

חוץ מבשבועה, ובית הלל אומרים: אף בשבועה.

בית שמאי אומרים: לא יפתח לו בנדר, ובית הלל אומרים: אף יפתח לו. בית שמאי אומרים: במה שהוא מדירו, ובית הלל אומרים: אף במה שאינו מדירו.

ביצד? אמר לו: אמור "קונם אשתי נהנית לי", ואמר: "קונם אשתי ובני נהנין לי", בית שמאי אומרים: אשתו מותרת ובני אסורין, ובית הלל אומרים: אלו ואלו מותרין.

גמ' והאמר שמואל: דינא דמלכותא דינא!

אמר רב חנינא אמר רב כהנא אמר שמואל: במוכס שאין לו קצבה. דבי רבי ינאי אמר: במוכס העומד מאלי.

except for by taking of an oath, due to its more stringent nature. **And Beit Hillel say:** One may mislead them even by taking an oath.^h

Beit Shammai say: When negotiating with a robber, one should not initiate by taking a vow for him unless the robber does not believe his claim, in which case he may take a vow to reinforce his words. **And Beit Hillel say:** He may even initiate by taking a vow to him. **Beit Shammai say:** One may take a vow only about that which the robber compels him to take a vow but may not add to it. **And Beit Hillel say:** One may take a vow even about that which he does not compel him to take a vow.

The mishna explains the previous statement: **How so?** If the extortionist said to him that he should say: **Benefiting from me is konam for my wife** if the vow is not true, and he said: **Benefiting from me is konam for my wife and my children**, **Beit Shammai say:** His wife is permitted to benefit from him, since the extortionist demanded that he take that vow, but his children, whom he added of his own accord, are prohibited from benefiting from their father. **And Beit Hillel say:** Both these and those are permitted to benefit from him.

GEMARA The Gemara asks, concerning the mishna's statement that one may take a vow to tax collectors: **But didn't Shmuel say: The law of the kingdom is the law,**^{HN} i.e., there is a halakhic principle that Jews must obey the laws of the state in which they live? Since one must pay the tax determined by the kingdom, how did the Sages permit one to lie in order to avoid paying?

Rav Hinnana said that Rav Kahana said that Shmuel said: The mishna is referring to a tax collector who has no fixed amount^h for collection established by the kingdom, but rather collects the tax arbitrarily. Therefore, this case is not included in the law of the kingdom. A Sage of the school of Rabbi Yannai said: The mishna is referring to a tax collector who establishes himself as such independently and was not appointed by the kingdom.

HALAKHA

Even by taking an oath, etc. – אף בשבועה וכו' – When permission was given to a person to take a vow to murderers, robbers, and extortionists due to coercion, it was also permitted to take an oath. One may do so not only if the other party forces him, but he may even initiate the vow or oath himself. He may also add to the items about which the other party compels him to take a vow or oath. This ruling is in accordance with Beit Hillel (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 3:1; *Shulhan Arukh, Yoreh De'a* 232:14).

The law of the kingdom is the law – דינא דמלכותא דינא – A law set by the kingdom is the law, and it must be obeyed by Jews as long as it does not conflict with Jewish law. Some say that this is because those living in a kingdom have accepted its laws upon themselves explicitly or simply by not actively protesting (Rashba; *Terumat HaDeshen*), while others say that it is because it is the right of the king to impose his law upon his subjects (Responsa of the Rashba; Meiri). Most of the halakhic authorities consider it to be a Torah law (Ritva; Rivash; *Taz*) while others hold that it is a rabbinic law (*Beit Shmuel*). The Maharik notes that if the law of the kingdom is not applied equally to everyone, it is within the category of theft (Rambam *Sefer Nezikim, Hilkhot Gezeila VaAveda* 5:11–18; *Shulhan Arukh, Hoshen Mishpat* 369:2, 8–9).

To a tax collector who has no fixed amount, etc. – במוכס שאין לו קצבה וכו' – It is permitted to trick a tax collector or to utter a vow in his presence in order to avoid paying the tax if the collector is not authorized by the authority of the kingdom, or if he is one who appropriates more than the authorized fixed amount (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 3:2; *Shulhan Arukh, Yoreh De'a* 232:14).

NOTES

The law of the kingdom is the law – דינא דמלכותא דינא – This halakhic principle, which greatly affects the lives of Jews in many locations around the world, has been discussed at length by numerous commentaries, and several opinions have been advanced concerning its scope. Some hold that it applies only to a gentile king who is entitled to legislate as he pleases in his land and can decide who may and may not live in his country. But it does not apply to Jewish kings, since the right of Jews to live in Eretz Yisrael does not depend at all upon the king (Ran; *Nimmukei Yosef*). The Rambam and Ritva disagree with this interpretation. They hold that this law results from the power of the ruling authority, whether Jewish or otherwise.

According to other early commentaries, this principle is applicable specifically with regard to those who wish to settle in a particular land or to pass through it. In such cases the

sovereign has the right to collect taxes. However, one who does not desire to live in a particular land is not enjoined by *halakha* to follow the law of the land (*Kitzur Piskei HaRosh*). Most commentaries and halakhic authorities follow the opinion of Rabbeinu Tam, that the law of the kingdom is the law only when the laws are applied equally to everyone. If the sovereign discriminates against a certain group or individual, the principle is not applicable; their laws are considered an act of theft by the kingdom rather than the law of the kingdom. According to the Ritva, this principle applies only to long-standing laws that have been customarily followed by the sovereign. New laws and decrees do not fall within the purview of the law of the kingdom. Rather, they are termed: The laws of the king, which are not actually within his jurisdiction to legislate and therefore do not have the same authority.

Where he said... should be forbidden, etc. – באומר: When one vows due to coercion, he should mentally make a stipulation that will allow him to fulfill the vow e.g., that the prohibition be applicable only for a short time. Since he took the vow under coercion, he may rely on his mental stipulation (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 3:3; *Shulhan Arukh, Yoreh De'a* 232:14).

Matters that remain in the heart are not matters – דברים שבלב אינן דברים: If it appears that one is selling something for a specific reason, but he does not specify any stipulations, if the reason is not actualized, the sale is still valid. This is because matters in the heart are not matters. But if it can be demonstrated that one clearly made the sale for a particular reason, the deal is nullified if the reason is not actualized (Rema, based on *Tosafot* and *Rosh*). The *Haggahot Alfasi* rules that matters in the heart are considered significant matters with regard to gifts (Rambam *Sefer Kinyan, Hilkhot Mekhira* 11:9; *Shulhan Arukh, Hoshen Mishpat* 207:4).

”שהן של בית המלך ואף על פי שאינן של בית המלך”. היכי נדר? אמר רב עמרם אמר רב: באומר ”יאסרו פירות העולם עלי אם אינן של בית המלך”.

בין דאמר ”יאסרו” – איתסרו עליה כל פירי עלמא! באומר ”היום”. אי דאמר ”היום” לא מקבל מיניה מוכס!

באומר בלבו ”היום” ומוציא בשפתיו סתם. ואף על גב דקבירא לן דברים שבלב אינן דברים. לגבי אונסין שאני.

”בית שמאי אומרים בכל” כו'. בית שמאי אומרים: במה שהוא מדירו, ובית הלל אומרים: אף בשאינו מדירו. ביצד? אמר לו: ”קונם אשתי נהנית לי”, ואמר ”קונם אשתי ובני נהנין לי”, בית שמאי אומרים: אשתו מותרת ובניו אסורין, ובית הלל אומרים: אלו ואלו מותרין.

אמר רב הונא: תנא, בית שמאי אומרים: לא יפתח לו בשבועה, ובית הלל אומרים: אף יפתח לו בשבועה. לבית שמאי – בשבועה הוא דלא יפתח לו, והא בנדר – יפתח לו. והא תנן, בית שמאי אומרים: לא יפתח לו בנדר!

ותו: מיפתח הוא דלא יפתח לו בשבועה, הא מינדר נדר בשבועה. והתנן בית שמאי אומרים: בכל נודרין חוץ מבשבועה!

The mishna states: He may also take a vow to them that his produce belongs to the house of the king, although it does not belong to the house of the king. The Gemara asks: How does he take a vow in this way? Rav Amram said that Rav said: This is a case where he said: The produce of the world should be forbidden⁴ to me if this produce does not belong to the house of the king.

The Gemara asks: Since he said that the produce of the world shall be forbidden to him, shouldn't all the produce of the world be forbidden to him, as this produce did not belong to the house of the king? The Gemara answers: This is a case where he says: They shall be forbidden to me only today.⁵ The Gemara wonders: If he says: Today, the tax collector will not accept it as a vow, since it is not difficult to avoid eating produce for one day. Therefore, he may still be suspected of lying.

The Gemara answers: This is a case where he says: Today, in his heart but verbalizes the vow in an unspecified manner. And although we hold that unspoken matters that remain in the heart are not significant matters⁶ and are not taken into consideration, with regard to circumstances beyond one's control it is different,⁷ and he is permitted to rely on the mental stipulation that he added in order to limit the duration of the prohibition effected by the vow.

The mishna states: Beit Shammai say that they may take a vow in such a case using every means of vowing except for an oath, while Beit Hillel say they may take a vow even using an oath. Beit Shammai say: One may vow only about that which the extortionist compels him to take a vow but may not add to it. And Beit Hillel say: One may take a vow even about that which he does not compel him to take a vow. How so? If the extortionist said to him that he should say: Benefiting from me is *konam* for my wife if the vow is not true, and he said: Benefiting from me is *konam* for my wife and my children, Beit Shammai say: His wife is permitted to benefit from him, since the extortionist demanded that he take that vow, but his children, whom he added of his own accord, are prohibited from benefiting from their father. And Beit Hillel say: Both these and those are permitted to benefit from him.

Rav Huna said that a Sage taught: Beit Shammai say that one may not initiate by taking an oath to him unless the extortionist does not believe his claim, and Beit Hillel say: He may even initiate by taking an oath to him. The Gemara asks: A precise analysis of the wording indicates that according to Beit Shammai it is only by taking an oath to him that one may not initiate, but one may initiate by taking a vow to him. Rav Huna asks: But didn't we learn in the mishna that Beit Shammai say: He may not initiate by taking a vow to him?

Rav Huna asks another question: And furthermore, a precise analysis of the wording indicates that he may not initiate by taking an oath to him, but he may certainly vow with an oath if the tax collector insists on it; but didn't we learn in the mishna that Beit Shammai say: They may take a vow in such a case using every means of vowing in order to mislead them except for by taking an oath, which indicates that one may not take an oath even if he does not initiate with one?

NOTES

Where he says: Today, etc. – באומר היום וכי: Early commentaries ask: What is the difference between this case and that of vows of exhortation and others similar to it, for which there is no need to add a mental stipulation or limitation? The Ran answers that in this case, although one is coerced, the coercion does not actually dissolve the vow. The Rid and *Tosafot* explain at length that with regard to vows of exhortation and vows that are unintentional, one's intent is clearly not to vow in the manner expressed by his words. Here, however, the words do not contradict one's mental stipulation because he took the

vow so that he would be believed, and since they believed him, his vow is valid. The Rashba cites the explanation of *Tosafot*, who say that the case here refers to an ignorant person. The *halakha* treats him more stringently when he makes a mental stipulation (see 20a). The Rashba refutes this explanation and claims that this vow is not really like a vow of exhortation because here one wants the listeners to understand his words exactly as he says them, and this partially nullifies what he says in his heart.

With regard to circumstances beyond one's control it is different – לגבי אונסין שאני – Some have explained that in any event someone who says that he had a stipulation in mind that limited his vow or who explains his words in a way that does not make it prohibitive to him is not generally believed. Since he expressed himself without further clarification, his words are understood in accordance with their standard meaning. But here, since one is coerced and cannot say what he really means, unexpressed ideas are also taken into consideration (Rabbi Yitzhak Tzarfat).

There is an allowance for a request for dissolution of an oath – **יש שאלה בשבועה** – Oaths and vows can be dissolved even if the name of God was mentioned. The Rema writes that an oath should not be nullified *ab initio*, except in exigent circumstances (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 6:5; *Shulhan Arukh, Yoreh De'a* 230:1).

הרי נטיעות האלו קרבן – These saplings are like an offering – If one says: These saplings are like an offering if they do not fall down today, if the day passes and they do not fall down they are consecrated and must be redeemed like other consecrated items. This ruling is in accordance with the mishna and the explanation in the Gemara (Rambam *Sefer Avoda, Hilkhot Me'ila* 4:11).

NOTES

הרי נטיעות האלו קרבן – These saplings are like an offering – Most of the commentaries hold that this is referring to the actual process of consecration. Although neither saplings nor garments may be brought as offerings, the intention is to consecrate their monetary value and use this sum to purchase offerings.

Some commentaries hold that it actually is referring to a *konam* and not to consecration, and the ensuing discussion follows the opinion of Rabbi Meir, who holds that even items whose status is like a forbidden offering [*konam*] can be redeemed (Ran; *Shita Mekubbetzet*).

תנא מתניתין בגר – להודיעך בְּחֶן דְּבֵית שְׁמַאי, תנא בְּרִייתָא בְּשִׁבּוּעָה – להודיעך בְּחֶן דְּבֵית הִלֵּל.

The Gemara resolves the contradiction: **The mishna taught the halakha that pertains to a vow to convey to you the far-reaching nature of the opinion of Beit Shammai**, who say that one may not initiate even with a vow. However, **the baraita taught the halakha that pertains to an oath to convey to you the far-reaching nature of the opinion of Beit Hillel**, who maintain that initiating even with an oath is permitted. It is apparent that according to Beit Shammai one may not initiate with a vow and may not take an oath at all. Therefore, the *baraita* cannot be used to infer Beit Shammai's opinion concerning oaths.

רב אשי אמר: הכי קתני, בית שמאי אומרים: אין שאלה בשבועה, ובית הלל אומרים: יש שאלה בשבועה.

Rav Ashi said the following to resolve the contradiction: **This is what it is teaching:** The *baraita* does not refer to a vow taken in the case of robbers or tax collectors. Rather, the dispute focuses on an entirely different topic: **Beit Shammai say that there is no allowance for a request for dissolution of an oath**, and the statement: He may not initiate, relates to a halakhic authority who seeks an opening to dissolve an oath. **And Beit Hillel say there is an allowance for a request for dissolution of an oath.**^h

מתני' "הרי נטיעות האלו קרבן אם אינן נקצצות", טלית זו קרבן אם אינה נשרפת – יש להן פדיון. "הרי נטיעות האלו קרבן עד שיקצצו", טלית זו קרבן עד שתשרף –

MISHNA If one sees his property in danger of being destroyed, and takes a vow stating, for example: **These saplings are like an offering^{nh} if they are not cut down**, or: **This garment is like an offering if it is not burned**, these items are consecrated if the saplings remain standing or if the garment is not burned. In addition, **they are subject to the possibility of redemption** just as other items consecrated for maintenance of the Temple may be redeemed. But if one said: **These saplings are like an offering until they are cut down**, or: **This garment is like an offering until it is burned**,

Perek III
Daf 28 Amud b

אין להם פדיון. then they are not subject to the possibility of redemption.

גמ' ולייתי "קדושות ואין קדושות!" אידי דבעי למיתנא סיפא "אין להם פדיון" – תנא נמי רישא "יש להם פדיון".

GEMARA The Gemara questions the language of the mishna: Why does the mishna utilize the wording: They have redemption and they do not have redemption? **Let the mishna teach: They are consecrated and they are not consecrated,**ⁿ since the primary novelty is that they are consecrated, but not completely. The Gemara answers: **Since it wanted to teach in the latter clause the phrase: They are not subject to the possibility of redemption**, which cannot be expressed as: They are not consecrated, as they are consecrated, **it taught also the first clause using the language: They are subject to the possibility of redemption.**

NOTES

קדושות – They are consecrated and they are not consecrated – The thrust of the Gemara's question is as follows: Why does the mishna utilize the language: They are subject to redemption, if the point is primarily that the saplings or garment are consecrated?

Early commentaries have questioned the expression: Consecrated and not consecrated, since the term: Not consecrated, is inaccurate in the latter clause of the mishna, where the items are consecrated but cannot be redeemed. Therefore, many hold that the correct text is only: Let the mishna teach: Consecrated. According to this, the question concerns the unusual phraseology: They are subject to redemption; it would have been more suitable to employ the clearer and more common language:

They are consecrated (*Tosafot*, citing Rashbam; Rashba; Ran; Meiri).

There are others who maintain that the standard text is correct. Some have explained that the question is based on the assumption that the phrase: They are not subject to redemption, in the last clause of the mishna, means that they are no longer consecrated, and therefore the mishna should have said so explicitly. The Gemara answers that the language is precise, and the items are not subject to redemption but are indeed consecrated. Since the latter clause focuses on redemption, the first clause does as well (*Shita Mekubbetzet*).

Others, such as the Commentary on *Nedarim* and the Ri, cited in *Tosafot*, explain that the phrase: Consecrated and not

consecrated, relates only to the first clause of the mishna, and the intention is that they are consecrated, but not with inherent sanctity, which is not subject to redemption. Rather, the items retain sanctity that inheres in its value, i.e., they are donated for the upkeep of the Temple, and may be redeemed. According to these commentaries, this expression is similar in style to that of: Divorced and not divorced (*Gittin* 78b), which means that the woman is divorced but not totally divorced. Others also interpret this phrase as referring to the former clause of the mishna but suggest that the term consecrated means: If they are not cut, and the term not consecrated means: If they are cut (*Tosafot Yeshanim*).

