Others explain that Karnevo is the name of a kosher bird (Ri Migashi).

The small passage — Ḥekah: The commentsaries explain that this statement has a practical halachic ramification, as one should recite a special blessing upon reaching a place where a miracle occurred for one of the nation’s forefathers. Therefore, upon reaching this place one must recite this blessing (Rashbam).

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And Rav Hanan bar Rava says that Rav says: The mother of Abraham was called Amaltai bat Karnevo. The mother of Haman was called Amaltai bat Orevati. And your mnemonic, to ensure that the two are not confused for one another, is that a raven [orev] is impure, and in this manner one remembers that Orevati is the grandmother of the impure Haman, while a sheep [kar] is pure, which indicates that Karnevo is the grandmother of the pure Abraham.

Rav Hanan bar Rava continues: The mother of David was named Natzvat bat Ada-el. The mother of Samson was named Tzela ponit, and his sister was called Nashyan. The Gemara asks: What is the practical difference as to what their names were? The Gemara answers: It is important with regard to an answer for heretics who inquire into the names of these women, which are not stated in the Bible. One can reply that there is a tradition handed down concerning their names.

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And Rav Hanan bar Rava says that Rav says: Our forefather Abraham was imprisoned for ten years, because he rejected the idol worship that was accepted in his land. He was imprisoned for three years in the city of Khuta, and seven years in Karddu. And Rav Dimi of Nehar‘ade teaches the opposite, that he was imprisoned seven years in Khuta and three in Karddu. Rav Hisdai: The small passage of Khuta, this is Ur of the Chaldeans (see Genesis 11:31).

And Rav Hanan bar Rava says that Rav says: On that day when our forefather Abraham left the world, the leaders of the nations of the world stood in a line, in the manner of mourners, and said: Woe to the world that has lost its leader, and woe to the ship that has lost its captain.

With regard to leaders, the Gemara adds that it is stated in praise of God: “And You are exalted as head above all” (1 Chronicles 29:11). Rav Hanan bar Rava says that Rav says: Even one with the most insignificant position of authority, e.g., an appointee over irrigation, is appointed by Heaven.

The Gemara returns to its discussion of the punishment of Elimelech and his sons, which Rabbi Shimon ben Yohai says they received because they left Eretz Yisrael. Rav Ḥyya bar Avin says that Rabbi Yehoshua ben Korha says: Heaven forfend that they sinned in this manner, as if Elimelech and his sons had found even bran they would not have left Eretz Yisrael. But rather, for what reason were they punished? They were punished because they should have requested mercy of God for their generation, and they did not request this, as it is stated: “When you cry, let those you have gathered deliver you” (Isaiah 57:13).

Rabba bar Ḥana says that Rabbi Yohanan says: They taught that it is prohibited to leave Eretz Yisrael only if money is cheap, i.e., not excessively difficult to obtain, and produce is expensive, similar to the case in the baraita where two ša‘a of wheat are sold for a selu. But when money is expensive, i.e., difficult to earn money for sustenance, even if the price of four ša‘a of grain stood at a selu, one may leave Eretz Yisrael in order to survive.
The Gemara provides a mnemonic for the following list of Rabbi Yohanan’s recollections: Selah; laborer; carob; boy; because they would say. The first statement is that Rabbi Yohanan said: I remember when four selah of produce were sold for one selah, and yet there were many swollen from hunger in Tiberias, as they did not have even one isar of coin with which to purchase food. And Rabbi Yohanan further said: I remember when laborers would not work; they would not agree to work on the east side of the city, because they would die from the smell of the bread that would waft over them from the city’s west side. The Gemara continues to relate other, more salutary, memories: And Rabbi Yohanan said: I remember when a child would break a carob, and a line of honey would extend over his two arms. And Rabbi Elazar said: I remember when a raven would take a piece of meat, and a line of fat would extend from the top of the wall upon which it was standing to the ground. And Rabbi Yohanan said: I remember when a boy and girl, of sixteen and seventeen years of age, would walk together in the market, and they would not sin. And Rabbi Yoĥanan said: I remember when they would say in the study hall that one who agrees with the gentiles falls into their hands, and that one who relies on them sees that which is his become inverse.

The Gemara returns to its discussion of the story of Ruth. It is written: “Mahlon and Chilion” (Ruth 1:2), and it is written elsewhere: “Joash and Saraph, who had dominion in Moab” (1 Chronicles 4:22). Apparently, both names refer to the same Joash and Saraph, because they despaired of Eretz Yisrael, as they established themselves in Moab, and later lived there for many years. The other was called Saraph, because they were liable to receive the punishment of burning [sereifa] for their sins against God, because they left their community.

And one of them says: Their given names were Joash and Saraph, and why were they called by the names Mahlon and Chilion? One was called Mahlon [mahlon] because they made their bodies profane [hullin], and the other was called Chilion [khilyon] because they were liable to receive the punishment of destruction [kelaya] for their sins against God.

The Gemara notes: It is taught in a baraita in accordance with the one who says that their given names were Mahlon and Chilion. As it is taught in a baraita: What is the meaning of that which is written: “And Joash, and the men of Cozeba,” and Joash, and Saraph, who had dominion in Moab, and Jashubi Lehem. And the matters are ancient” (1 Chronicles 4:22)? “And Joash,” this refers to Joshua, who established [shekekim] and kept the oath with people of Gibeon (see Joshua, chapter 9). “And the men of Cozeba,” these are the men of Gibeon, who lied [shekizevu] to Joshua by saying that they came from a distant land. “And Joash, and Saraph,” these are Mahlon and Chilion. And why were they called by the names Joash and Saraph? One was called Joash because they despaired [shentiya’isha] of the redemption; the other was called Saraph because they were liable to receive the punishment of burning [sereifa] for their sins against God.

NOTES

They would die from the smell of the bread – פְּלֵט עֵזָא: Because there was a lack of bread in the city, the laborers would not accept work in the east of the city because they could not bear the smell of bread from elsewhere that was brought in by the frequently blowing west wind (see Rashbam and Rabbi Gershom Meor HaGola).

One who agrees with the gentiles – יוֹלָךְ: One should contradict the statements of idol worshipers rather than side with them (Rashbam). This is an example of being punished measure for measure, as one who agrees with gentiles falls into their hands and suffers from their actions, which he had formerly praised (Rabbi Elezer of Metz).

One who relies on them – מְלַאכָּר רַבִּי יוֹחָנָן: This is also an example of being punished measure for measure, since one who relies on gentiles to aid him in monetary matters and believes that he will profit from his dealings with them is punished by having his money taken by them (Rabbi Elezer of Metz).

They made their bodies profane – חֲרֹב נֵעְלַיָא: They profaned their bodies by leaving the sacred land for a profane place (Rabbeinu Gershom), or by marrying gentle women (Maharsha).

And Joash and the men of Cozeba, etc. – וְיָשָׁר יֵכְרָתַם מִבָּשָׁר: The commentators explain that the homiletic interpretation of the verse connects the people mentioned with the tribe of Judah. All the individuals listed, including Joshua, are descendants of this tribe, either from their maternal or paternal side (Rashbam). Alternatively, the verse is referring to gentiles who became close to the Jewish people, either out of fear and through trickery, e.g., the Gibonites, or due to their love of God, such as Ruth and the descendants of Jonadab, son of Rechab. These converts are contrasted with Mahlon and Chillon, Jews who turned away from the Torah (Maharsha).
The Sages of Babylonia themselves were unsure about the Greek, which is why they, who lived in Babylonia, did not know its meaning. Specifically, it perhaps comes from helmins, genitive helminthos, which is a kind of worm, possibly a worm found in produce.

Worms (retzinta) – רְצִינְתָא: This term is perhaps derived from the Latin ricinus, which is a kind of worm.

The Ancient of Days, etc. – בֵּית דִּבְרֵי יְהוָה: This phrase is a reference to God (see Daniel 7:9). The baraita is saying that all of these events, which are hard to comprehend and appeared arbitrary at the time they occurred, were all intended by God. The same is true with regard to David’s descent from the daughter of Lot, as Moab was born in a manner that no one could have anticipated. For this reason, the verse states that David was “found,” considered by the people like an unexpected windfall.

Who kept their father’s oath – כוֹסֵא לְאִמָּהּ שֶׁל מַלְכוּת שְׁלֹמֹה, בֶּן בְּנָהָו, שֶׁנֶּאֱמַר: “And he caused a throne to be set for the Ancient of Days, etc.” This term is similar to a plant. Blight (shedifa) – שדיפא: Shedifa is blight, a misfortune that occurs when the weather is overly hot (Rashbam). Shedifa does not destroy the plants themselves, but divests produce of its taste.

For the mother of the dynasty of kingship – והמה הַיּוֹצְרִים: The commentators explain that although Bathsheba, mother of King Solomon, is mentioned several times in this chapter of the book of Kings, she is referred to by name on each occasion. For this reason, the phrase “the king’s mother” and the honor that is accorded to her are interpreted as a reference to another woman, Ruth, the mother of the entire royal dynasty (Maharsha).

In the baraita, for the produce of the old store” (Leviticus 25:22), referring to the produce grown in the sixth year of the Sabbatical cycle, this means without salmanton. This passage is referred to as the “story of Jonadab, son of Rechab, who kept their father’s command not to destroy the plants themselves, but divests produce of its taste (Rashbam). Alternatively, it refers to a dampness that rots plants (Arukh).

Who had dominion in Moab, “This means that they married Moabite women. And Jashubi Lehem,” this is referring to Ruth the Moabite, who returned to Bethlehem of Judea. “And the matters are ancient,” this means that these matters were said by the Ancient of Days, i.e., they occurred through God’s will, as it is written: “I have found David My servant” (Psalms 89:21); and the same term “found” also appears with regard to the daughters of Lot, as it is written: “Your two daughters that are found here” (Genesis 19:15). This teaches that David’s ancestry can be traced this far back, as he was destined to be born from Moab, who was the son of Lot’s daughter and Lot himself.

Since the Gemara has discussed times of famine in Eretz Yisrael, it concludes the chapter with a blessing of times of prosperity: The Sages taught: When the verse states: “And you shall eat of the produce of the old store” (Leviticus 25:22), referring to the produce grown in the sixth year of the Sabbatical cycle, this means without salmanton. The Gemara asks: What is the meaning of: Without salmanton? Rav Nahman said: Without worms (retzinta) that consume the produce, and Rav Sheshet said: Without blight, which destroys the taste of the produce.
The Gemara notes: It is taught in a baraita in accordance with the opinion of Rav Sheshet, and it is taught in another baraita in accordance with the opinion of Rav Nahman. It is taught in a baraita in accordance with the opinion of Rav Nahman: From the verse: “And you shall sow the eighth year, and you shall eat of the produce of the old store, until the ninth year” (Leviticus 25:22), one might have thought that the Jewish people will wait for the new produce due to the old store because the old store has been destroyed. Therefore the same verse states: “Until its produce comes in,” which indicates that they will not stop eating the old produce until the new produce comes of itself, i.e., until it is fully ripe and they do not need the old produce. The old produce will last until then and will not become worm infested, as stated by Rav Nahman.

The Sages taught with regard to a verse in the chapter of the blessings stated to the Jewish people: “And you shall eat old store long kept” (Leviticus 26:10). This teaches that any produce that is older than other produce of that same type will be better than that other produce. And I have derived that this is the case only with regard to items for which it is the normal manner to age them. From where do I derive in the case of items for which it is not the normal manner to age them, e.g., fruit, that they too will improve with age? The verse states: “Old store long kept,” a general expression that indicates that in any case the land will keep its produce from spoiling, as all types of produce will improve with age.

The continuation of the verse: “You shall bring forth the old from before the new,” teaches that there will be storehouses full of old produce and threshing floors full of new produce, and the Jewish people will say: How will we manage to take out this produce from the storehouse before that produce is brought in? Rav Pappa said: Everything that is old is superior in quality to the new, except for dates, liquor, and small fish, which are better when they are fresh.
Just as was previously stated with regard to the sale of houses and other structures, if a buyer purchases a ship without specifying precisely what he is acquiring, he has a right to the parts that are usually found on the ship and that are essential for its function. It is only if he specifies that he is purchasing the ship and everything that is on it that he acquires everything actually found on the ship, even if it is not part of the ship’s functional equipment, e.g., slaves and merchandise on the ship.

With regard to items that are generally used in tandem, sometimes the sale of one includes the sale of the other, while in other situations this is not the case. For example, if one sells a yoke that harnesses two oxen together, he has not sold the oxen themselves, and likewise in the reverse case the yoke is not sold along with the oxen. Similarly, if one buys a wagon he does not acquire the mules that pull it, and if one buys a donkey he does not acquire its equipment. One who buys a cow does not receive its calf, but one who buys a female donkey does acquire its foal along with it. One who buys the head of a large domesticated animal does not acquire its forelegs, whereas one does acquire the forelegs along with the head of a small domesticated animal. The rulings in these cases are affected by the terms and customs of the particular place.

The Gemara further states that the price of an item serves as proof with regard to determining what was included in the sale. Therefore, in a case where there is a discrepancy between the known price of the item and the amount paid for it, the halakha is as follows: If the difference in price could be attributed to a mistake on the part of the buyer, the standard halakhot of exploitation apply. If the difference in price is so great that it could not be attributed to an error on his part, it is assumed that the additional sum is a gift to the seller.

If one sells a pit, dovecote, or dunghill, he sells its contents as well, as the sale was conducted primarily for the contents. But with regard to one who sold the offspring of his dovecote or beehive, the Sages established that the buyer must leave a certain number of them for the seller, to ensure the continued function of the dovecote or beehive.

If one buys three trees in a field belonging to another he acquires the ground beneath and around the trees, to allow him to tend to the trees. Conversely, one who buys one tree acquires only the tree itself and the right to use the ground on which it rests for as long as the tree remains alive. The same halakha applies to one who buys two trees.

More generally, it is established that if one sells merchandise claiming that it is of a superior quality, and it is found to be poor in quality, or the reverse, whoever suffers a loss has the right to renege on the sale. By contrast, if both parties agree on the
sale of one type of item and the item is discovered to be of a different kind, the sale is considered to be an error and both parties can renege on the sale.

When merchandise is sold, there are many variables that affect when the transaction is finalized. The important factors include whether the sale takes place in the domain of the buyer or the seller. If neither of them owns the domain, there is a further distinction between the public domain, an alleyway, and a domain that belongs to another individual. Another important issue is whether a measuring vessel being used to measure the merchandise belongs to the buyer, the seller, or someone else. In practical terms, these variables affect whether each party can renege on the transaction, e.g., if the market price of the merchandise suddenly changes, and who is responsible for the measuring vessel and its contents.

One particular transaction discussed in this chapter is that of a young child sent to purchase an item from a storekeeper on behalf of his parent. In this case, the Gemara rules that if one sends a child and gives him money and a vessel to hold the merchandise that he purchases, the storekeeper is responsible for the money and for the merchandise he pours in the vessel. He is not responsible for the vessel itself unless he picks it up for the purpose of using it.

There are different methods of acquiring movable property. All such items can be acquired by means of lifting, even when the acquisition is performed in the public domain. Heavy and large items, which are not easily lifted, are acquired by means of pulling. Acquisition through pulling is not effective in the public domain. Items that can be pulled only with difficulty, e.g., a ship, are acquired by means of passing, which is performed in the public domain or in a domain that belongs to neither of them. Other options include the acquisition of movable property by means of the land on which it is located or by using a cloth in a symbolic exchange. The acquisition of a promissory note requires both the act of passing and the writing of an additional bill of sale, as they are not acquired by means of passing alone.

The Sages caution that a seller must take great care not to cause a loss for the buyer due to a defect in one's scales or measurement implements, and he must ensure that he measures accurately. Anyone who is not careful in this regard, and certainly one who employs false measures, steals from the public.

This chapter includes several aggadic passages. The main discussion, which appears in the context of ships, ostensibly describes the travels of Sages in the oceans and deserts. These tales are generally interpreted as allusions to ideas about the nature of the world and historical events, as well as visions of the future.
Since the publication of the first volume of the *Koren Talmud Bavli* we have employed some transliterated acronyms, such as Rambam, to give the translation a more authentic flavor. These acronyms are used throughout this volume where they are well known and where the acronym helps readers easily identify the author in question. The following chart provides the full name of each author or work alongside its common acronym.

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<td>Beur HaGra</td>
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<td>Derashot Mahari Mintz</td>
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<td>Geranat</td>
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<td>Gulyon Mahantra</td>
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<td>Haggahot HaGra</td>
<td>Comments of Rabbi Eliyahu of Vilna on the Talmud</td>
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<td>Haggahot Mahanha</td>
<td>Comments of Rabbi Shmuel Eliezer Eidel</td>
</tr>
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<td>Hassagot HaRovad</td>
<td>Comments of Rabbi Avraham ben David on the Rambam’s <em>Mishne Torah</em></td>
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<td>Rabbi Hayyim David Azulai</td>
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<td>Kitzur Piskei HaRosh</td>
<td>Abridged Halakhic Rulings of Rabbeinu Asher ben Rabbi Yehiel</td>
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<td>Mabit</td>
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<td>Nimmukei HaGrib</td>
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<td>Rivash</td>
<td>Rabbi Yitzhak ben Sheshet</td>
</tr>
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<td>Shas</td>
<td>The Six Orders of the Mishna</td>
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<td>She'elat Ya'avetz</td>
<td>Responsa of Rabbi Yaakov Emden</td>
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<td>Sefer Hafutim by Rabbi Yaakov ben Asher</td>
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<td>Zaloh</td>
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<td>Rabbi Yaakov Emden</td>
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Neither with the solid residue of produce – 107. that has been pressed free of its oil
It is not the mustard – 317. that renders them impotent

...Mount Seir, Ammon, and Moab

...He would turn the branches

Five courtyards – 63...open onto an alleyway

...Carob tree

...One who sells a city

...Trust – 146.

...Fish are unrestrained

...First brood

...The law of the kingdom

...A child born after

...eight months of pregnancy

...Boxwood

...Hurmiz Ardeshid

...One-cubit-thick wall

...It heats hot items

...the tree is above

...and the tree is above

...that has not been grafted

...is the law

...is the law

...that has been pressed free of its oil

...Trust

...and upper stone

...and the tree is above

...the tree is above
198...Three independent lands – שְׁכַנִּים שְׁלֹשׁ
35...Name – שֵׁם
392...The sun is red – אֲדֹל הַיָּם
Two houses – בֵּית לִשְׁנֵי שְׁלֹשׁ
31...on two sides of a public domain
That the – מִשְׁלָשׁ אַרְעָתָא אַתְּרֵי נִגְרֵי
308...wicked kingdom spread
136...Sycamore tree – עץ
272...Bench – יָסָר
Two courtyards – פַּרְקְיָה בֵּית הַבַּד
33...one higher than the other