

”האומר לחבירו” וכו’. בעי אבימי: “קונם לבית זה שאתה נכנס” מת או שמכרו לאחר, מהו? אדם אוסר דבר שברשותו לכשיצא מרשותו או לא?

אמר רבא, תא שמע: האומר לבני “קונם שאי אתה נהנה לי” ומת – יירשנו. “בתינו ובמותו” ומת – לא יירשנו. שבע מינה: אדם אוסר דבר שברשותו לכשיצא מרשותו, שבע מינה.

תנן התם: “קונם פירות האלו עלי, קונם הן על פי, קונם הן לפי” – אסור בחילופיהן ובגדוליהן.

בעי רמי בר חמא: אמר “קונם פירות האלו על פלוני” מהו בחילופיהן? מי אמרני: גבי דיליה, הואיל ואדם אוסר פירות חבירו על עצמו – אדם אוסר דבר שלא בא לעולם על עצמו, גבי חבירו, הואיל ואין אדם אוסר פירות חבירו על חבירו – אין אדם אוסר דבר שלא בא לעולם על חבירו.

S The mishna teaches: With regard to one who says to another: Entering your house is *konam* for me, and the owner dies or sells the house, the prohibition is lifted. But if he said: Entering this house is *konam* for me, he remains prohibited from entering the house even after the owner dies or sells the house. **Avimi raises a dilemma:** If the owner of a house said: Entering this house is *konam* for you,^N and then he died or sold it to another, what is the *halakha*? Do we say that a person can render an item in his possession forbidden even for a time after it will leave his possession, or not?

Rava said:^N Come and hear a proof from a mishna (*Bava Kamma* 108b–109a): If one says to his son: Benefiting from me is *konam* for you, and dies, the son still inherits from him. If, however, the father explicitly states that benefit is forbidden both in his lifetime and after his death,^N and dies, the son does not inherit from him.^N Rava suggests: Conclude from the mishna that a person can render an item in his possession forbidden^H even for a time after it will leave his possession. The Gemara notes: Conclude from the mishna that this is so.

S We learned in a mishna there (57a): If one says: This produce is *konam* upon me,^H or: It is *konam* upon my mouth, or: It is *konam* for my mouth, he is prohibited from eating even its replacements, should they be traded or exchanged, and anything that grows from it if it is replanted.

Rami bar Hama raises a dilemma:^N If one said: This produce is *konam* for so-and-so,^H what is the *halakha* with regard to their replacements?^N Do we say: With regard to himself, since a person can render another’s produce forbidden for himself, though it is not presently in his possession, so too, a person can render an entity that has not yet come into the world forbidden to himself? Is this why the replacement produce and anything that grows from it is forbidden to him, even if it did not yet exist when he took the vow? If so, with regard to another, since a person cannot render another’s produce forbidden to another, i.e., to that owner himself, similarly one cannot render an entity that has not yet come into the world forbidden to another. The produce’s replacements would therefore be permitted to him.

HALAKHA

A person can render an item in his possession forbidden, etc. – אדם אוסר דבר שברשותו וכו’ – One can render an item that is in his possession forbidden even for after it will leave his possession. For example, if one prohibits another from deriving benefit from a house by stating in a vow: This house, then even if he dies or sells the house that individual may not benefit from it (Rambam *Sefer Hafla’a*, *Hilkhot Nedarim* 5:5; *Shulhan Arukh*, *Yoreh De’a* 216:7).

This produce is *konam* upon me, etc. – קונם פירות האלו עלי – If one says: This produce is *konam* upon me, he is prohibited from deriving benefit not only from the produce itself but also from its replacements and from that which grows from it. Liquids that emerge or that are squeezed from it are forbidden to him as well. He is also prohibited from deriving benefit from second-generation growths of plants such as garlic and onions, which remain intact even when new plants grow from them. Second-generation growths of plants, such as wheat, whose seeds disintegrate after sprouting, are permitted. It is also permitted to derive benefit from replacements of the replacements.

The Rosh holds that even if the item is generally forbidden, only the one who replaced it is prohibited from benefiting from the replacements, and it is permitted for others to benefit from the replacements. Similarly, if one exchanged an item forbidden only to someone else, the forbidden party is permitted to derive benefit from the object. The Ran, however, prohibits deriving benefit in all cases (Rambam *Sefer Hafla’a*, *Hilkhot Nedarim* 5:13–15; *Shulhan Arukh*, *Yoreh De’a* 216:1).

This produce is *konam* for so-and-so – קונם פירות האלו על פלוני – If one takes an oath or vow prohibiting another from benefiting from his produce, their replacements and that which grows from them are also forbidden *ab initio*. However, since this query is not resolved in the Gemara, if one violates the vow or oath and derives benefit from the replacements or growths, he is not flogged. The Ra’avad holds that growths are certainly forbidden, and therefore one is flogged if he derived benefit from them (Rambam *Sefer Hafla’a*, *Hilkhot Nedarim* 5:16 and Radbaz, *Kesef Mishne* there; *Shulhan Arukh*, *Yoreh De’a* 216:2).

NOTES

קונם לבית זה שאתה – Entering this house is *konam* for you – The Rosh distinguishes between Avimi’s formulation and the case in the mishna. In the mishna, the individual vows to prohibit himself from benefiting from his own house. Even when the house leaves his possession it remains forbidden to him, since he had the capability to prohibit himself from benefiting from his neighbor’s house. Here, however, one prohibits his friend from benefiting from his house. One cannot prohibit another individual from benefiting from the property of a third party, and therefore Avimi questions whether the vow remains in effect when the house is transferred to someone else.

Rava said, etc. – אמר רבא וכו’ – The early commentaries question why the Gemara offers this proof here, having already refuted Rava’s claim it in the previous chapter (42a). Some commentaries explain that the refutation of Rava’s statement in the previous chapter is not conclusive, since there as well the Gemara ultimately concludes that one can forbid an item in his possession even after it leaves his possession (Rashba; Ran). The Rosh writes that the Gemara there refuted only the notion that one can assume a person’s intent to forbid an item in his possession even after it leaves his possession, even if he did not say

so explicitly. Here, however, the issue is the ability to expressly forbid an item in one’s possession even after it leaves his possession. This is what can be learned from Rava’s statement.

In his lifetime and after his death – בתינו ובמותו – It is stated in the Jerusalem Talmud that the only way for one to prohibit his child from inheriting his possessions is by stating these exact words. If he said only that the prohibition holds for the duration of his lifetime, the son inherits his possessions after his death. If he said only that the prohibition takes effect after his death, his son still inherits him because after he dies he no longer owns his possessions and the prohibition cannot take effect. Only when he says both that the prohibition holds in his lifetime and after his death does he prohibit the son from inheriting, as the prohibition takes effect while he is still alive and maintains control over his possessions, and it is not annulled upon his death (*Yefe Einayim*; see commentaries on Jerusalem Talmud).

Does not inherit from him – לא יירשנו – The Ran explains that this statement does not mean that he has no right to his portion of the inheritance and that it is given to other heirs. Rather, the inheritance belongs to him but he cannot derive any benefit

from it. Therefore, in certain cases, his creditors can claim their debts from the inheritance.

Rami bar Hama raises a dilemma – בעי רמי בר חמא – This query seems out of place and is better suited to the subsequent discussion (57a) concerning the mishna that deals with prohibitions on replacements and growths from prohibited items. Nevertheless, it is discussed here since it is similar to the previous question with regard to the effectiveness of a vow even after the forbidden item changes hands (see *Nidrei Zerizin*).

What is the halakha with regard to their replacements – מהו בחילופיהן – *Tosafot* and the Ran note that it is prohibited to replace or exchange an item from which one is prohibited from deriving benefit *ab initio*, as this in itself constitutes deriving benefit. The Gemara is therefore not questioning whether an act of replacement is permitted, but rather, if the forbidden item was unlawfully replaced, is the replacement forbidden after the fact by rabbinic law. A possible rationale for a rabbinic prohibition is that allowing one to use the replacement items may lead people to use the prohibited items as well (see Rosh, *Kiddushin* 2:31).

או דילמא משום דחילופין בגידולין דמי, לא שנא הוא ולא שנא חבירו?

Or perhaps the prohibition on replacement produce in the mishna is due to the fact that replacements of the produce are viewed as being like that which growsⁿ from them? They are both forbidden because they derive from the forbidden produce. If this is the case, it is no different for him and it is no different for another. Neither may derive benefit from the replacements.

אמר רב אחא בר מניומי, תא שמע: האומר לאשתו "קונים שאני נהנה לך" – לונה, ובעלי חובין באין ונפרעין. מאי טעמא בעלי חובין נפרעין – לאו משום דחילופין לאו בגידולין דמי?

Rav Aḥa bar Minyumi said: Come and hear a proof from a *baraita*: With regard to one who says to his wife: Benefiting from me is *konam* for you,ⁿ she may nevertheless borrow money to sustain herself, and the creditors can come and collectⁿ her debts from her husband. What is the reason that the creditors can collect from the husband? Is it not because she benefits only indirectly, and it must be that replacements, i.e., the creditors' money, are not like that which grows from the original item?

אמר רבא: דילמא לכתחילה הוא דלא, ואי עבד – עבד.

Rava said: This is not proof: Perhaps it is the case that one should not benefit from replacements *ab initio*,ⁿ but if one did it, it is done after the fact. Since the wife lacks any other means to support herself, the case is considered to be after the fact, and it is permitted for her to benefit indirectly. Still, replacements of an item are considered to be like that which grows from it *ab initio*.

NOTES

That replacements of the produce are viewed as being like that which grows – דחילופין בגידולין דמי – Just as it is prohibited to derive benefit from that which grows from a forbidden item, it is also prohibited to benefit from its replacements (Rashi). The Rashba reasons that replacements should be more obviously forbidden than growths, citing the case of *hekdesh*, Temple property, wherein replacements are forbidden but growths are permitted. Why shouldn't the same hold true for objects which are *konam* and therefore forbidden? The Rashba answers that even Rabbi Meir, who explicitly compares the concept of *konam* to *hekdesh*, only does so with regard to an item which is *konam* for everyone. If the item is *konam* for only one individual, then it is not comparable to *hekdesh*, but rather to prohibitions such as *teruma*, whose growths are forbidden and replacements are permitted.

prohibitive vow upon his wife. Every husband at the time of marriage accepts upon himself the obligation to sustain his wife, and a prohibitive vow would constitute abrogation of his marital obligations. *Tosafot* explain that the Gemara is dealing with a case where the husband pronounced the vow during the period of betrothal, before the actual marriage took place. Alternatively, they explain that the husband can formulate the vow in specific ways to ensure it is effective.

קונים שאני נהנה לך – Benefiting from me is *konam* for you – Most commentaries understand this case as referring to a husband who takes a vow prohibiting his wife from deriving any benefit from him. The commentaries take issue with the language of the Gemara, which, by employing the reflexive term *neheneh*, seems to indicate that the husband is prohibiting himself from benefiting from his wife. Due to this difficulty, a number of commentaries preferred alternate versions of the text, or otherwise suggested interpreting the text in a different manner. Other commentaries contend that the case in the Gemara should be understood to mean that it is prohibited for the husband to derive benefit from property his wife brought into the marriage. If he must derive benefit, he may then borrow money and allow the creditors to collect from that property. This understanding of the Gemara provides a more literal understanding of the text, and resolves difficulties inherent to the first explanation.

בעלי חובין באין ונפרעין – The creditors can come and collect – The creditors are able to collect the wife's debt from the husband because her loan places a lien on his possessions. The creditors do not transgress any prohibition by lending her money, nor is it prohibited for them to accept payment from the husband, as they have no connection to the vow. Since the wife may borrow the money and the husband may repay the debts, the loan represents a replacement for the husband's assets. Therefore, this case would seem to indicate that replacements of forbidden loans are permitted (Ran).

דילמא – Perhaps it is that one should not benefit *ab initio* – לכתחילה הוא דלא – According to this response, there is a prohibition against replacing items which are *konam* and therefore forbidden *ab initio*, but once one does so it is permitted for him to derive benefit from the replacement. As such, it appears that Rava understands the Gemara as referring to a woman who happened to borrow money, not that she was permitted to do so (Rosh; Rid). The Rashba understands the *baraita* as advising the wife to borrow from others *ab initio* if necessary, since the wife benefits from the loan before it becomes a replacement for the husband's property. Alternatively, one might understand the Gemara to mean that since the woman is already entitled to sustenance from her husband's possessions due to marital obligations, the entire case is no longer considered *ab initio*.

One such difficulty is whether the husband can impose a

אלא, תא שמע: המקדש בערלה – אינה מקודשת, מכרן וקידש בדמיהן – הרי זו מקודשת. הקא נמי, לכתחילה הוא דלא, ואי עבד – עבד.

Rather, come and hear a proof from another mishna (*Kiddushin* 56b): With regard to **one who betroths a woman with fruit of *orla***,^{HB} i.e., fruit of the first three years of a tree's growth, from which it is forbidden to benefit, **she is not betrothed** because the fruits have no value. Betrothal can be performed only with an object worth at least one *peruta*. But if he sold them and betrothed her with the money he received, she is betrothed.^N Evidently, replacements of a forbidden item are permitted. The Gemara responds: **Here also, one should not benefit from the replacement items given in exchange for the *orla ab initio*, but if one did it, it is done after the fact.** Replacements of an item may still be considered to be like that which grows from it *ab initio*.

מתני' "הריני עליך חרם" – הנודר אסור: "הרי את עלי חרם" – הנודר אסור: "הריני עליך ואת עלי" – שניהם אסורין, ושניהם מותרין בדבר של עולי בבל.

MISHNA If someone says to another: **I am hereby forbidden to you like an item dedicated to the Temple,**^{HN} then **the one prohibited by the vow is prohibited** from benefiting from the possessions of the one who took the vow. If someone says: **You are hereby forbidden to me like an item dedicated to the Temple,** then **the one who took the vow is prohibited** from benefiting from the possessions of the other. If he says: **I am hereby forbidden to you and you are hereby forbidden to me** like an item dedicated to the Temple, **both are prohibited** from benefiting from the possessions of the other. **But it is permitted for both of them to benefit from the objects belonging to those who ascended from Babylonia,**^N i.e., common property of the nation as a whole, which is not considered to be the property of any individual.

המקדש בערלה – **וכר**: If one betroths a woman with an item from which it is prohibited to derive benefit by rabbinic law, with no basis in the Torah for the prohibition, the betrothal takes effect. If the prohibition is due to a rabbinic expansion of Torah law, it is uncertain whether she is betrothed. She must therefore be betrothed again in order to marry the man in question, but if she wishes to marry someone else she requires a bill of divorce. If the item is itself forbidden by Torah law, the betrothal does not take effect. If the man transgressed and sold the forbidden item, then used the money received to betroth a woman, she is betrothed. If he initially sold the forbidden item to a Jew who was unaware that he was purchasing a forbidden item, then it is uncertain whether she is betrothed. If the forbidden item is an object of idol worship, even a betrothal with money received from its sale does not take effect (Rambam *Sefer Nashim, Hilkhot Ishut* 5:1; *Shulhan Arukh, Even HaEzer* 28:21–22).

I am hereby forbidden to you like an item dedicated to the Temple – **הריני עליך חרם**: If one says to another: I am hereby forbidden to you, or uses any other language to prohibit the other from benefiting from him, the other may not derive benefit from him. However, the one who took the vow may benefit from the other. If the latter violates the vow by benefiting from him, he is not flogged, as he himself did not state the vow and therefore cannot be considered fully responsible for the transgression. If one says: I am hereby forbidden to you and you are hereby forbidden to me, they are both prohibited from benefiting from one another (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 5:1–2; *Shulhan Arukh, Yoreh De'a* 224:1).

BACKGROUND

Orla – ערלה: It is prohibited to eat or derive benefit from fruit that grows during the first three years after a tree has been planted (Leviticus 19:23). This prohibition applies only to the fruit and its protective coverings; it is permitted to derive benefit from the tree itself, as well as from its leaves, roots, etc. This prohibition applies only to the produce of trees grown expressly for their fruit and does not apply to trees planted as a property boundary or a wind buffer.

NOTES

She is betrothed – **הרי זו מקודשת**: Several commentaries explain that the betrothal is valid and the Sages do not require a new act of betrothal. This implies that replacement articles are permitted after an exchange, even by rabbinic law (Ran; Meiri). Seemingly, one can derive from this that replacements of the replacements are also permitted, since the betrothal takes place in exchange for money, and he is permitted to marry the woman. According to *Tosafot*, however, secondary replacements are forbidden. Here, specifically with regard to betrothal, there is no rabbinic prohibition against deriving benefit from the secondary replacements, i.e., the woman, since the betrothal was in accordance with Torah law and the Sages did not want to annul a mitzva. However, in other cases secondary replacements are forbidden by rabbinic law.

According to the Rid, the Gemara entertains the possibility that it is permitted not only to use the replacement of a forbidden object *ab initio*, but it is also permitted to replace forbidden objects by selling them to a gentile *ab initio*. This reasoning assumes that it is prohibited to derive direct benefit from the objects themselves only by using them; a sale, however, does not constitute direct benefit.

I am hereby forbidden to you like an item dedicated to the Temple – **הריני עליך חרם**: The commentaries note that the term *herem* may denote objects dedicated to the Temple rather than refer to a prohibitive vow. The Ran explains that this case is referring to one who took a vow while in the Galilee, as the people of the Galilee are ignorant of the *halakhot* pertaining to Temple

dedications, and therefore it must be presumed that the vow was intended to render benefit completely forbidden (see 18b). The Vilna Gaon writes that the expression: I am hereby forbidden to you, would be meaningless in the context of dedication to the Temple, and therefore it must always be assumed that it refers to rendering benefit completely forbidden.

Rabbi Natan bar Yosef writes that this mishna includes another novelty. Although the one taking the vow said: I am hereby forbidden to you, seemingly indicating that the vow renders forbidden only his benefit to the individual, the mishna teaches that he presumably renders the individual's benefit from his possessions forbidden as well.

The objects belonging to those who ascended from Babylonia – **בדברי של עולי בבל**: Most commentaries understand that these objects are permitted because those who came from Babylonia declared all communal property ownerless and therefore permitted for use by all Jews (Ran). *Tosafot* add that by declaring their possessions ownerless, they ensured that there would be no issue of shared ownership of the property. In this way, no member of the community could render the property forbidden to a fellow Jew. The Rambam, in his Commentary on the Mishna, and the Meiri explain that the objects are viewed as belonging to all of the Jewish people in partnership, and are not ownerless. Nevertheless, one cannot take a vow rendering them forbidden to another, as each partner's relative portion is so small as to be negligible.