

גמ' בשלמא לא ילוגו – דקא מהני ליה. אלא לא ילוגו הימנו, מאי קא מהני ליה? ובשלמא לא ילוגו הימנו ולא יקח הימנו – דקמיתהני מיניה, אלא לא ישאל הימנו, מאי קא מיתהני מיניה?

GEMARA Granted that the person from whom benefit is forbidden may not lend money to the person for whom benefit is forbidden,^N as he thereby benefits him. However, with regard to the fact that the former may not borrow money from the latter, in what way does he benefit him by borrowing his money? And it could even be said, granted that he may neither borrow money from him nor purchase an item from him, as one benefits in lending money by preserving the value of that money in case the coins deteriorate, and in selling by ridding oneself an item that is difficult to sell. However, with regard to the fact that the person from whom benefit is forbidden may not borrow an item from the person for whom benefit is forbidden, in what way does the lender benefit from him? The borrower returns the same item to the lender.

אמר רבי יוסי ברבי חנינא: כגון שגדרו הנאה זה מזה. אביי אמר: גזירה לשאול משום להשאיל, וכן בכוליהו גזירה.

Rabbi Yosei, son of Rabbi Hanina, said: The mishna is referring to a case where they both vowed that benefit from each other is forbidden. Clearly, then, neither of them may lend to the other or borrow from him. Abaye said: It is possible to explain the mishna as it is written, as referring to a case where only one vowed that benefit from the other is forbidden. However, the Sages issued a decree that it is also prohibited for one to borrow^H from a person for whom benefit from him is forbidden, due to the concern that he might come to lend to him, as reciprocity is common in these matters. And likewise, that is the explanation in all the cases in the mishna; it is prohibited to borrow money, borrow items, and to purchase items from him due to a rabbinic decree, lest he come to benefit him.

מתני' אמר לו: השאילני פרתך. אמר לו: אינה פנויה. אמר: "קונם שדי שאני חורש בה לעולם." אם היה דרכו לחרוש – הוא אסור וכל אדם מותרים, ואם אין דרכו לחרוש – הוא וכל אדם אסורין.

MISHNA One said to another: Lend me your cow. The other person said to him: My cow is not available. The one seeking to borrow the cow responded angrily: Plowing my field with this cow is *konam* forever.^{MH} If it was his typical manner to plow the field himself, then it is prohibited for him to plow his field with that cow but it is permitted for every other person. If it is not his typical manner to plow the field himself, and he has others plow for him, it is prohibited for him and for every other person to plow his field with that cow, because his intent was to render benefit from plowing with this cow forbidden.

המודר הנאה מתבירו ואין לו מה יאכל, הולך אצל החנוני ואומר: איש פלוגי נודר ממני הנאה, ואיני יודע מה אעשה. והוא נותן לו, ובא ונוטל מזה.

In the case of one for whom benefit from another is forbidden by vow and who does not have anything to eat, the one from whom benefit is forbidden goes to the shopkeeper and says^H to him: So-and-so vowed that benefit from me is forbidden for him and I do not know what I will do. After grasping his intent, the shopkeeper gives food to the one for whom benefit is forbidden, and then the shopkeeper comes and takes payment for the food from that one who spoke to him.^N

NOTES

Granted that he may not lend money to him, etc. – בשלמא לא ילוגו וכו': The commentaries explain why the prohibition is more understandable with regard to the loan of money and sale of an item than it is with regard to lending items. In the case of a loan of money, the lender might benefit by receiving higher-quality coins in repayment of the loan than the coins he lent. In the case of a purchase, the seller may benefit if it is low-quality merchandise and he is relieved to find someone to buy it. However, if one lends an item, he receives that very item in return. Furthermore, it could lose value through use or with the passage of time.

The Rashash adds that one who lends money to another who vowed that benefit from him is forbidden derives benefit from the satisfaction that a person who hates him was forced to turn to him for help in his time of need.

Plowing my field with this cow is *konam* forever – קונם שדי שאני חורש בה לעולם: Some explain that the one who sought to borrow the cow and was rebuffed was angry. Therefore he vowed never to plow with that cow (Rashi; Tosafot; Ran). Alternatively, perhaps he thought that the reason the owner refused to lend him his cow was that he assumed that he wanted it for plowing. Therefore he vowed, so that the owner would lend it to him for other purposes (Shita Mekubbetzet; Rabbi Avraham min HaHar, citing Rashi; Meiri).

Some commentaries explain differently, that the owner of the cow vowed to reinforce his refusal and support his assertion that the cow is not available for plowing (Ritva; Re'em Horowitz).

He comes and takes payment from that one who spoke to him – ובא ונוטל מזה: The one who approached the shopkeeper pays if he chooses. However, he is not legally required to do so. If the one who approached the shopkeeper was required to repay the debt, the shopkeeper would be the agent of the one from whom benefit is forbidden. That is the explanation in the Jerusalem Talmud, and the commentaries explained accordingly.

HALAKHA

A decree that it is prohibited to borrow – גזירה לשאול: One for whom benefit from another is forbidden by vow may neither borrow money or items from that other person nor lend money or items to him. The latter is due to a decree issued by the Sages lest it lead to deriving benefit from him, in accordance with the opinion of Abaye (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 6:16; *Shulhan Arukh*, *Yoreh De'a* 221:5).

Plowing my field with this cow is *konam* forever – קונם שדי שאני חורש בה לעולם: With regard to one who asks another to lend him his cow, and after being refused vows that plowing his field with that cow is forbidden forever, if he typically plows

the field himself, it is prohibited for him to plow his field with that cow; however, others may do so for him. If others typically plowed the field for him, it is prohibited both for him and for others to plow the field with that cow (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 8:12; *Shulhan Arukh*, *Yoreh De'a* 218:5).

He goes to the shopkeeper and says – הולך אצל החנוני ואומר: With regard to one for whom benefit from another is forbidden by a vow who has nothing to eat, the one who vowed to render benefit from him forbidden may go to a shopkeeper and say: It is prohibited by vow for this person to benefit from me, and I do not know what I will do. The shopkeeper then gives food to the

one for whom benefit is forbidden, and then the shopkeeper goes to the one who vowed, to seek compensation, although the one who vowed is not legally obligated to reimburse him. Similarly, if one for whom benefit from another is forbidden by a vow needs work done, the one who vowed to render benefit from him forbidden may approach laborers and say: It is prohibited by a vow for this person to benefit from me. The laborers may perform the task and seek compensation from the one who vowed (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:12–13; *Shulhan Arukh*, *Yoreh De'a* 221:8).

NOTES

נָתַן לְאֶחָד – He gives food to one other person as a gift – *Tosafot* and the Rosh write that the Sages permitted doing so only in exigent circumstances, when one is on the road and has nothing to eat. This is because the Gemara later distinguishes between this type of gift, which is permitted, and the gift of Beit Horon, which is prohibited.

הָיָה בֵּיתוֹ לְבָנוּת, גָּדְרוֹ לְגִדּוֹר, שָׂדֵהוּ לְקָצוֹר – הוֹלֵךְ אֶצְלָה הַפּוֹעֲלִים, וְאוֹמֵר: אִישׁ פְּלוֹנִי מוֹדֵר כְּמִנִּי הַנָּאָה וְאֵינִי יוֹדֵעַ מַה אֶעֱשֶׂה. וְהֵן עוֹשִׂין עִמּוֹ, וּבָאִין וְנוֹטְלִין שְׂכָר מִזֶּה.

הָיוּ מְהַלְכִין בְּדֶרֶךְ וְאֵין לוֹ מַה יֵאכַל – נָתַן לְאֶחָד לְשׁוּם מִתְנָה, וְהָלַךְ מוֹתֵר בֵּה. אִם אֵין עִמָּהֶם אֲחֵר – מְנִיחַ עַל הַסֵּלַע אוֹ עַל הַגָּדֵר, וְאוֹמֵר: הֲרֵי הֵן מוֹפְקָרִים לְכָל מִי שְׁיַחֲפוּץ, וְהָלַךְ נוֹטֵל וְאוֹכֵל. וְרַבִּי יוֹסֵי אוֹסֵר.

גַּמ' אָמַר רַבִּי יוֹחָנָן: מֵאֵי טַעְמָא דְרַבִּי יוֹסֵי – קָסְבֵר: הַפְּקָר כְּמִתְנָה, מַה מִתְנָה – עַד דְאֶתְיָא מְרֻשּׁוֹת נָתַן לְרֻשּׁוֹת מְקַבְּל, אֲףִי הַפְּקָר – עַד דְאֶתְיָא לְרֻשּׁוֹת זֻכָּה.

מְתִיב רַבִּי אָבָא: וְהָלַךְ נוֹטֵל וְאוֹכֵל, וְרַבִּי יוֹסֵי אוֹסֵר. אָמַר רַבִּי יוֹסֵי: אֵימָתִי – בְּיָמֵן שְׁנֵדְרוּ קוֹדֵם לְהַפְּקִירוֹ.

Similarly, if the house of one for whom benefit is forbidden by a vow was to be built, his fence to be erected, or his field to be harvested, and laborers were required but he had no money to hire them, the one from whom benefit is forbidden goes to the laborers and says to them: Benefit from me is forbidden by vow to so-and-so and I do not know what I will do. And the laborers perform those tasks with him, and come and take payment for their labor from that person who approached them.

If the one who vowed to render benefit from him forbidden and the one for whom benefit is forbidden were traveling together along the road¹ and the one for whom benefit is forbidden does not have anything to eat, the one who from whom benefit is forbidden gives food to one other person as a gift,^N and it is permitted for that person for whom benefit is forbidden to eat the food because it no longer belongs to the one from whom benefit is forbidden. If there is no other person with them, the one who vowed places the food on the nearest rock or on the nearest fence and says: These food items are hereby rendered ownerless and are available to anyone who wants them. Then that person for whom benefit is forbidden takes and eats the food. Rabbi Yosei prohibits doing so.

GEMARA With regard to the dispute between the Rabbis and Rabbi Yosei whether one from whom benefit is forbidden to another can give the other person food by declaring the food ownerless, Rabbi Yohanan said: What is the reason for the opinion of Rabbi Yosei? He holds that the legal status of the process of rendering property ownerless is like that of the acquisition of a gift. Just as acquisition of a gift is not complete until the item comes from the possession of the one who gives the gift into the possession of the one who receives the gift, so too, the process of rendering property ownerless is not complete until the item comes into the possession of the one who acquires it. According to Rabbi Yosei, it is prohibited for the one for whom benefit is forbidden to take the food that was declared ownerless. Since it still belongs to the one from whom benefit is forbidden, by taking the food he derives forbidden benefit from him.

Rabbi Abba raises an objection from a *baraita*: And then that person takes and eats the food; and Rabbi Yosei prohibits doing so. Rabbi Yosei said: When is it prohibited to do so? When his vow predates his declaration that the food is ownerless. In that case, the vow took effect on all his possessions, including those that he later declared ownerless.

HALAKHA

They were traveling along the road – הָיוּ מְהַלְכִין בְּדֶרֶךְ: If one for whom benefit from another is forbidden by a vow and that other person travel together, and the former has nothing to eat, the other person may give food to a third person as a gift, and that person may then give it to the one for whom benefit is forbidden. If there is no one accompanying them, the one from whom benefit is forbidden may place the food down and declare: These food items are hereby rendered ownerless and are available to anyone who wants them, and the one for whom benefit is

forbidden may take the food and eat it. However, if the one from whom benefit is forbidden gives the food to a third person and stipulates that he is giving it so the one from whom benefit is forbidden can eat it, or even if it is obvious from his actions that his intent is that the second person can eat it and he does not give it as a full-fledged gift, that is a gift of Beit Horon and he may not eat the food (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 14:15; *Shulhan Arukh, Yoreh De'a* 221:9).

אבל אם היה הפקירו קודם לנדרו –
הרי זה מותר. ואי אמרת עד דאתי
לרשות זוכה – מה לי נדרו קודם
להפקירו, מה לי הפקירו קודם לנדרו?

However, if his declaration that the food is ownerless predates his vow, it is permitted for the other person to eat the food. And if you say that the reason for the opinion of Rabbi Yosei is because the food remains in the possession of the owner until it comes into the possession of the one who acquires it, what is different for me if his vow predates his declaration that the food is ownerless, and what is different for me if his declaration that the food is ownerless predates his vow? In any event, the item remains in the possession of its owner and the one for whom benefit is forbidden benefits from it.

הוא מותיב לה והוא משני לה: כל
הנדר – אין דעתו על מה שהפקיר.

The Gemara answers: Rabbi Abba raised the objection and he answered that objection. The difference between the cases does not relate to the *halakhot* of ownerless property; rather, it relates to the nature of vows. The intent of anyone who vows is that the vow not apply to an item that he rendered ownerless. Therefore, when he declares the food ownerless and then vows, he does not intend to include the ownerless food in his vow, and the prohibition does not take effect upon it.

מתיב רבא: "מקצתן לראשון וכולן
לשני" – ראשון קנה.

Rava raised an objection: With regard to a person on his deathbed who ordered his executor to distribute all his property, if he recovers, he may retract the gift. However, if he ordered him to distribute only a portion of his property and kept the rest, he cannot retract the gift. If he ordered him to distribute his property to two people and said: A portion of the property is given to the first person and all of the remaining property is given to the second person, then if he recovered, the first person acquired the property that was given him, as it was a partial gift.

שני לא קנה!

And the second person did not acquire the propertyⁿ that was given him, as it was a gift of all his remaining property, which can be retracted. Although the first person did not yet acquire the property, as the person on his deathbed did not die, the property is no longer considered to be in the possession of the one who owned it. This is clear from the fact that if it were still in his possession, the gift to the second person would not be a gift of all his remaining property. This contradicts the opinion of Rabbi Yoḥanan, who said in explanation of the opinion of Rabbi Yosei: Acquisition of a gift is not complete until the item comes from the possession of the one who gives the gift into the possession of the one who receives the gift.

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The first person acquired the property, and the second person did not acquire the property – שני לא קנה. ראשון קנה: According to this version, the *baraita* is referring to a person on his deathbed who gave a portion of his possessions to one person, and all of his remaining possessions to another person. Since his gift to the first person included only a portion of his property, its legal status is like that of any other gift, and it is irrevocable.

Rashi explains that Rava's objection is based on the fact that the gift to the second person is considered a gift of all his property, even though the first person did not yet receive the portion given to him. If, as Rabbi Yoḥanan said in explanation of the opinion of Rabbi Yosei, acquisition of a gift is not complete until the item comes from the possession of the one who gives the gift into the possession of the one who receives the gift, both gifts should have been irrevocable, as the person on his deathbed gives each recipient only a portion of his property. According to this, the question is on Rabbi Yoḥanan's explanation of Rabbi Yosei's opinion. The Ra'avad, cited in the Meiri, agrees.

Rabbeinu Tam (cited by *Tosafot*) explains that it is clear that the *baraita* is referring to a case where the person on his deathbed reconsidered his gift to the first person and gave all his property to the second person. The objection raised by Rava is based on the

fact that apparently, even after he gave the gift to the first person, he continued to consider the property his, contrary to the opinion of Rabbi Abba. The Rosh, in his first explanation, agrees.

Many of the early commentaries cite a variant reading: If the owner distributes a portion to the first person and all of it to the second person, the first is enslaved to the second. This is from the *Tosefta* in tractate *Bava Batra* (9:11), which is referring to a case where one on his deathbed gave his possessions to his slaves. If he gave a portion of his property to the first slave, that slave is not freed, because perhaps the slave is included in that portion that remained in the possession of the owner. If the owner gave all his remaining property to the second slave, the second slave acquired not only the property and title to himself, but also title to the first slave. Here too, the objection raised by Rava is based on the fact that apparently, even after he gave the gift to the first slave, he continued to consider the property his, contrary to the opinion of Rabbi Abba (Rashba; Ran; *Tosafot*; Rosh). The Rid also cites that variant reading but interprets it as referring not to slaves, but to one who gives away his property. He interprets the phrase: The first is enslaved to the second, not in the sense of actual slavery, but in the sense that the second person has a right to the property of the first and may repossess it from him.

המפקיר את שדהו – One who declares his field ownerless – If one declares his field ownerless and no one takes possession of it, for the first three days thereafter he can retract his declaration and it is as though he never declared it ownerless at all. However, once three days pass, he cannot retract his declaration. His only recourse is to take possession of the field, and his legal status is that of one who acquired an ownerless field (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 2:17; *Shulhan Arukh, Hoshen Mishpat* 273:9).

אלא אמר רבא, היינו טעמא דרבא יוסי: גזירה משום מתנת בית חורון.

Rather, Rava said^N that this is the reason for the opinion of Rabbi Yosei: It is prohibited by rabbinic decree for the one for whom benefit is forbidden to take food that was declared ownerless, due to the gift of Beit Ḥoron.^N An incident occurred in Beit Ḥoron involving a person who employed artifice and gave a gift to another to circumvent a vow. The Sages ruled that artifice of that sort is forbidden. Here too, when he renounced ownership he merely employed artifice to circumvent the vow.

תנא: המפקיר את שדהו, כל שלשה ימים – יכול לחזור בו, מכאן ואילך – אין יכול לחזור בו.

It is taught in a *baraita*: In the case of one who declares his field ownerless,^H for the entire three days after that declaration he is able to retract it.^N From this point forward, he is unable to retract the declaration.

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Rather Rava said, etc. – **אלא אמר רבא וכו'**: Rashi cites two explanations of this passage. According to the first, Rabbi Yosei, contrary to the explanation of Rabbi Yoḥanan, holds that ownerless status takes effect immediately, unrelated to the acquisition of that item by another. However, here Rabbi Yosei issued a decree to prohibit ownerless status of that sort due to the gift of Beit Ḥoron. Since it appears that the owner declared the item ownerless merely to enable the one for whom the item is forbidden to acquire it, it is prohibited for the latter to do so.

According to the second interpretation, Rava agrees with Rabbi Yoḥanan's explanation of Rabbi Yosei's opinion that a declaration of ownerlessness is effective only when that item is acquired by another; however, due to the swindlers, the Sages instituted in general that the declaration is effective immediately. However, in this case, due to the concern for the gift of Beit Ḥoron, the food remains forbidden. Its status is according to Torah law, and it is not ownerless.

The gift of Beit Ḥoron – מתנת בית חורון: This is described in detail in several places throughout the Talmud (e.g., 48a). There was an incident involving a man whose father was prohibited by a vow from deriving benefit from him. The man made a wedding feast to which he wished to invite his father. Therefore, he transferred ownership of his courtyard and the food to a resident of Beit Ḥoron to enable his father to participate without deriving forbidden benefit from him. However, the one to whom ownership was transferred was concerned that it was prohibited to make this arrangement, and he consecrated everything that he received. The person who transferred ownership to him protested, as he had no intention to give him an actual gift. Therefore, the Sages instituted that any gift that cannot be consecrated by its recipient is not considered a gift. In the case in the Gemara here, where it is clear from the actions or words of the one giving the gift that he is doing so only to circumvent the vow, the gift is not a valid gift.

כל שלשה ימים – יכול לחזור בו: This *halakha* relates to the *halakhot* of tithes. The obligation to tithe produce is abrogated when the produce is rendered ownerless. Therefore, there is concern that one will declare his field ownerless to abrogate his obligation to tithe and then retake possession of the field with no obligation to tithe. Therefore, the Sages instituted that for three days after declaring the produce ownerless one can retract the declaration and thereby maintain ownership. If he retracts the declaration, based on the rabbinic ordinance, the field was never ownerless and he is obligated to tithe the produce. If he leaves the field ownerless for more than three days, the chance that another will acquire it is great. Therefore, one would be less likely to risk losing his field in order to avoid tithing his produce. Everything mentioned in this context ostensibly contradicts the mishna, as the mishna is referring to a case where one declares an item ownerless and the one for whom benefit was forbidden acquires it immediately.

Tosafot answer (45a) that the rabbinic ordinance that divestment of ownership takes effect only three days after the declaration applies only for fields and the like, due to the concern that the objective is to exempt oneself from the obligation to tithe; however, the ordinance does not apply to movable property. Another explanation in *Tosafot* and the Rosh, citing Rabbi Eliezer of Metz, is that the rabbinic ordinance that the declaration does not take effect for three days applies only to a case where he seeks to avoid tithing. The prohibition of untithed produce is known to all but his declaration divesting ownership of the field is not so widely known. The rabbinic ordinance seeks to prevent onlookers from getting the impression that the owner of the field did not tithe his produce and he is eating untithed produce. In this case, since both the prohibition created by the vow and the declaration of ownerlessness are not well known, no false impression will be created and the ordinance is not necessary.