אַבַּיֵי אָמַר: גְּזֵרָה שֶׁמָּא תַּעֲשֶׂה עִיסָּה בְּשׁוּתָּפוּת,

Abaye said: It is **a decree** that the Sages made, **lest** a woman **make dough in partnership** with her neighbors. Indeed, in the case of the mishna, the small amount she received from her neighbor should be nullified in the dough. However, on another occasion, several friends or neighbors might decide to pool ingredients and prepare bread in partnership, in which case the bread is certainly bound by the Shabbat limits of all the parties combined. In order to prevent confusion between making dough in partnership and making it with borrowed ingredients, the Sages made a decree that the dough in both cases be subject to the same limitations.

רָבָא אָמַר: תְּבָלִין לְטַעֲמָא עֲבִידִי, וְטַעֲמָא לָא בָּטֵיל.

Rava said a different reason: **Spices are made** in order **to** add **taste**[H] to food, and **taste is not nullified,** even if the amount of actual substance is minute. Nullification indicates that a small amount of food may be considered insignificant and therefore null and void, but if an ingredient is added with the specific intent that its taste be noticed, there can be no nullification.

HALAKHA

Spices are made to add taste – תְּבָלִין לְטַעֲמָא עֲבִידִי: Spices are added for flavor and therefore are not nullified as long as their taste is noticeable. Consequently, if spices with *teruma* status fell into a pot of regular food they are not nullified, even if they constitute one part in a thousand (Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 16:2).

Perek **V**
Daf **39** Amud **a**

וְרַב אַשִׁי אָמַר: מִשּׁוּם דְּהָווּ לֵיהּ. דָּבָר שֶׁיֵּשׁ לוֹ מַתִּירִין, וְכָל דָּבָר שֶׁיֵּשׁ לוֹ מַתִּירִין – אֲפִילּוּ בְּאֶלֶף לָא בָּטֵיל.

And Rav Ashi said a different explanation as to why the spices, water, and salt are not subject to nullification: It is **because** any one of these ingredients **is an object whose prohibition is temporary,** as the prohibition against their being taken out of the Shabbat limits lapses once the Festival has passed, **and** the general principle is that **anything whose prohibition is temporary**[N] **cannot become nullified, even** by one part **in one thousand.**

"רַבִּי יְהוּדָה פּוֹטֵר בְּמַיִם". מַיִם – אִין, מֶלַח – לָא. וְהָא תַּנְיָא, רַבִּי יְהוּדָה אוֹמֵר: מַיִם וּמֶלַח בְּטֵלִין בֵּין בְּעִיסָּה בֵּין בִּקְדֵרָה! לָא קַשְׁיָא; הָא – בְּמֶלַח סְדוֹמִית, הָא – בְּמֶלַח אִסְתְּרוֹקָנִית.

§ It is taught in a mishna: **Rabbi Yehuda exempts** one from travel limitations **in** the case of **water.** The Gemara asks: Does this mean to imply that **water, yes,**[N] it is exempted by Rabbi Yehuda, but **salt, no,** it is not? **But isn't it taught** in a *baraita*: **Rabbi Yehuda says: Water and salt are** both **nullified, whether in a dough or in a pot** of cooked food. The Gemara answers: This is **not difficult.** In **this** case of the mishna, the reference is to **salt of Sodom,** which is quite coarse and does not blend in easily with the dough, and, being noticeable in the final product, is not nullified. In **that** case of the *baraita*, the reference is **to** a type of fine salt known as ***isterokanit***[L] **salt.**[B] Consequently, it is not noticeable in the final product and can be nullified.

וְהָתַנְיָא, רַבִּי יְהוּדָה אוֹמֵר: מַיִם וּמֶלַח בְּטֵלִין בְּעִיסָּה וְאֵין בְּטֵלִין בִּקְדֵרָה, מִפְּנֵי רוֹטְבָהּ! לָא קַשְׁיָא; הָא – בְּעָבֶה, הָא – בִּרְקָה.

The mishna states that according to Rabbi Yehuda water mixed into dough, and presumably into a cooked dish as well, is considered nullified. The Gemara challenges this: **But isn't it taught** in a *baraita* that **Rabbi Yehuda says: Water and salt are nullified in dough but not in a pot, due to its sauce.** The pot, unlike bread, ends up with liquid in it, so the borrowed water is still recognizable. The Gemara replies: This is **not difficult. This** case of the mishna, where Rabbi Yehuda says that the water is nullified in the cooked food, is referring **to a thick** dish that has no liquid sauce. **That** case of the *baraita*, in which Rabbi Yehuda said the water is not nullified, is referring **to a thin** dish with liquid sauce.

NOTES

Anything whose prohibition is temporary – דָּבָר שֶׁיֵּשׁ לוֹ מַתִּירִין: Some note that although in many cases it is stated that the *halakha* follows the lenient view in issues of *eiruvin*, this applies only in cases of uncertainty. In a situation such as this, which involves a monetary aspect as well, the Sages were stringent in applying the *halakhot* of nullification (*Ḥatam Sofer*).

Water, yes, etc. – מַיִם, אִין וכו': Although the *halakha* is not in accordance with the opinion of Rabbi Yehuda, the Gemara elaborates on his opinion, as the ensuing discussion has implications for the Rabbis' opinion as well (*Rishon LeTziyyon*).

LANGUAGE

***Isterokanit* – אִסְתְּרוֹקָנִית:** This word is probably derived from the name of a place, perhaps ὀστρακίνη, *Ostrakinè*, the Greek name for Ostrakine, a border town in southern Israel. Some say it is named for the area of Astrakhan, on the Caspian Sea. Since the production of salt from seawater took place in that city, this type of salt was named after the place.

BACKGROUND

Salt of Sodom and *isterokanit* salt – מֶלַח סְדוֹמִית וְאִסְתְּרוֹקָנִית: The *ge'onim* explain the word Sodom literally, as meaning salt extracted from Mount Sodom, near the Dead Sea, a mountain made almost entirely of rock salt. This salt, which is crystallized and hard as stone, is very noticeable when placed in a pot. *Isterokanit* salt is produced by drawing seawater into ponds and then letting the water evaporate in the sun. In ancient times such salt was moist and far more dissolvable than salt extracted from stone, making it unnoticeable in a mixture.

Above: Salt cave on Mount Sodom
Left: Rock salt at the peak of Mount Sodom

מתני׳ הַגַּחֶלֶת כִּרְגְלֵי הַבְּעָלִים, וְשַׁלְהֶבֶת בְּכָל מָקוֹם. גַּחֶלֶת שֶׁל הֶקְדֵּשׁ – מוֹעֲלִין בָּהּ, וְשַׁלְהֶבֶת – לֹא נֶהֱנִין וְלֹא מוֹעֲלִין. הַמּוֹצִיא גַּחֶלֶת לִרְשׁוּת הָרַבִּים – חַיָּיב, וְשַׁלְהֶבֶת – פָּטוּר.

MISHNA

A coal that one borrowed from another on the Festival is **as the feet of the owner,** and it may be carried on the Festival to any place where its owner may walk. Since it has substance, it is associated with its owner. **But a flame** that one lit from another's flame may be taken **anywhere,**[N] as it has no substance.[H] This essential difference between a coal and a flame has additional halakhic ramifications: If one uses **a coal of consecrated property** for a non-consecrated purpose, he is liable for **misuse** of consecrated property, since it has substance. **But** if one uses a consecrated **flame,** although according to rabbinic law **one may not** derive **benefit** from it *ab initio*, if one did benefit from it, **he is not** liable for **misuse,** since it does not have substance. Similarly, **one who takes out a coal** from a private domain **to the public domain** on Shabbat is **liable** for the prohibited labor of carrying, but one who takes out **a flame is exempt.**

גמ׳ תָּנוּ רַבָּנַן: חֲמִשָּׁה דְּבָרִים נֶאֶמְרוּ בְּגַחֶלֶת: הַגַּחֶלֶת כִּרְגְלֵי הַבְּעָלִים, וְשַׁלְהֶבֶת בְּכָל מָקוֹם. גַּחֶלֶת שֶׁל הֶקְדֵּשׁ – מוֹעֲלִין בָּהּ, וְשַׁלְהֶבֶת – לֹא נֶהֱנִין וְלֹא מוֹעֲלִין. גַּחֶלֶת שֶׁל עֲבוֹדָה זָרָה – אֲסוּרָה, וְשַׁלְהֶבֶת – מוּתֶּרֶת. הַמּוֹצִיא גַּחֶלֶת לִרְשׁוּת הָרַבִּים – חַיָּיב, וְשַׁלְהֶבֶת – פָּטוּר. הַמּוּדָּר הֲנָאָה מֵחֲבֵירוֹ – אָסוּר בְּגַחַלְתּוֹ וּמוּתָּר בְּשַׁלְהֶבְתּוֹ.

GEMARA

The Sages taught in a *Tosefta* (*Beitza* 4:7): **Five things were stated with regard to a coal,** in relation to the practical halakhic differences between a coal and a flame: **(1) Coal is as the feet of the owner** with regard to its Festival resting place, **whereas a flame** may be carried **anywhere. (2) One** is liable for **misusing** property consecrated to the Temple **with a consecrated coal, whereas** with regard to **a flame,**[H] according to rabbinic law **one may not benefit** from it, **but he is not** liable for **misusing** property consecrated to the Temple. **(3) Coal** used for **idol worship**[H] **is prohibited** for one to benefit from it, **whereas** from **a flame** of this sort it **is permitted**[N] to benefit. **(4) One who carries out a coal to the public domain is liable, whereas** one who carries out **a flame**[H] **is exempt. (5) One who is prohibited by a vow** from deriving **benefit from another is prohibited from** using **his coal, but** he is **permitted** to derive benefit **from his flame.**[H]

מַאי שְׁנָא שַׁלְהֶבֶת עֲבוֹדָה זָרָה דְּשַׁרְיָא, וּמַאי שְׁנָא דְּהֶקְדֵּשׁ דַּאֲסִירָא? עֲבוֹדָה זָרָה דְּמֵאִיסָה וּבְדִילִי אֱינָשֵׁי מִינַּהּ – לָא גָּזְרוּ בָּהּ רַבָּנַן, הֶקְדֵּשׁ דְּלָא מְאִיס וְלָא בְּדִילִי אֱינָשֵׁי מִינֵּיהּ – גָּזְרוּ בֵּיהּ רַבָּנַן.

With regard to the *halakhot* cited in the *baraita* above, the Gemara asks: **What is different** in in the case of **a flame** of **idol worship, that** one is **permitted** to use it even *ab initio*, as the *baraita* uses the term permitted in that case; **and what is different** in the case of a **consecrated** flame, in **that** it is **prohibited** to be used *ab initio*, as the *baraita* states: One may not benefit from it, but he is not liable for misuse? The Gemara explains: In the case of **idol worship, which is repulsive** to Jews **and from which** Jewish **people** inherently **maintain separation, the Sages did not decree** additional restrictions **with regard to it.** However, concerning **consecrated property, which is not repulsive and from which people do not** inherently **maintain separation,**[N] in order to prevent its misuse, **the Sages did decree with regard to it** that it is prohibited to use the flame.

״הַמּוֹצִיא גַּחֶלֶת לִרְשׁוּת הָרַבִּים חַיָּיב וְשַׁלְהֶבֶת פָּטוּר״. וְהָא תַּנְיָא: הַמּוֹצִיא שַׁלְהֶבֶת כָּל שֶׁהוּא חַיָּיב. אָמַר רַב שֵׁשֶׁת: כְּגוֹן שֶׁהוֹצִיאוֹ בְּקֵיסָם.

§ It is taught in the *baraita* that **one who carries out a coal to the public domain** is **liable, whereas** one who carries out **a flame is exempt.** The Gemara asks: **But isn't** it **taught** in another *baraita*: **One who carries out a flame of any size** on Shabbat **is liable? Rav Sheshet said:** The second *baraita* is referring to a case **where one carried out** the flame along **with a wooden chip.** Since the flame is attached to a physical object, it is considered significant.

וְתֵיפוֹק לֵיהּ מִשּׁוּם קֵיסָם. בְּדְלֵית לֵיהּ שִׁעוּרָא. דְּתָנַן: הַמּוֹצִיא עֵצִים – כְּדֵי לְבַשֵּׁל בֵּיצָה קְלָה.

The Gemara raises an objection: **But** if so, **let it derive** that one is liable for carrying out in this case **due to** the **wooden chip,** and the presence of the flame is irrelevant. The Gemara responds: That *baraita* speaks of a chip **that does not have the** minimum **measure** that determines liability for carrying out, **as we learned** in a mishna (*Shabbat* 89b): In the case of **one who carries out wood** on Shabbat,[H] the measure that determines liability is **enough** wood **to cook an egg** of the kind that is the **easiest** to cook, which is the egg of a chicken. Because the chip is too small to cook an egg, one is not liable for carrying it out, but one is liable for carrying out the flame attached to it.

NOTES

But a flame may be taken anywhere – וְשַׁלְהֶבֶת בְּכָל מָקוֹם: In this case, the mishna does not state: As the feet of the one who takes it. Because a flame is of no substance, the prohibition of Shabbat boundaries does not apply to it at all (*Meiri*).

A flame used for idol worship is permitted – שַׁלְהֶבֶת עֲבוֹדָה זָרָה מוּתֶּרֶת: Although one is permitted to benefit from a flame used for idol worship, the Sages nevertheless prohibited the recital of the *havdala* blessing over its light (*Berakhot* 51b). This is because the coal or candle of idolatry, from which the fire emanates, is forbidden (Rosh).

And from which people do not inherently maintain separation – וְלָא בְּדִילִי אֱינָשֵׁי מִינֵּיהּ: Some commentaries raise the following difficulty: The *baraita* teaches that one may derive benefit from a flame owned by someone from whom he is prohibited to benefit by force of a vow. Yet there is no element of revulsion with regard to such an item, and one does not inherently maintain separation from it. Why, then, did the Sages not prohibit its use? One answer is that generally one makes a vow prohibiting another from benefiting from his property only because he hates him, in which case these people are indeed likely to keep away from each other.

HALAKHA

A coal and a flame with regard to boundaries – גַּחֶלֶת וְשַׁלְהֶבֶת בִּתְחוּמִים: If one borrows a coal from another on a Festival, he may carry it only where the latter may walk. However, if he lights a fire from another's flame, he may carry the fire anywhere (*Shulḥan Arukh*, *Oraḥ Ḥayyim* 397:13).

A consecrated coal and flame – גַּחֶלֶת וְשַׁלְהֶבֶת שֶׁל הֶקְדֵּשׁ: If one appropriates a consecrated coal for his own use, he has thereby committed the transgression of misusing consecrated property. with regard to a consecrated flame, one may not derive benefit from it *ab initio*, but he is not considered to have violated the Torah prohibition of misuse if he does so (Rambam *Sefer Korbanot*, *Hilkhot Me'ila* 2:13).

Coal used for idol worship – גַּחֶלֶת שֶׁל עֲבוֹדָה זָרָה: It is prohibited to derive benefit from a coal used for idolatry or from the coal's ashes. Even after the fact, if an item was made by the heat of the coal, one may not derive benefit from it (*Taz*). However, one may benefit from a flame used for idol worship (*Shulḥan Arukh*, *Yoreh De'a* 142:1).

One who carries out a coal and a flame – הַמּוֹצִיא גַּחֶלֶת וְשַׁלְהֶבֶת: One who carries out or brings in a coal of any size from one domain to another on Shabbat is liable, but one who does so with a flame is exempt, although this act is prohibited (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 18:5).

A coal and a flame with regard to vows – גַּחֶלֶת וְשַׁלְהֶבֶת בְּמוּדָּר הֲנָאָה: One who is prohibited by a vow from deriving benefit from another may not use his coal, but he may use his flame (*Shulḥan Arukh*, *Yoreh De'a* 221:12).

Carrying out wood on Shabbat – הוֹצָאַת עֵצִים בְּשַׁבָּת: One who carries out wood on Shabbat from one domain to another is liable, if the amount he carries is enough to cook a chicken's egg that is mixed with oil and placed in a vessel (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 18:4).

אַבַּיֵי אָמַר: כְּגוֹן דְּשַׁיְּיפֵיהּ מָנָא מִשְׁחָא וְאַתְּלֵי בֵּיהּ נוּרָא. וְתֵיפּוֹק לֵיהּ מִשּׁוּם מָנָא. בְּחַסְפָּא.

Abaye said a different scenario: The mishna is referring to a case **where one smeared a vessel with oil, and lit a fire on it,** and carried out that flame.[N] The Gemara asks: If so, **let it derive** that one is liable for carrying out in this case **due to** the **vessel** itself, and the flame is irrelevant. The Gemara replies: The mishna is referring **to** a fire lit in **an earthenware** shard, not in a whole vessel.

וְתֵיפּוֹק לֵיהּ מִשּׁוּם חַסְפָּא. בִּדְלֵית לֵיהּ שִׁעוּרָא, דְּתָנַן: חֶרֶס כְּדֵי לִיתֵּן בֵּין פַּצִּים לַחֲבֵירוֹ, דִּבְרֵי רַבִּי יְהוּדָה.

The Gemara challenges: **And** nevertheless, **let it derive** that one is liable for carrying **due to** the **earthenware** shard itself. The Gemara answers: It deals **with** a shard **that is not of** the minimum **measure** that determines liability for carrying out, **as we learned** in a mishna (*Shabbat* 82a): The measure that determines liability for carrying out **earthenware** is **enough to place between one** window **frame and another,** as small shards of earthenware were sometimes placed between window frames during construction. This is **the statement of Rabbi Yehuda.**

אֶלָּא הָא דְּתָנַן: הַמּוֹצִיא שַׁלְהֶבֶת פָּטוּר הֵיכִי מַשְׁכְּחַת לָהּ? כְּגוֹן דְּאַדְּיָיהּ אַדּוּיֵי לִרְשׁוּת הָרַבִּים.

The Gemara asks: **But** if so, if one is liable for carrying it out whenever the flame is attached to an object of substance, **that which we learned** in the mishna here: **One who carries out a flame is exempt,** under **what circumstances** can this case **be found?** The Gemara answers: The mishna is speaking of a case **where one fanned** the fire **with his hand** so that it spread **into the public domain** without its being attached to any vessel.

מתני׳ בּוֹר שֶׁל יָחִיד – כִּרְגְלֵי הַיָּחִיד, וְשֶׁל אַנְשֵׁי אוֹתָהּ הָעִיר – כִּרְגְלֵי אַנְשֵׁי אוֹתָהּ הָעִיר, וְשֶׁל עוֹלֵי בָבֶל – כִּרְגְלֵי הַמְמַלֵּא.

MISHNA With regard to **a cistern of an individual,** water drawn from it **is as the feet of the individual** who owns the cistern, and the water may be carried only to those places where its owner is permitted to walk. **And** water drawn from a cistern belonging jointly to all **the people** dwelling in **a particular town is as the feet of the people of that town.**[H] **And** water drawn from a cistern **of those who come up** to Eretz Yisrael **from Babylonia,** i.e., a public cistern, is **as the feet of whoever fills** his vessel with its water; the water has no defined boundary of its own since it is made available to all.

גמ׳ רָמֵי לֵיהּ רָבָא לְרַב נַחְמָן: תְּנַן, בּוֹר שֶׁל יָחִיד כִּרְגְלֵי הַיָּחִיד, וּרְמִינְהוּ: נְהָרוֹת הַמּוֹשְׁכִין וּמַעְיָנוֹת הַנּוֹבְעִין – הֲרֵי הֵן כִּרְגְלֵי כָּל אָדָם! אֲמַר (לֵיהּ) רָבָא: הָכָא בְּמַאי עָסְקִינַן – בִּמְכוּנָּסִין. וְאִתְּמַר נַמִּי, אָמַר רַבִּי חִיָּיא בַּר אָבִין אָמַר שְׁמוּאֵל: בִּמְכוּנָּסִין.

GEMARA **Rava raised a contradiction to Rav Naḥman: We learned** in the mishna that the water of **a cistern of an individual is as the feet of the individual; and** Rava **raised a contradiction** from the *Tosefta* (*Beitza* 4:8): Water drawn from **flowing rivers**[NH] **and flowing springs are as the feet of all people. Rava said: With what are we dealing here** in the mishna? **With** cisterns that contain **collected** water, not flowing water. **And it was also said** that **Rabbi Ḥiyya bar Avin said** that **Shmuel said:** The mishna applies only **to collected** water.

״וְשֶׁל עוֹלֵי בָבֶל כִּרְגְלֵי הַמְמַלֵּא״. אִתְּמַר: מִילֵּא וְנָתַן לַחֲבֵירוֹ. רַב נַחְמָן אָמַר: כִּרְגְלֵי מִי שֶׁנִּתְמַלְּאוּ לוֹ, רַב שֵׁשֶׁת אָמַר: כִּרְגְלֵי הַמְמַלֵּא.

§ The mishna states: **And** water drawn from a cistern **of those who come up** to Eretz Yisrael **from Babylonia,** i.e., a public cistern, is **as the feet of whoever fills** his vessel with its water. **It was stated** that *amora'im* disagreed with regard to this issue: In the case of one who **filled** a vessel with water from a public cistern on behalf of **another and gave** the water **to** him,[H] **Rav Naḥman said:** The water is **as the feet of the one for whom they were filled; Rav Sheshet said:** It is **as the feet of the one who filled** it.

בְּמַאי קָא מִיפַּלְגִי? מָר סָבַר: בֵּירָא דְּהֶפְקֵרָא הוּא, וּמָר סָבַר: בֵּירָא דְּשׁוּתָּפֵי הוּא.

The Gemara asks: **With regard to what** principle **do they disagree?** The Gemara explains: **One Sage,** Rav Sheshet, **holds** that a public **cistern is ownerless,** and the *halakha* is that one cannot take possession of ownerless property on behalf of someone else. Therefore, the water belongs to the one who drew it; it is as his feet, and this status does not change even if he subsequently gave it to anyone else. **And one Sage,** Rav Naḥman, **holds** that a public cistern **is** considered jointly owned **by** all its **partners,** namely, all of the Jewish people. Therefore, it is possible for one partner to draw water on behalf of another partner, and the drawn water immediately belongs to the person for whom it was drawn.

אֵיתִיבֵיהּ רָבָא לְרַב נַחְמָן: הֲרֵינִי עָלֶיךָ חֵרֶם – הַמּוּדָּר אָסוּר,

Rava raised a challenge to Rav Naḥman from a mishna (*Nedarim* 47b): One who says to another: **I am hereby** prohibited **to you** by force of ***ḥerem,*** a kind of vow of prohibition, as objects declared as *ḥerem* are generally consecrated to the Temple, **the one prohibited by the vow,** the addressee, **is prohibited** to derive benefit from the person who made the vow or from his property, as the point of the vow was to prohibit the addressee from deriving any benefit from the one who made the vow.

NOTES

The opinions of Rav Sheshet and Abaye – שִׁיטוֹת רַב שֵׁשֶׁת וְאַבַּיֵי: The Rambam's presentation of this topic indicates that he maintains that Rav Sheshet and Abaye did not in fact disagree with regard to the *halakha*. Others explain that, according to Abaye, a wooden chip on fire is equivalent to a coal, so that one who carries it out is liable as in the case of the coal (*Sefat Emet*).

And he raised a contradiction, flowing rivers, etc. – וּרְמִינְהוּ, נְהָרוֹת הַמּוֹשְׁכִין וכו׳: In his question, Rava is assuming that the rivers and springs mentioned in the *baraita* are privately owned, as otherwise there would be no contradiction to the mishna. What is the basis for this assumption? The point that the *baraita* seeks to make is that flowing water does not have any fixed, assigned place of rest when the Festival begins because it is constantly in motion. Since this is the principle taught by the *baraita*, it is logical to assume that it is of no difference if the river or spring is privately owned or public property (Ra'avad; Rashba). The Gemara further assumes that the cistern in the mishna, since it is not defined as a particular type, can also be a cistern that accesses running water. The *baraita* therefore directly contradicts the mishna (Ra'ah).

HALAKHA

A cistern of an individual and of the public – בּוֹר שֶׁל יָחִיד וְשֶׁל רַבִּים: The water of a privately owned cistern is as the feet of its owner; the water of a cistern that belongs to a town is as the feet of the inhabitants of that town. Some say that if one of the residents made for himself a joining of Shabbat boundaries [*eiruv*] in one direction or another, the other inhabitants may carry the water only within the Shabbat boundary shared by all the inhabitants (*Tur*, citing Rashba). If a cistern is ownerless, its water is as the feet of whoever draws from it (*Shulḥan Arukh*, *Oraḥ Ḥayyim* 397:14).

Flowing rivers – נְהָרוֹת הַמּוֹשְׁכִין: The water of rivers and springs, which flows from one place to another, is as the feet of the one who draws it (*Shulḥan Arukh*, *Oraḥ Ḥayyim* 397:15).

One who filled a vessel with water on behalf of another and gave it to him – מִילֵּא וְנָתַן לַחֲבֵירוֹ: If one filled water for another from an ownerless cistern, the water is as the feet of the one who drew the water, not of the recipient, the *halakha* is in accordance with Rav Sheshet in his disputes with Rav Naḥman with regard to ritual matters. Some, however, claim that since the conclusion of the Gemara is that this issue depends on the issue of picking up a found article on behalf of another, and in that case the *halakha* follows Rav Naḥman, the water should follow the one for whom it was drawn. In exigent circumstances one may rely on this view (*Arukh HaShulḥan*). In the case of a cistern under joint ownership, if one partner draws from it on behalf of another partner, the water is as the feet of the person for whom it was drawn (*Mishna Berura*; *Shulḥan Arukh*, *Oraḥ Ḥayyim* 397:16).

HALAKHA

The prohibition of vows and *ḥerem* – אִיסּוּרֵי נְדָרִים וַחֲרָמִים: In the case of two people, named, for example, Reuven and Shimon, if Reuven said to Shimon: I am hereby prohibited to you by force of *ḥerem,* or: You are hereby prohibited to derive any benefit from me, Reuven may benefit from Shimon, but the latter may not derive benefit from the former. If Reuven said to Shimon: You are hereby prohibited to me by force of *ḥerem*, it is Reuven who may not derive benefit from Shimon, but not the reverse. If he said to him: I am hereby prohibited to you by force of *ḥerem*, and you to me, they are both prohibited to derive benefit from each other. They are permitted to benefit from items that belong to all Jews, such as the Temple Mount and its courtyards, but not from items jointly owned by all inhabitants of a particular town, such as a synagogue. The Sages, however, decreed that one person cannot prohibit another from his portion of a synagogue or a Torah Scroll, and any attempt to do so has no effect (*Shakh*; *Shulḥan Arukh*, *Yoreh De'a* 224:1).

Two partners who took a vow – הַשּׁוּתָּפִין שֶׁנָּדְרוּ: In a case where two partners owning a single courtyard vowed not to derive benefit from one another, the vow takes effect and they are both prohibited to enter the courtyard, provided it is large enough to be legally divided, i.e., at least four by four cubits for each partner. If it is not large enough to be divided, the vow does not take effect, and they both may enter the courtyard (*Shulḥan Arukh*, *Yoreh De'a* 226:1).

"הֲרֵי אַתָּה עָלַי חֵרֶם" – הַנּוֹדֵר אָסוּר. "הֲרֵינִי עָלֶיךָ וְאַתָּה עָלַי" – שְׁנֵיהֶם אֲסוּרִים זֶה בָּזֶה, וּמוּתָּרִין בְּשֶׁל עוֹלֵי בָּבֶל, וַאֲסוּרִין בְּשֶׁל אוֹתָהּ הָעִיר.

If he said to him: **You are hereby** prohibited **to me** by force of ***ḥerem*, the one making the vow is** himself **prohibited** to derive benefit from the addressee or from his property.[H] If he said to him: **I am hereby** prohibited **to you** and **you to me** by force of *ḥerem*, **they are both prohibited** to benefit **from one another. And they are permitted** to benefit from anything belonging **to those who come up from Babylonia,** i.e., public property that is not owned by any person or group, **but they are prohibited** to benefit from property that is jointly owned by the inhabitants **of that city,** as both parties have a share in such items.

וְאֵלּוּ הֵן דְּבָרִים שֶׁל עוֹלֵי בָּבֶל: הַר הַבַּיִת, הַלְּשָׁכוֹת וְהָעֲזָרוֹת, וּבוֹר שֶׁל אֶמְצַע הַדֶּרֶךְ. וְאֵלּוּ הֵן שֶׁל אוֹתָהּ הָעִיר: הָרְחוֹב, וּבֵית הַכְּנֶסֶת, וּבֵית הַמֶּרְחָץ.

That mishna provides examples: **And the following are items of those coming up from Babylonia,** i.e., publicly owned items: **The Temple Mount, the chambers, and the courtyards** on the Temple Mount, **and a cistern** situated **in the middle of the road. And these are** items jointly owned by the inhabitants **of that city: The street, and the synagogue,**[N] **and the bathhouse.**

וְאִי אָמַרְתְּ בֵּירָא דְּשׁוּתָּפֵי הוּא – אַמַּאי מוּתָּר? וְהָתְנַן: הַשּׁוּתָּפִין שֶׁנָּדְרוּ הֲנָאָה זֶה מִזֶּה – אֲסוּרִים לִיכָּנֵס לֶחָצֵר.

Rava, having cited the mishna in full, concludes his challenge to the opinion of Rav Naḥman: **And if you say** that **a cistern** of those who come up from Babylonia, a public cistern, **is** owned jointly **by partners,** i.e., by all Jews, **why** should it be **permitted** for the one who made the vow and the addressee to use it? **But didn't we learn** in a mishna (*Nedarim* 45b): Two **partners who took a vow**[NH] not to derive **benefit from one another are prohibited to enter** a joint **courtyard** in which they both have a share. According to you, the same should apply to a cistern in which the two of them have a share, such as the cisterns of those who come up from Babylonia.

לְרָחוֹץ בַּבּוֹר לְרָחוֹץ הָכִי נָמֵי, וְהָכָא בְּמַאי עָסְקִינַן – לְמַלּאוֹת, מָר מִדִּידֵיהּ קָא מְמַלֵּא, וּמָר מִדִּידֵיהּ קָא מְמַלֵּא.

Rav Naḥman answered: Indeed that is the case. **So too,** they are prohibited **to wash** themselves **in a cistern** because when bathing one uses all of the water of the cistern, part of which belongs to the forbidden partner. **But** when the *baraita* says that a cistern of those who come up from Babylonia is permitted to both parties, **with what are we dealing here?** The *baraita* is referring only **to filling** water[N] from the cistern. This is permitted because it is considered that **this one fills from his** portion, **and that one fills from his** portion. The water that each of them draws is considered retroactively designated exclusively for him, so that the partner has no share in it at all.

NOTES

The street and the synagogue – הָרְחוֹב וּבֵית הַכְּנֶסֶת: This is referring to village and town synagogues, which are the joint property of the town inhabitants. Synagogues in big cities, however, are considered to belong to all Jews (see *Megilla* 26a) and are therefore included in the category of property that belongs to those who come up from Babylonia.

But didn't we learn, partners who took a vow, etc. – וְהָתְנַן, הַשּׁוּתָּפִין שֶׁנָּדְרוּ וכו': Several early authorities address the question of why the Gemara found it necessary to cite this second mishna, since it is already clear from the mishna cited previously that one who is barred by a vow from benefitting from another may not use any jointly owned property, such as the street and the synagogue. *Tosafot* explain that the main proof is derived from the first source, but since it does not explicitly mention the aspect of partnership, the Gemara quoted the second source as well. The *Meiri* explains similarly at greater length. Conversely, the Ra'ah maintains that the main proof is from the second mishna, while the first source is quoted because it mentions a publicly owned cistern (see Rabbi Zeraḥya HaLevi and Ra'avad).

With what are we dealing here, to filling water – הָכָא בְּמַאי עָסְקִינַן, לְמַלּאוֹת: This is difficult, as the conclusion of the Gemara is that Rav Naḥman does not agree even in the case of filling water from the cistern because he maintains that there is no retroactive designation, whereas at this point in the Gemara Rav Naḥman himself appears to reply according to the assumption that there is retroactive designation. The Rashba writes that Rava, when posing this question, was unaware of Rav Naḥman's opinion. Rav Naḥman answered Rava according to Rava's assumptions in order to sharpen his mind, but Rav Naḥman himself did not believe that this is a case of partnership and retroactive designation. Others, however, reject this approach and explain that according to the conclusion of the Gemara it emerges that in fact Rava never posed his question and Rav Naḥman did not offer this answer (see *Rishon LeTziyyon*).

וְסָבַר רַב נַחְמָן יֵשׁ בְּרֵירָה? וְהָתְנַן: הָאַחִין הַשּׁוּתָּפִין, כְּשֶׁחָיְבִין בְּקַלְבּוֹן – פְּטוּרִין מִמַּעֲשֵׂר בְּהֵמָה,

The Gemara asks: **And does Rav Naḥman hold** that **there is** retroactive **designation? But didn't we learn** in a mishna (*Shekalim* 1:7): If **brothers** divided up inherited property among themselves and subsequently joined their property again and became **partners,**[H] **they are obligated to** add a ***kalbon,***[NL] a small coin, to the obligatory half-shekel yearly Temple donation. The *kalbon* covered both the cost to the Temple of exchanging half-shekels into larger coins and the depreciation of the donated coin. Although a whole shekel given by two partners does not need to be changed into a larger coin, the Sages imposed the same *kalbon* fee on the partners as on everyone else. However, these partners **are exempt from** the **animal tithe,**[N] in accordance with the standard *halakha* that people who own animals in partnership are exempt from the animal tithe.

וּכְשֶׁחָיְבִין בְּמַעֲשַׂר בְּהֵמָה – פְּטוּרִין מִן הַקַּלְבּוֹן,

The quote from the mishna continues: **And** in a situation in which the brothers are **liable for the animal tithe,** as when they have not yet divided up their inheritance, and all the deceased's estate is therefore still considered a single unit and not a partnership, **they are exempt from the *kalbon*,** in accordance with the *halakha* that a father who contributes a single shekel for his two dependent sons does not need to add the *kalbon*.

וְאָמַר רַב עָנָן: לֹא שָׁנוּ אֶלָּא שֶׁחָלְקוּ גְּדָיִם כְּנֶגֶד טְלָאִים, וּטְלָאִים כְּנֶגֶד גְּדָיִם,

And Rav Anan said: The Sages **taught** that the inherited property is no longer considered a single unit after the brothers divided it and then rejoined in a partnership **only when they divided kids against lambs or lambs against kids,** i.e., if one brother took kids and the other took a corresponding value of lambs. This kind of division is considered a commercial transaction, with one brother purchasing goats and paying for them with lambs and vice versa. Therefore, when they join their animals again as partners, it is considered an entirely new partnership.

אֲבָל חָלְקוּ גְּדָיִם כְּנֶגֶד גְּדָיִם וּטְלָאִים כְּנֶגֶד טְלָאִים – אוֹמֵר: זֶה חֶלְקוֹ הַמַּגִּיעוֹ מִשָּׁעָה רִאשׁוֹנָה לְכָךְ.

However, if **they divided kids against kids and lambs against lambs,** meaning that each brother took an equal portion of each of the items they inherited, one can **say** of each brother's portion: **This is his portion** destined to **reach him from the first moment,** from the time of the death of the deceased. If the brothers form their partnership again, the inheritance becomes a single unit again, and they are therefore obligated in the animal tithe and exempt from the *kalbon*.

וְרַב נַחְמָן אָמַר: אֲפִילּוּ חָלְקוּ גְּדָיִם כְּנֶגֶד גְּדָיִם וּטְלָאִים כְּנֶגֶד טְלָאִים אֵין אוֹמֵר "זֶה חֶלְקוֹ הַמַּגִּיעוֹ מִשָּׁעָה רִאשׁוֹנָה לְכָךְ".

But Rav Naḥman said: Even if they divided kids against kids and lambs against lambs, one does **not say** that **this is his portion** destined to **reach him from the first moment.** This is because Rav Naḥman does not accept the principle of retroactive designation. Consequently, the resolution proposed previously for the issue of filling water from the cistern of those who come up from Babylonia is invalid.

אֶלָּא, דְּכוּלֵּי עָלְמָא בֵּירָא דְּהֶפְקֵרָא הִיא, אֶלָּא הָכָא בְּמַגְבִּיהַּ מְצִיאָה לַחֲבֵירוֹ קָא מִיפַּלְגִי, מָר סָבַר: קָנָה, וּמָר סָבַר: לֹא קָנָה.

The Gemara retracts its previous explanation of the disagreement between Rava and Rav Naḥman: **Rather, everyone agrees** that a cistern of those who come up from Babylonia, i.e., a public cistern, **is an ownerless cistern, but here they disagree over** a different issue: **One who picks up a found article** intending to acquire it **on behalf of his friend.**[H] One **Sage,** Rav Naḥman, **holds** that if one picks up a found object on behalf of his friend, his friend **acquires**[N] it through this act as though he had picked it up himself. The water of the ownerless cistern is like a found object. Therefore, if one draws water on behalf of another, the latter acquires it, and consequently the water is as his feet. **And** one **Sage,** Rav Sheshet, **holds** that when one picks up a found object for another, the latter **does not acquire it.** Rather, it belongs to the one who actually picked it up, and consequently the water is as the feet of the one who draws it.

NOTES

Kalbon – **קַלְבּוֹן:** It is a mitzva for every adult male Jew to give a half-shekel to the Temple every year for public offerings. The Sages instituted that each person must add another small coin, a *kalbon*, to the half-shekel in order to cover the expense of exchanging the coins into larger ones. They established that even if two people together give a whole shekel, in which case there is no need for exchange into whole shekels, they must nevertheless each add the *kalbon*. However, if the shekels are donated on behalf of several people from common family property, such as a father donating half-shekels for his sons, no *kalbon* is added. This issue is explained at length in tractate *Shekalim*.

Animal tithe – **מַעֲשַׂר בְּהֵמָה:** It is a mitzva by Torah law to set aside one of every ten newborn animals born each year from one's cattle and flock, to bring as an offering in the Temple. This obligation applies only to livestock born in one's possession but not to animals that are purchased from others. Partners who divide their shared herd are considered to have bought from each other, and therefore both are exempt from tithing the newborn animals in their possession. However, if the livestock is considered joint property, the partners are obligated to give this tithe (Rambam *Sefer Korbanot, Hilkhot Bekhorot* 6:10).

One Sage holds that his friend acquires, etc. – **מָר סָבַר קָנָה וכו׳:** The basic reasoning here is sound, but Rashi notes and attempts to resolve a difficulty: The discussion here indicates that it is Rav Naḥman who maintains that if one picks up a found article on behalf of a friend the friend acquires it, whereas it is stated in tractate *Bava Metzia* that Rav Naḥman maintains that the friend does not acquire it. For this reason, Rashi emends the text of the Gemara so that Rav Naḥman's opinion here corresponds to what he holds in tractate *Bava Metzia*. *Tosafot* also discuss this issue and suggest several answers to resolve the apparent contradiction. One answer, given by the Rashbam, is that drawing water is different from an ordinary case of picking up an ownerless object, in that there is plenty of water for everyone, and no one loses access to the water as the result of another person's drawing it (see Rabbi Zeraḥya HaLevi, *Ba'al HaMaor*, and Rashba). However, Rabbeinu Ḥananel's comments indicate that his reading of the Gemara explicitly states that Rav Naḥman holds that one can acquire an article for another by picking it up for him. It is possible that Rav Naḥman retracted part or all of that position (see *Meiri*).

LANGUAGE

Kalbon – **קַלְבּוֹן:** From the Greek κόλλυβος, *kollubos*, meaning a small coin used to pay money changers.

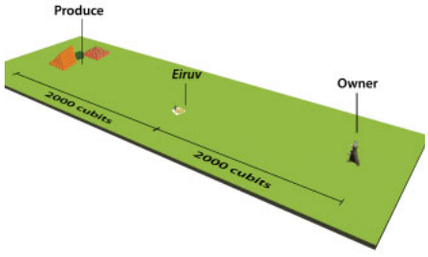
HALAKHA

If brothers became partners – **הָאַחִין הַשּׁוּתָּפִין:** Brothers who are also partners are exempt from the animal tithe if they have joint ownership in a manner that renders them liable to pay the *kalbon*. If they are obligated in the animal tithe, they are exempt from the *kalbon*. This *halakha* applies even when they divided the property by distributing all items equally between them, in accordance with the opinion of Rav Naḥman (Rambam *Sefer Zemanim, Hilkhot Shekalim* 3:4–5; Rambam *Sefer Korbanot, Hilkhot Bekhorot* 6:10).

One who picks up a found article on behalf of his friend – **הַמַּגְבִּיהַּ מְצִיאָה לַחֲבֵירוֹ:** If one lifts up a found item on behalf of his friend, the friend acquires it (*Shulḥan Arukh, Ḥoshen Mishpat* 269:1).

BACKGROUND

One who had produce in a different city – מִי שֶׁהָיוּ פֵּירוֹתָיו בְּעִיר אַחֶרֶת:



Eiruv placed to enable the owner to reach his produce

מתני׳ מִי שֶׁהָיוּ פֵּירוֹתָיו בְּעִיר אַחֶרֶת, וְעֵירְבוּ בְּנֵי אוֹתָהּ הָעִיר לְהָבִיא אֶצְלוֹ מִפֵּירוֹתָיו – לֹא יָבִיאוּ לוֹ, וְאִם עֵירֵב הוּא – פֵּירוֹתָיו כָּמוֹהוּ.

MISHNA With regard to **one who had produce in a different city**[B] beyond the Shabbat limit, **and the residents of that city** where the produce was located joined the Shabbat boundaries, enabling them to reach the owner's home on the Festival, and they wish **to bring him some of his produce, they may not bring** it **to him.** His produce is as his feet; since it is outside of his Shabbat limit, it may not be taken from its place. **However, if** the owner **placed an *eiruv*** to enable travel to that city, the legal status of **his produce is like his** status with regard to the Shabbat limit. People from that city who also placed an *eiruv* may bring the produce to him, since he himself may walk to the produce and take it.

Perek **V**
Daf **40** Amud **a**

NOTES

One who invited guests to visit him – זִמְּנוּ אֶצְלוֹ אוֹרְחִים: The mishna uses the word guests in the plural to teach that even if many guests arrived from different places and various boundaries, it is permitted to transfer possession of all their gifts by means of one act of acquisition (*Bigdei Yom Tov*).

As the feet of the one with whom they were deposited – כִּרְגְלֵי מִי שֶׁהִפְקִידוּ לוֹ: Some early authorities explain that this expression does not exclude the owner himself, but rather it means that it follows even the feet of the one with whom it was deposited. According to this approach, the object may be carried only to a place where both of them may walk (see Ran; *Beit Yosef*; *Yam Shel Shlomo*).

The question has been asked why Rav maintains that it follows the one with whom it is deposited, as certainly the owner does not intend to transfer ownership of his property to the keeper. One explanation is that since the keeper naturally has occasion to transfer the items from one place to another, it is in the owner's interest for his objects to be as the feet of the keeper (*Simḥat Yom Tov*; see *Penei Yehoshua*).

HALAKHA

Giving portions to guests – נְתִינַת מָנוֹת לְאוֹרְחִים: On a Festival, guests may not carry gifts from their host to places where the host may not walk, unless the host transfers ownership of these portions to the guests on the eve of the Festival by granting them acquisition by means of another person (*Shulḥan Arukh*, *Oraḥ Ḥayyim* 397:18).

As whose feet is a deposit – פִּקָּדוֹן כִּרְגְלֵי מִי: If one deposits produce with another who resides outside his Shabbat limit, without further specification, the produce is as the feet of the keeper. However, if the keeper designates a corner of his house for the owner's produce, it is as the feet of the owner, as the *halakha* follows Rav in his disputes with Shmuel in all matters of ritual law (*Shulḥan Arukh*, *Oraḥ Ḥayyim* 397:17).

Responsibility for a deposit in a courtyard – אַחֲרָיוּת עַל פִּקָּדוֹן שֶׁבֶּחָצֵר: If one brings his objects or animals into the courtyard of another, the latter does not bear responsibility for damage caused to the owner's object in his courtyard, even if the owner of the object brings them in with the permission of the owner of the yard. However, if the one with the courtyard accepts upon himself the responsibility of watching the items, he is liable for them, in accordance with the opinion of Rabbi Yehuda HaNasi (*Shulḥan Arukh*, *Ḥoshen Mishpat* 393:1).

מִי שֶׁזִּמְּנוּ אֶצְלוֹ אוֹרְחִים – לֹא יוֹלִיכוּ בְּיָדָם מָנוֹת, אֶלָּא אִם כֵּן זָכָה לָהֶם מֵהֶן מֵעֶרֶב יוֹם טוֹב.

With regard to **one who invited guests to** visit **him**[N] from a town beyond his Shabbat limit, and they joined the Shabbat boundaries to enable them to reach his house, **they may not carry in their hands** back to their town any **portions** they received from him as gifts. These portions are as the feet of the host, since they belonged to him on the eve of the Festival. This is true **unless he transferred ownership of their portions to them on the eve of the Festival,** in which case the gifts may be carried wherever the recipients may walk.[H]

גמ׳ אִיתְּמַר, הַמַּפְקִיד פֵּירוֹת אֵצֶל חֲבֵירוֹ, רַב אָמַר: כִּרְגְלֵי מִי שֶׁהִפְקִידוּ לוֹ, וּשְׁמוּאֵל אָמַר: כִּרְגְלֵי הַמַּפְקִיד. לֵימָא רַב וּשְׁמוּאֵל דְּאָזְדוּ לְטַעֲמַיְיהוּ, דְּתָנַן: אִם הִכְנִיס בִּרְשׁוּת – בַּעַל הֶחָצֵר חַיָּיב, רַבִּי אוֹמֵר: לְעוֹלָם אֵינוֹ חַיָּיב עַד שֶׁיְּקַבֵּל עָלָיו בַּעַל הַבַּיִת לִשְׁמוֹר,

GEMARA **It is stated** that *amora'im* disagreed with regard to **one who deposits produce with another** for safekeeping: In whose possession is the produce with regard to determining its place of rest over the Festival? **Rav said:** They are **as the feet of the one with whom they were deposited.**[NH] **And Shmuel said:** They are **as the feet of the** object's **owner.** The Gemara suggests: **Let us say** that **Rav and Shmuel follow their** usual line of **reasoning, as we learned** in a mishna: **If** one **brought in** his produce or his ox to another's courtyard **with** his **permission, the owner of the courtyard is liable** for any damage caused to them. **And Rabbi** Yehuda HaNasi **said:** The homeowner **is never liable** for damages, **unless the homeowner** explicitly **accepts upon himself** the responsibility **to watch** them.[H]

וְאָמַר רַב הוּנָא אָמַר רַב: הֲלָכָה כְּדִבְרֵי חֲכָמִים. וּשְׁמוּאֵל אָמַר: הֲלָכָה כְּרַבִּי. לֵימָא רַב דְּאָמַר כְּרַבָּנַן, וּשְׁמוּאֵל דְּאָמַר כְּרַבִּי.

And Rav Huna said that **Rav said: The *halakha* is in accordance with the statement of the Rabbis,** who disagreed with Rabbi Yehuda HaNasi, and **that Shmuel said: The *halakha* is in accordance with** the opinion of **Rabbi** Yehuda HaNasi. If so, **let us say** that **Rav spoke** here **in accordance with** the opinion of **the Rabbis,** with the following reasoning: Just as when one gives permission to store something in his yard, that object is under his jurisdiction concerning monetary responsibility, so too, it is in his jurisdiction concerning the establishment of the Shabbat limit. **And Shmuel spoke** here **in accordance with** the opinion of **Rabbi** Yehuda HaNasi: When a homeowner gives permission to store something in his yard, the object is not in his jurisdiction, whether with regard to monetary responsibility or with regard to the Shabbat limit.

אָמַר לָךְ רַב: אֲנָא דַּאֲמָרִי – אֲפִילּוּ לְרַבִּי. עַד כָּאן לָא קָאָמַר רַבִּי הָתָם – אֶלָּא דְּבִסְתָמָא לָא קָבִיל עֲלֵיהּ נְטִירוּתָא, אֲבָל הָכָא – הָא קָבִיל עֲלֵיהּ נְטִירוּתָא.

The Gemara rejects the comparison: **Rav** could have **said to you: I said** my statement in this case **even in accordance with** the opinion of **Rabbi** Yehuda HaNasi. For **Rabbi** Yehuda HaNasi **stated** his *halakha* **only there,** that an object brought into a courtyard is not considered in the possession of the homeowner with regard to monetary responsibility, **because in** the **ordinary** situation one who allows someone to bring items into his courtyard **does not accept upon himself** the responsibility of **watching** them. **But here,** the homeowner **has accepted upon himself** the responsibility **of watching** the produce, and consequently it is as his feet.