מַאי לָאו דַּאֲמַר: אִילּוּ הָיִיתִי יוֹדֵעַ שֶׁהַכּוּפְרִי יָפֶה לַלֵּב הָיִיתִי אוֹמֵר ״כָּל הַבְּצָלִים אֲסוּרִין וְכוּפְרִי מוּתָּר״?

What, is it not speaking here of a case **where** that person **said:**[N] **Had I known that the *kuferi*** onion **is good for the heart I would have said: All onions are forbidden and** the ***kuferi*** onion **is permitted?** This would be difficult for Rabba, who argues in similar cases that all opinions maintain that the other onions are forbidden, as well as for Rava, who would hold that only Beit Shammai, who follow the opinion of Rabbi Meir, maintain that all onions are forbidden in this type of case, and yet here Rabbi Meir himself permits all types of onions.

לָא, בְּאוֹמֵר: אִילּוּ הָיִיתִי יוֹדֵעַ שֶׁהַכּוּפְרִי יָפֶה לַלֵּב הָיִיתִי אוֹמֵר ״בָּצָל פְּלוֹנִי וּפְלוֹנִי אֲסוּרִין וְכוּפְרִי מוּתָּר״. וְרַבִּי מֵאִיר אַלִּיבָּא דְּרַבִּי עֲקִיבָא וְאַלִּיבָּא דְּרַבָּנַן.

The Gemara responds: **No,** this should be explained as a case **where one says: If I had known that the *kuferi*** onion **is good for the heart, I would have said: Such an onion and such** an onion **are forbidden** to me **and** the ***kuferi*** onion **is permitted, and** the opinion of **Rabbi Meir** is **in accordance with** the opinion **of Rabbi Akiva**[N] **and** also **in accordance with** the opinion **of the Rabbis.** This is because, according to Rava, when one says: This one and that one, all agree that everything is permitted.

אֵיתִיבֵיהּ רָבִינָא לְרָבָא: רַבִּי נָתָן אוֹמֵר: יֵשׁ נֵדֶר שֶׁמְּקָצָתוֹ מוּתָּר וּמְקָצָתוֹ אָסוּר. כֵּיצַד? נָדַר מִן הַכַּלְכָּלָה

Ravina raised an objection to Rava: Rabbi Natan says there is a vow that is partially dissolved and partially binding. How so? One who **took a vow** that benefit **from** all the items in **a basket**[B] be forbidden to him,

NOTES

What, is it not where that person said, etc. – מַאי לָאו דַּאֲמַר וכו׳: The question is simple to understand according to the opinion of Rabba, since he holds that if one formulates a vow employing the phrase: All onions are forbidden and the *kuferi* onion is permitted, all opinions agree that the *kuferi* onion is permitted and the others are forbidden. According to the opinion of Rava, the question can be understood as indicating an inconsistency in the opinion of Rabbi Meir. Rava explained above (26a) that Beit Shammai's opinion is based upon that of Rabbi Meir, who says that one is held accountable for the former expression, so that if one were to say: All onions are forbidden and the *kuferi* onion is permitted, one would think that Rabbi Meir would hold like Beit Shammai, who, according to Rava, hold that one who uses this phrasing does not dissolve the entire vow. Yet, the mishna states explicitly that Rabbi Meir ruled that the vow was dissolved with regard to all types of onions.

According to the Rashba, the Ran, and others, the Gemara could have answered that even if Beit Shammai hold in accordance with Rabbi Meir, that a person is held accountable for the former expression, there is no reason to think that Rabbi Meir holds like Beit Shammai with regard to the *halakha* of a vow that is partially dissolved. According to this, the answer given in the Gemara was in order to explain the mishna even granting Rav Adda bar Ahava's assumption that Rabbi Meir holds in accordance with the opinion of Beit Shammai.

And Rabbi Meir is in accordance with Rabbi Akiva – וְרַבִּי מֵאִיר אַלִּיבָּא דְּרַבִּי עֲקִיבָא: This means that, according to Rava, it is possible to establish the opinion of Rabbi Meir as being in agreement with the opinion of both the Rabbis and Rabbi Akiva. However, according to Rabba, one must explain that Rabbi Meir holds like his teacher, Rabbi Akiva (*Tosafot Yeshanim*).

BACKGROUND

Basket [*kalkala*] – כַּלְכָּלָה: The word *kalkala* means a basket or a container. It appears that the *kalkala* was generally woven from willow or palm branches, although some were made of other materials. These baskets had wide openings and elevated rims, though they were not particularly deep. The *kalkala* was typically used for storing soft fruits such as figs, grapes, and the like.

Roman fresco from a villa in southern Italy, featuring a basket with figs. It dates back to the first century.

Perek **III**
Daf **27** Amud **a**

וְהָיוּ בָּהּ בְּנוֹת שׁוּחַ, וְאָמַר: ״אִילּוּ הָיִיתִי יוֹדֵעַ שֶׁבְּנוֹת שׁוּחַ בְּתוֹכָהּ – לֹא הָיִיתִי נוֹדֵר״ – הַכַּלְכָּלָה אֲסוּרָה, בְּנוֹת שׁוּחַ מוּתָּרוֹת. עַד שֶׁבָּא רַבִּי עֲקִיבָא וְלִימֵּד: נֵדֶר שֶׁהוּתַּר מִקְצָתוֹ – הוּתַּר כּוּלּוֹ. מַאי לָאו דַּאֲמַר: אִילּוּ הָיִיתִי יוֹדֵעַ שֶׁבְּנוֹת שׁוּחַ בְּתוֹכָהּ – הָיִיתִי אוֹמֵר ״תְּאֵנִים שְׁחוֹרוֹת וּלְבָנוֹת – אֲסוּרוֹת, בְּנוֹת שׁוּחַ – מוּתָּרוֹת״, וְרַבִּי עֲקִיבָא הִיא, וּפְלִיגִי רַבָּנַן?

and there were *benot shuaḥ*[B] in it, and he said: Had I known that there were *benot shuaḥ* in it I would not have taken a vow, the basket and the remaining figs inside **are forbidden,** while **the *benot shuaḥ* are permitted.** This was the accepted ruling **until Rabbi Akiva came and taught: A vow which is dissolved partially is dissolved completely.** Therefore, all of the produce is permitted. **What, is it not** referring to a case where one said: **Had I known that *benot shuaḥ* were inside it, I would have said** that **black and white figs are forbidden,** and ***benot shuaḥ* are permitted, and this is** the opinion of **Rabbi Akiva, and the Rabbis disagree** with him? But according to Rava everyone agrees that all the produce is permitted in a case like this.

BACKGROUND

White fig

***Benot shuaḥ* – בְּנוֹת שׁוּחַ:** *Benot shuaḥ* is a species of white figs that mature late in the season and may grow to a size which is different from the normal size of other types of figs. This is possibly *Ficus virens*, which is known even today as the white fig. It is found in India, Southeast Asia, Malaysia, and Northern Australia.

Many early commentaries believe that the types of figs known as *benot shuaḥ* and *benot sheva* are identical and the two terms are synonymous, though others are of the opinion that they refer to different species.

לָא, בְּאוֹמֵר: אִילּוּ הָיִיתִי יוֹדֵעַ שֶׁבְּנוֹת שׁוּחַ בְּתוֹכָהּ – הָיִיתִי אוֹמֵר ״כָּל הַכַּלְכָּלָה אֲסוּרָה וּבְנוֹת שׁוּחַ מוּתָּרוֹת״.

The Gemara responds: **No,** it is possible to say that it is speaking of a case **where he says: Had I known that there were *benot shuaḥ* in it I would have said** that **the entire basket is forbidden and** the ***benot shuaḥ* are permitted,** which is the opinion of Rabbi Akiva according to Rava.

מַאן תְּנָא לְהָא, דְּתָנוּ רַבָּנַן: נָדַר מֵחֲמִשָּׁה בְּנֵי אָדָם כְּאֶחָד, הוּתַּר לְאֶחָד מֵהֶם – הוּתְּרוּ כוּלָּן. ״חוּץ מֵאֶחָד מֵהֶן״ – הוּא מוּתָּר, וְהֵן אֲסוּרִין.

The Gemara asks: **Who** is the *tanna* who **taught that which the Sages taught:** With regard to one who **took a vow, in one** utterance, prohibiting himself from deriving benefit **from five people,** if the vow **is dissolved for one of them,** then the vow concerning **all of them is dissolved;** but if he retracted and said: I am prohibited to derive benefit from all of these individuals **except for one of them,** then **he,** i.e., that individual who was excluded, **is permitted and they,** the others, **are forbidden?**

אִי לְרַבָּה – רֵישָׁא רַבִּי עֲקִיבָא וְסֵיפָא דִּבְרֵי הַכֹּל, אִי לְרָבָא – סֵיפָא רַבָּנַן וְרֵישָׁא דִּבְרֵי הַכֹּל.

The Gemara explains two possibilities: **If** one says that it is in accordance **with** the explanation of **Rabba,** then **the first clause** is referring to a case where after having taken a vow prohibiting himself from deriving benefit from all five people, he retracted and said: Benefit from this one and from that one are forbidden but benefit from one is permitted, and it is in accordance with the opinion of **Rabbi Akiva,** that a vow which is dissolved partially is dissolved completely. **And the latter clause** is where he adds to the initial vow by stating: Except for one of them, and **everyone agrees** that only that one is permitted. **If** one says that it is in accordance **with** the explanation of **Rava, the latter clause** is in accordance with the opinion of the **Rabbis, and everyone agrees** with the ruling of **the first clause.**

מתני׳ נִדְרֵי אוֹנָסִין; הִדִּירוֹ חֲבֵירוֹ שֶׁיֹּאכַל אֶצְלוֹ, וְחָלָה הוּא, אוֹ שֶׁחָלָה בְּנוֹ, אוֹ שֶׁעִכְּבוֹ נָהָר – הֲרֵי אֵלּוּ נִדְרֵי אוֹנָסִין.

MISHNA What are examples of **vows** impeded by **circumstances beyond** one's **control? If one's friend took a vow with regard to him that he should eat with him, and he became sick, or his son became sick,**[N] **or a river** that he was unable to cross **barred him** from coming, **these are** examples of **vows** whose fulfillment are impeded by **circumstances beyond** one's **control.**[H] They are not binding and do not require dissolution.

גמ׳ הַהוּא גַּבְרָא דְּאַתְפִּיס זַכְוָותָא בְּבֵי דִּינָא, וַאֲמַר: אִי לָא אָתֵינָא עַד תְּלָתִין יוֹמִין – לִיבָּטְלוּן הָנֵי זַכְוָותַאי. אִיתְנִיס וְלָא אֲתָא, אֲמַר רַב הוּנָא: בָּטֵיל זַכְוָותֵיהּ.

GEMARA The Gemara relates that there was **a certain man who** had a dispute in court with another individual and wanted to postpone the trial to a later time in order to search for more evidence. Meanwhile, he **deposited** his documents for **a favorable** verdict, i.e., that supported his claim, **in court, and** since the other litigant did not believe that he would return, the man **said: If I do not come** back **within thirty days, these** documents for **a favorable verdict will be void. He was impeded** by circumstances beyond his control **and did not come** back. **Rav Huna said: His** documents for **a favorable verdict are void** since he did not return by the specified time.

אֲמַר לֵיהּ רָבָא: אָנוּס הוּא, וְאָנוּס רַחֲמָנָא פְּטָרֵיהּ, דִּכְתִיב ״וְלַנַּעֲרָה לֹא תַעֲשֶׂה דָּבָר״.

Rava said to him: He is a victim of circumstances beyond his **control and** the *halakha* is that **the Merciful One exempted a victim of circumstances beyond** his **control** from responsibility for his actions,[H] **as it is written** concerning a young woman who was raped: "**But unto the damsel you shall do nothing;** there is in the damsel no sin worthy of death" (Deuteronomy 22:26).

וְכִי תֵּימָא קְטָלָא שָׁאנֵי – וְהָתְנַן: נִדְרֵי אוֹנָסִין, הִדִּירוֹ חֲבֵירוֹ שֶׁיֹּאכַל אֶצְלוֹ, וְחָלָה הוּא אוֹ שֶׁחָלָה בְּנוֹ אוֹ שֶׁעִכְּבוֹ נָהָר – הֲרֵי אֵלּוּ נִדְרֵי אוֹנָסִין!

And if you would say that with regard to the penalty of **death,** which is extremely severe, the *halakha* is **different,** and she is treated leniently and not executed, but with regard to other transgressions one's actions are treated as deliberate, **but didn't we learn** in the mishna here: What are examples of **vows** whose fulfillment are impeded by **circumstances beyond** one's **control?**[N] If **one's friend took a vow with regard to him that he should eat with him, and he became sick, or his son became sick, or a river** that he was unable to cross **barred him** from coming, **these are** examples of **vows** whose fulfillment are impeded by **circumstances beyond** one's **control;** they are not binding and do not require dissolution. This demonstrates that even here the exemption due to circumstances beyond one's control should apply.

NOTES

Or his son became sick, etc. – אוֹ שֶׁחָלָה בְּנוֹ וכו׳: The Ran notes that this example was utilized to illustrate the point that even an unexpected occurrence that does not actually prevent one from coming but complicates the situation is included. This is because one probably did not vow with that situation in mind. Although this is an example of unspoken matters, which are generally not considered to be significant, nevertheless it is obvious here that this was his intention.

But didn't we learn: Vows impeded by circumstances beyond one's control, etc. – וְהָתְנַן נִדְרֵי אוֹנָסִין וכו׳: The Gemara does not provide an explanation for Rav Huna's opinion or for how he answers this question. The Rashba explains that the difference between the cases is obvious: When one makes the stipulation himself and risks losing his rights, it is reasonable that he must specifically say that in the case of unforeseeable circumstances his rights should not be lost. But for most vows, one does not take into consideration that an unexpected event will occur, and he is therefore not required to make such stipulations. In fact, *Tosafot* indicate that Rav Huna's case is referring to such an unusual situation that it is not reasonable that one would make a stipulation about it, and yet Rav Huna still rules that the evidence in question is void. However, according to *Tosafot*, his evidence is rendered void because his suggestion that they be nullified is equivalent to partially admitting that the evidence is not valid. Therefore, his rights are rescinded in any case where he does not actually return. The Ritva and the Rosh offer a third explanation. A vow and an oath are generally valid only when one undertakes them with full knowledge, based on the words "that a man shall utter clearly with an oath" (Leviticus 5:4). Consequently, it is obvious that in the event of circumstances beyond one's control the vow is void. But with regard to stipulations for monetary issues, one must detail his conditions.

HALAKHA

Vows impeded by circumstances beyond one's control – נִדְרֵי אוֹנָסִין: Vows whose fulfillment are impeded by circumstances beyond one's control are permitted, for example, where one took a vow to eat with another and then either he or his son become sick or a river that overflowed prevents them from coming. In addition, if one takes a vow because he is being compelled to do so, it is not a vow (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 3:1 and *Hilkhot Nedarim* 4:1; *Shulḥan Arukh, Yoreh De'a* 232:12).

And the Merciful One exempted a victim of circumstances beyond his control – וְאָנוּס רַחֲמָנָא פְּטָרֵיהּ: If one stipulates with a symbolic acquisition that if he does not appear in court on a specific date and take an oath then the other person is considered justified in his claim, no additional time is given. If the specified day passes and he does not appear in court, he has lost his rights (Rema, citing *Beit Yosef*). If he can bring proof that he was prevented from arriving that day by circumstances beyond his control, he is exempt from his stipulation. This ruling is in accordance with the opinion of Rava (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 7:10; *Shulḥan Arukh, Ḥoshen Mishpat* 21:1).

HALAKHA

This is your bill of divorce from now, etc. – הֲרֵי זֶה גִּיטֵּךְ מֵעַכְשָׁיו וכו׳: If one says to his wife: This is your bill of divorce from now if I do not return within twelve months, and he dies within twelve months, she is divorced. However, if she has no children and there is a potential *yavam* waiting to marry her, she should not marry another man until twelve months pass so that the condition is completely fulfilled and the divorce is finalized, thereby abrogating the requirement for levirate marriage (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 9:11; *Shulḥan Arukh*, *Even HaEzer* 144:3).

וּלְרָבָא, מַאי שְׁנָא מֵהָא דְּתָנַן: ״הֲרֵי זֶה גִּיטֵּךְ מֵעַכְשָׁיו אִם לֹא בָּאתִי מִכָּאן עַד שְׁנֵים עָשָׂר חֹדֶשׁ״ וּמֵת בְּתוֹךְ שְׁנֵים עָשָׂר חֹדֶשׁ – הֲרֵי זֶה גֵּט. אַמַּאי? וְהָא מֵינַס אִיתְנִיס! אָמְרִי: דִּלְמָא שָׁאנֵי הָתָם

The Gemara asks: **And according to Rava,** in **what** way **is** it **different from** that **which we learned** in a mishna (*Gittin* 76b): If a man says to his wife: **This is your bill of divorce from now**[H] **if I do not arrive from now until** the conclusion of **twelve months, and he died within** those **twelve months, this** document **is** a valid **bill of divorce** from the time of his declaration. **Why? But he was a victim of circumstances beyond** his **control,** as death is the ultimate example of this? The Gemara answers: **Say** that **perhaps** it is **different there,**

Perek **III**
Daf **27** Amud **b**

BACKGROUND

Ferry [*ma'abera*] – מַעְבָּרָא: The word *ma'abera* means a ferry, boat, or raft used to cross a river. The form *ma'abera* is the full spelling of the word, but the Talmud generally uses the form *mabera* without the guttural letter *ayin*.

These ferries commonly crossed a river several times a day and carried people from one side to the other. It was generally not worthwhile for the ferry owner to transport only a few people at a time, so passengers had to wait until there were enough people to justify making the trip. There was no other way to cross wide rivers, and if the ferry was on the opposite side of the river, the passenger could not call to it even in an emergency.

HALAKHA

It is not considered an arrival – לָא שְׁמִיהּ מָתְיָיא: If one said to his wife: This is your bill of divorce if I don't return within thirty days, and while he was returning he became sick or a river barred him from arriving, such that he did not arrive within the time allotted, the bill of divorce is valid, even if he shouted that he was prevented from arriving. This is because circumstances beyond one's control have no legal standing with regard to bills of divorce (see *Ketubot* 2b). This principle applies in cases when one should have taken into account the potential problem initially. However, a rare event, e.g., being attacked by a lion or bitten by a snake, does cancel the bill of divorce. If a man died childless under those circumstances, the wife he left behind does require levirate marriage. This is the *halakha* regardless of whether the rare event was caused by a person or by Heaven (*Beit Shmuel*). The Rema, citing the Mordekhai, holds that captivity is not considered a rare event (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 9:8; *Shulḥan Arukh*, *Even HaEzer* 144:1).

An *asmakhta* does not effect acquisition – אַסְמַכְתָּא לָא קָנְיָא: If one performs an act of acquisition that will not take effect immediately, but rather, makes a stipulation whose fulfillment will cause the acquisition to take effect and whose lack of fulfillment prevents the acquisition from taking effect, then even if the stipulation is fulfilled, acquisition is not effected because an *asmakhta* does not effect acquisition (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 11:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 207:2).

NOTES

***Asmakhta* – אַסְמַכְתָּא:** The Ramban provides three indicators of an *asmakhta*, which differentiate it from other stipulations: First, an *asmakhta* contains an element of exaggeration. Much more is promised if the stipulation is not fulfilled than the actual loss caused by not fulfilling it. Second, an *asmakhta* exists only when it is dependent on a passive condition. If the stipulation involves an action, it is not considered an *asmakhta*, since its fulfillment depends on one's will. Third, a stipulation is termed an *asmakhta* only when it is partially dependent on the one that stipulates. If it is totally dependent on him or completely independent of him, it is not an *asmakhta*. The Ritva summarizes the Ramban's conclusions and adds that he also maintains that no *asmakhta* exists with regard to the *halakhot* of marriage and divorce for various reasons.

דְּאִי הֲוָה יָדַע דְּמִית – מִן לְאַלְתַּר הֲוָה גָּמַר וְיָהֵיב גִּיטָּא.

for had he known that he would die within a year **he would have immediately finalized** his decision **and given** her **the bill of divorce.** Since he gave it to her initially so that she not require levirate marriage, it is assumed that his intent was to deliver it even in this case. By contrast, in the case where one stipulated about his rights, which he certainly did not intend to forfeit, it is assumed that he would not have wanted his statement to take effect in this situation.

מַאי שְׁנָא מֵהַהוּא דַּאֲמַר לְהוּ: אִי לָא אֲתֵינָא מִכָּאן עַד תְּלָתִין יוֹמִין – לֵיהֱוֵי גִּיטָּא. אֲתָא, וּפְסָקֵיהּ מַעְבְּרָא, אֲמַר לְהוּ: חֲזוּ דַּאֲתַאי, חֲזוּ דַּאֲתַאי! וַאֲמַר שְׁמוּאֵל: לָא שְׁמִיהּ מָתְיָיא. אַמַּאי? וְהָא מֵינַס אֲנִיס!

The Gemara continues to question Rava: In **what** way **is** it **different from** the following case: There was **a certain** man **who said to** the agents with whom he entrusted a bill of divorce: **If I do not return from now until thirty days** have passed, **let** this **be a bill of divorce. He came** on the thirtieth day **but was prevented** from crossing the river **by the ferry**[B] that was located on the other side of the river, so he did not arrive within the designated time. **He said to the** people across the river: **See that I have arrived, see that I have arrived. And Shmuel said:** It **is not considered** to be **an arrival,**[H] and the condition is considered to have been fulfilled. The Gemara asks: **Why** is it not considered an arrival; **but he was impeded by circumstances beyond** his **control?**

דִּלְמָא אוּנְסָא דְּמִיגְלֵא שָׁאנֵי, וּמַעְבְּרָא מִילֵּי אוּנְסֵיהּ.

The Gemara responds: **Perhaps** the case of **circumstances beyond** one's **control that are apparent** to everyone and could have been anticipated ahead of time **is different, and a ferry is** considered **an apparent** type of **circumstance beyond** one's **control,** which he should have considered and stipulated explicitly. Since he did not do so, it is not considered a circumstance beyond one's control.

וּלְרַב הוּנָא, מִכְּדֵי אַסְמַכְתָּא הִיא, וְאַסְמַכְתָּא לָא קָנְיָא! שָׁאנֵי הָכָא, דְּמִיתְפְּסָן זְכוּתָן.

The Gemara asks: **And according to Rav Huna,** who said that his documents for a favorable verdict are rendered void if he does not return by the set time, it is difficult to understand why the stipulation is valid. **After all, it is a transaction with inconclusive consent** [***asmakhta***],[N] since he certainly assumed that he would return and intended to actually give away his documents, **and an *asmakhta* does not effect acquisition.**[H] Even if a person performs an act of acquisition to that effect, he does not have the intention to actually follow through. The Gemara responds: **Here** it is **different because his** documents for **a favorable verdict are being held** by the court, so he certainly did intend to give them up in the event that he not return on time.

וְהֵיכָא דְּמִיתְפְּסִין לָאו אַסְמַכְתָּא הִיא? וְהָתְנַן: מִי שֶׁפָּרַע מִקְצָת חוֹבוֹ וְהִשְׁלִישׁ אֶת שְׁטָרוֹ, וְאָמַר: אִם אֵין אֲנִי נוֹתֵן לוֹ מִכָּאן עַד שְׁלֹשִׁים יוֹם – תֵּן לוֹ שְׁטָרוֹ.

The Gemara asks: **And** in a case **where** his rights **are held** by another party, **is it not** considered **an *asmakhta*? But didn't we learn** in a mishna (*Bava Batra* 168a): In the case of **one who repaid part of his debt, and deposited his** loan **document with a third** party for purposes of security, **and said: If I do not give him** the remainder of the debt **from now until thirty days, give him his** loan **document** and he can collect the entire amount.

הִגִּיעַ זְמַן וְלֹא נָתַן, רַבִּי יוֹסֵי אוֹמֵר: יִתֵּן, וְרַבִּי יְהוּדָה אוֹמֵר: לֹא יִתֵּן. וְאָמַר רַב נַחְמָן אָמַר רַבָּה בַּר אֲבוּהּ אָמַר רַב: אֵין הֲלָכָה כְּרַבִּי יוֹסֵי דְּאָמַר אַסְמַכְתָּא קָנְיָא!

If the time arrived and he did not give the remainder of the debt to the creditor, **Rabbi Yosei says:** The third party **should give** the document to the debtor. **And Rabbi Yehuda says: He should not give** it. **And Rav Naḥman said** that **Rabba bar Avuh said** that **Rav said: The *halakha* is not in accordance with** the opinion of **Rabbi Yosei,**[H] **who said that an *asmakhta* effects acquisition.** The reason for this is that the one who deposited the document believes he will return in time and never intended to give over the document. It can be seen in the mishna that even in a case where the document was held by a third party, it is still considered an *asmakhta* and is not valid.

שָׁאנֵי הָכָא דַּאֲמַר לִבָּטְלָן זְכוּתֵיהּ.

The Gemara responds: **It is different here because** the one who deposited his documents with the court explicitly **said that** documents for **a favorable verdict should be void,**[N] which demonstrates that he intended to uphold his stipulation.

וְהִלְכְתָא: אַסְמַכְתָּא קָנְיָא, וְהוּא דְּלָא אָנִיס, וְהוּא דְּקָנוּ מִינֵּיהּ בְּבֵית דִּין חָשׁוּב.

The Gemara concludes: **And the *halakha*** in these cases is as follows: **An *asmakhta* effects acquisition**[N] even if it is dependent on a condition that may not be fulfilled, **but this is** true only **if** the one who had stated the obligation dependent upon the *asmakhta* **was not impeded** by circumstances beyond his control that prevented him from doing so, and instead deliberately chose not to fulfill the stipulation. In addition, **this is** the *halakha* only **if he effected an acquisition from** the other party[H] for this *asmakhta* **in an eminent court,** but not for an agreement that takes place not in an eminent court.

HALAKHA

The *halakha* is not in accordance with Rabbi Yosei – אֵין הֲלָכָה כְּרַבִּי יוֹסֵי: If one repaid part of a loan and gave the document to someone to hold with the stipulation that if he did not repay the rest of the loan by a certain day he should give the document to the creditor, and that day arrived without him making the payment, the third party should not give the document to the creditor, since this is an *asmakhta*. This ruling is in accordance with Rav Naḥman, who states that the *halakha* is not in accordance with Rabbi Yosei (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 11:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 55:1).

But this is if he was not impeded, this is if he effected an acquisition from the other party, etc. – וְהוּא דְּלָא אָנִיס, וְהוּא דְּקָנוּ מִינֵּיהּ וכו': An *asmakhta* based upon which one performed an act of acquisition in an eminent court effects acquisition when one's documents of a favorable verdict are held by the court and no circumstances beyond his control impede him from fulfilling his stipulation. This ruling follows the conclusion of the Gemara.

The Rema writes that early authorities engaged in a dispute concerning the definition of an eminent court. Some hold that any three individuals who are expert in the *halakhot* of an *asmakhta* are considered an eminent court (*Tur*, citing Rosh), while others hold that the court must be considered eminent in that locale or known to be expert (Mordekhai; *Maggid Mishne*). There are those who hold that if the litigants performed an act of acquisition with regard to the stipulation of the *asmakhta*, even if his documents for a favorable verdict are not held by the court, it is a valid acquisition, and this is indeed the accepted practice (Rosh). The Rema notes that there are those who hold that if one hands over his documents to a third party as a form of mutual guarantee, then even an *asmakhta* effects acquisition, in accordance with the principle that the law of the kingdom is the law (*Beit Yosef*, citing Rashba; Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 11:13; *Shulḥan Arukh*, *Ḥoshen Mishpat* 55:1, 207:15).

NOTES

That documents for a favorable verdict should be void – לִבָּטְלָן זְכוּתֵיהּ: There are several ways to explain why one's statement that his rights be nullified is effective. Some have suggested it is due to the halakhic principle of forgiveness, which allows him to waive his right to the debt he is owed. The Rambam holds that when attempting to claim money from another, a stipulation of an *asmakhta* does not effect acquisition. However, when one merely wishes to waive the debt, it does not have the status of an *asmakhta* and his words are binding (see Rosh and Rid). But many others, including the Commentary on *Nedarim*, hold that there is no distinction between the two cases (see Rashba). According to this reasoning, when one says that his documents should be nullified, it is as though he is admitting that his claims or the documents in his possession are false (*Tosafot*; Rosh). Others interpret this to mean that his statement is equivalent to declaring that he transfers the documents from the time he made his statement, which according to Rav Huna does not constitute an *asmakhta* (*Tosefot Rabbeinu Peretz*).

An *asmakhta* effects acquisition, etc. – אַסְמַכְתָּא קָנְיָא וכו': According to the Commentary on *Nedarim*, three criteria are necessary for an *asmakhta* to effect acquisition: There was no duress, an act of acquisition was performed, and the stipulation was made before an eminent court.

In addition, many *ge'onim* hold one must declare that the acquisition takes effect specifically from this moment, however Rabbeinu Tam in *Sefer HaYashar* holds this is not required (see *Tosafot*). Others hold that an *asmakhta* effects acquisition only in cases like this, where one says that his rights should be nullified. Another opinion is that when one states that his rights are to be void, it is not an *asmakhta*, as it takes effect immediately. Rav Hai Gaon holds that the Gemara's entire ruling on this issue follows only the opinion of Rabbi Yosei and is not the practical *halakha*.

מתני׳ נוֹדְרִין לֶהָרָגִין וְלֶחָרָמִין וְלַמּוֹכְסִין שֶׁהִיא תְּרוּמָה אַף עַל פִּי שֶׁאֵינוֹ תְּרוּמָה, שֶׁהַן שֶׁל בֵּית הַמֶּלֶךְ אַף עַל פִּי שֶׁאֵינָן שֶׁל בֵּית הַמֶּלֶךְ. בֵּית שַׁמַּאי אוֹמְרִים: בְּכֹל נוֹדְרִין

MISHNA **One may take a vow to murderers,**[NH] i.e., people suspected of killing others over monetary matters; **or to robbers** [*ḥaramin*]**;**[B] **or to tax collectors**[B] who wish to collect tax, **that** the produce in his possession **is *teruma***[NB] **although it is not *teruma*.** One may also take a vow to them **that** the produce in his possession **belongs to the house of the king,**[B] **although it does not belong to the house of the king.** One may take a false vow to save himself or his possessions, as a statement of this sort does not have the status of a vow. **Beit Shammai say: One may vow** in such a case, although he has no intention that his words be true, **using every** means of taking a vow or making a prohibition in order to mislead those people,

NOTES

One may take a vow to murderers – נוֹדְרִין לֶהָרָגִין: The Rambam in his Commentary on the Mishna and many others explain that this mishna is a continuation of the previous one, which discusses vows impeded by circumstances beyond one's control, and two types of vows are presented: The previous mishna discusses circumstances beyond one's control occurring at the time of fulfillment of the vow that prevent the vow from actually being fulfilled, while this mishna describes those that occur when one is taking a vow and compel him to do so. However, other commentaries explain that until now the Gemara has been discussing vows that, once taken, do not require dissolution, while here it is describing vows that may be taken *ab initio*, although one has no intent to fulfill them (*Tosafot Yeshanim*).

That is *teruma* – שֶׁהִיא תְּרוּמָה: This mishna is referring to Jewish murderers and robbers, who are careful not to eat forbidden items despite their tendencies to murder and steal (Rosh). With regard to the tax collectors, it is possible that they did not collect tax from *teruma* because they did not wish to benefit from something considered to be consecrated.

HALAKHA

One may take a vow to murderers, etc. – נוֹדְרִין לֶהָרָגִין וכו׳: A vow made under compulsion is not a valid vow. Therefore, one may vow to murderers and tax collectors but should make a mental stipulation limiting the scope of the vow, such as intending that it be valid for only one day. This ruling is in accordance with the mishna (Rambam *Sefer Hafla'a*, *Hilkhot Shevuot* 3:1, 3–4 and *Hilkhot Nedarim* 4:1–2; *Shulḥan Arukh*, *Yoreh De'a* 232:14).

BACKGROUND

Robbers [*ḥaramin*] – חָרָמִין: The commentaries explain that the word *ḥaramin* refers to robbers who steal money from people. Some hold that they were appointed by the authorities, and their role was to prevent the passage of goods into the hands of the enemy in times of emergency and other circumstances. The *ḥaramin* received special orders to exempt *teruma* from expropriation. Furthermore, it is possible that the murderers mentioned here were not criminally violent. Rather, they were ordered by the authorities to kill anyone transporting goods from one place to another without permission.

Tax collectors – מוֹכְסִין: In some locations, until recent times, private individuals would pay a fixed sum to the government for the right to collect taxes from its citizenry, which the collectors would be entitled to keep. A head tax collector would then sell the rights to collect in certain regions to others, who would pay a fixed sum to the one who purchased collection rights from the government. The precise sum to be collected for taxes was not dictated by the government, and the more money collected by the collector, the greater his profit. However, this setup led to exploitation and robbery, since the collector would often exempt his friends from paying taxes and collect extra sums from others to make up for the shortfall. This was true when the authorities took a fixed percentage of the sums collected, and even more so when the terms of what could be collected were not clearly stated. For this reason, an ordinary tax collector was considered to be a scoundrel and an evil person.

***Teruma* – תְּרוּמָה:** Whenever the term *teruma* appears without qualification, it refers to a portion of produce from the produce of Eretz Yisrael that is separated and given to the priests. There is a dispute among the early authorities as to whether by Torah law this requirement applies only to grain, wine, and olive oil; to all seven of the species associated with Eretz Yisrael; or to all produce grown there, though all agree that at least by rabbinic law it is extended to all produce. The source for this mitzva is: "And this shall be the priests' due from the people…The first fruits of your grain, of your wine, and of your oil shall you give him" (Deuteronomy 18:3–4).

The Torah does not specify the amount of *teruma* that must be separated. One may theoretically fulfill one's obligation by separating even a single kernel of grain from an entire crop of grain. However, the Sages instituted recommended measures: One-fortieth for a generous gift, one-fiftieth for an intermediate gift, and one-sixtieth for a miserly gift. It is prohibited to separate the tithes before separating *teruma*.

Teruma is sacred and may be eaten only by a priest and his household while they are in a state of ritual purity (see Leviticus 22:9–15). If *teruma* becomes ritually impure, it may no longer be eaten and must be burned. Nevertheless, it remains the property of the priest, and he may benefit from its burning.

During present times, the obligation to separate *teruma* remains, at least as a rabbinic obligation. However, *teruma* is not given to the priests because they have no definite proof of their priestly lineage. It is not possible to consume *teruma* while ritually pure in the present, and therefore the Sages' ordinance with regard to the amounts to be separated is no longer in practice. Only a minimal amount of produce is separated in practice.

That belongs to the house of the king – שֶׁל בֵּית הַמֶּלֶךְ: Items that belonged to the royal house or to private royal districts in various areas were generally exempt from taxes. Claiming that an item belonged to the royal house deterred murderers, robbers, and even ordinary villains because they did not want to enter into a direct conflict with the authorities.