

NOTES

Say the latter clause, she may benefit – אימא סיפא יכולה – ליהנות: The Ran explains that the proof is from the fact that she may take gleanings, forgotten sheaves, and *pe'a*, as these gifts belong to the poor, and from the fact that if she could use her husband's property she would not be considered poor. This is possibly the difference between the opinions of Ulla and Rav Nahman. The Ran adds that according to Ulla the mishna is referring to a woman whose husband is poor. Other commentaries state that the Gemara infers from the word: And, as in the phrase: And she may benefit, that this is a new *halakha*, not a continuation of the previous statement. According to this opinion, we can say that Rava reads: She may, without the word and, as he maintains it is a single issue (Rid; Meiri).

And the mishna states: What is the reason – ומה טעם קאמר – This is problematic, as in an earlier mishna (79a) everyone agrees that if she prohibited to herself the fruits of the only storekeeper with whom her husband conducts his business, he can nullify her vow. The vow here, which concerns all people, including her husband, is certainly more restrictive than that one. The Rashba and the Ran explain that the ruling of that mishna refers to the winter season, when there are no gleanings, forgotten sheaves, or *pe'a*, and it would not apply to a situation where she has access to these gifts.

HALAKHA

A husband is not included in her reference to people – בעל – לאו בכלל בריות הוא: If a woman vowed not to derive benefit from people and her husband did not nullify her vow, it is permitted for her to benefit from her husband as long as they are married. If they divorce, her vow applies to him as well, and she may benefit only from gleanings, forgotten sheaves, and *pe'a* (Rambam *Sefer Hafia'a*, *Hilkhot Nedarim* 12:8; *Shulhan Arukh*, *Yoreh De'a* 234:65).

גמ' אלמא אפשר דמתונה מדיליה, מבקל דבעל לאו בכלל בריות הוא. אימא סיפא: יכולה ליהנות בלקט שכחה ופאה. אבל מדבעל – לא אכלה. אלמא בעל בכלל בריות הוא!

אמר עולא: לעולם לאו בכלל בריות הוא, ועוד אין יכול להפר – מפני שיכולה ליהנות בלקט שכחה ופאה.

רבא אמר: לעולם בעל בכלל בריות הוא, ומה טעם קאמר, מה טעם אין יכול להפר – מפני שיכולה ליהנות בלקט שכחה ופאה.

רב נחמן אמר: לעולם בעל לאו בכלל בריות הוא, והכי קתני: נתגרשה – יכולה ליהנות בלקט שכחה ופאה.

GEMARA The mishna teaches that if a woman vowed not to derive benefit from people, her husband cannot nullify her vow. The Gemara infers from this *halakha*: Apparently, this is because the woman can be sustained from his, i.e., her husband's, property, without having to take from others. This proves by inference that in this context a husband is not included in her reference to people, as, although she mentioned people in her vow, she did not mean to prohibit herself from deriving benefit from her husband. The Gemara asks: But say the latter clause of that same part of the mishna, which states: But she may benefit^N from gleanings, forgotten sheaves, and *pe'a*. This implies that she may derive benefit from the gifts given to the poor, but she may not eat from property belonging to her husband. Apparently, a husband is in fact included in her reference to people, and she may not benefit from him either.

Ulla said: Actually, a husband is not included in her reference to people, and there is no contradiction. Rather, the mishna provides two reasons why he cannot nullify his wife's vow. The first reason, which is merely implied by the mishna, is that she can be sustained by her husband. And furthermore there is the stated reason, that he cannot nullify the vow because she may benefit from gleanings, forgotten sheaves, and *pe'a*.

Rava said the opposite: Actually, a husband is included in her reference to people, and therefore his wife may not benefit from him. And when the mishna states the *halakha*, it employs the style known as: What is the reason,^N and it should be understood as follows: What is the reason that the husband cannot nullify his wife's vow? Because she may benefit from gleanings, forgotten sheaves, and *pe'a*.

Rav Nahman said: Actually, a husband is not included in her reference to people,^H and her vow not to derive benefit from all people does not include him, which is why he cannot nullify it. And this is what the mishna is teaching: The husband cannot nullify his wife's vow, because even if she becomes divorced and can no longer derive benefit from her husband, as he is now included in her reference to people, she may still benefit from gleanings, forgotten sheaves, and *pe'a*.

Perek XI
Daf 84 Amud a

איתיביה רבא לרב נחמן: ובעל לאו בכלל בריות הוא? והתנן: "נטולה אני מן היהודים" – יפר חלקו, ותהא משמשתו, ותהא נטולה מן היהודים.

Rava raised an objection to the opinion of Rav Nahman: And is a husband not included in her reference to people?^N But didn't we learn otherwise in a mishna (90b): If a woman said: I am removed from the Jews, i.e., the benefit of intercourse with me is prohibited to all Jews, her husband must nullify his part, i.e., the part that affects him. She would be permitted to him, and she may engage in intercourse with him, but she is removed from all other Jews, so that if he divorces her, she is forbidden to all.

NOTES

Included in her reference to people – בכלל בריות הוא: If it is explained that by using the word people the wife means everyone including her husband, the same should apply to the word Jews. Conversely, if the term people means anyone apart from her husband, then when she says the word Jews she likewise has only other Jews in mind.

Poor man's tithe – מעֵשֶׁר עָנִי: Poor man's tithe is a special tithe set aside from agricultural produce and distributed to the poor. During the third and sixth years of the Sabbatical cycle, after the priests' share of the produce and the first tithe have been set aside, one-tenth of the remaining produce must be set aside and distributed to the poor. This tithe is called poor man's tithe. During the other years of the Sabbatical cycle, second tithe is set aside instead of poor man's tithe. Poor man's tithe is non-sacred, but until it has been set aside the produce is deemed untithed produce and may not be eaten.

ואי אִמְרַתְּ בְּעַל לְאוּ בְּכָלֵל בְּרִיּוֹת הוּא – נְדָרֵי עֵינָיו נִפְשָׁהּ, וְיִפְרָ לָהּ לְעוֹלָם!

The Gemara explains the difficulty: If you say that the husband is included in this vow, it follows that he can nullify his part, as it is a vow that adversely affects the relationship between him and her, but the vow is not permanently nullified; if they divorce she is removed from all Jews, including him. **But if you say a husband is not included in her reference to people, then it is not a vow that touches upon their personal relationship, but rather it is a vow of affliction,^N and he can nullify it for her forever.**

אימא לך: שאני הכא דמוכחא מלתא. דעל היתרא קאסרה נפשך.

Rav Nahman responded: I could say to you that in general a husband is not included in her reference to people, but **here it is different, as it is clear^N** that the woman means to include her husband in the vow, as she means to render forbidden to herself a matter that is otherwise permitted to her and not to render forbidden to herself intercourse with men other than her husband, which is in any case forbidden to her. Therefore, she certainly intended to render herself forbidden to her husband.

יכולה ליהנות בלקט שכחה ופאה. ולא קתני ובמעשר עני. והתניא בברייתא: ובמעשר עני!

§ The mishna teaches that if a woman took a vow prohibiting herself from benefiting from people, **she may nevertheless benefit from gleanings, forgotten sheaves, and pe'ea**. The Gemara notes that the mishna **does not teach** that she may benefit from these gifts **and also from poor man's tithe**.^B The Gemara asks: **But isn't it taught in a baraita** that she may benefit from these gifts **and also from poor man's tithe?**

אמר רב יוסף: לא קשיא: הא – רבי אליעזר, הא – רבנן. דתנן רבי אליעזר אומר: אין אדם צריך לקרות שם על מעשר עני של דמאי.

Rav Yosef said: This is **not difficult**, as the matter is the subject of a tannaitic dispute. **This baraita** that says that the woman may derive benefit even from poor man's tithe reflects the opinion of **Rabbi Eliezer**, whereas **that mishna**, which does not mention poor man's tithe, reflects the opinion of **the Rabbis**, as we learned in a mishna (*Demai* 4:3): **Rabbi Eliezer says: A person need not actually set aside, nor even designate by name, the poor man's tithe of doubtfully tithed produce [demai],^N i.e., produce purchased from an *am ha'aretz*, one who is not diligent in separating tithes, as poor man's tithe has no sanctity, and a poor man cannot claim it from him, since he cannot offer proof that this produce in fact has the status of poor man's tithe.**

NOTES

Vow of affliction – נְדָרֵי עֵינָיו נִפְשָׁהּ: The Commentary on *Nedarim* explains the version here as follows: If the husband is not included in her reference to people, it follows that her vow refers only to other people, which means that in the event of a divorce or widowhood she will remain forbidden to them. Since her abstention from intercourse is considered affliction, although she is not suffering from her vow at present, her knowledge that she will in the future be deprived constitutes affliction, and therefore her husband can nullify the vow. There are several difficulties with this explanation. The first issue concerns the applicability of affliction to this case; according to Rabbi Yosei abstention from intercourse is considered a matter between him and her, whereas the Rabbis are undecided on this matter. Furthermore, it is hard to relate the words: He must nullify his part, to a situation in which the husband has no part at all (see Rabbi Yitzhak Tzarfati).

A different interpretation of this reading of the text is offered by Rabbeinu Yona: If the husband is not included in her reference to people, her vow evidently does not refer to intercourse at all, but to any benefit, as she is in any case forbidden to engage in sexual intercourse with others while she is married. This explains why the vow is viewed as one of affliction, and why her husband must nullify it fully and permanently (*Tosafot*; Rashba; Ran). Most early authorities, however, had a far simpler version of the Gemara: And if the husband is not included in her reference to people, why must he nullify it for her? In other words, if she never vowed that her husband is forbidden to her at all, why must he nullify her vow? She is entirely permitted to him. According to this reading, the word *le'olam*, forever, is not the last word of the previous sentence, but rather the first word of the next sentence, and should be understood in accordance with its alternative meaning: Actually.

Here it is different, as it is clear – שאני הכא דמוכחא מלתא: According to this version of the text, this means it is clear that she intended to include her husband, as everyone else is already forbidden to her. Consequently, although her husband is not included in her reference to people with regard to other types of vows, here, since she must have intended to render herself prohibited in some matter, it is clear that she meant to include her husband in her reference to Jews (*Tosafot*). The Commentary on *Nedarim* claims that her intention was exclusively toward her husband; Rabbi Yitzhak Tzarfati contends that she was mainly referring to him. Yet other commentaries, in continuation of the alternative interpretation cited in the previous note, explain that it is evident that she did not have ordinary benefit in mind, but rather the benefit of intercourse.

Doubtfully tithed produce [demai] – דמאי: *Demai* is produce received or acquired from an ignorant person [*am ha'aretz*], some of whom were negligent with regard to the proper separation of *terumot* and tithes. It was generally accepted that they were careful to set aside *teruma gedola*, the first *teruma* given to a priest, but they were not equally careful with regard to first tithe and its *teruma*. The Sages therefore declared that tithes must be separated from such produce out of uncertainty. According to all opinions first tithe must be separated, so that *teruma* of the tithe, which is forbidden to non-priests, can be removed from it. This portion need not be given to a Levite, as he cannot prove that first tithe had not already been separated from this produce. Similarly, one must set aside second tithe. With regard to poor man's tithe, however, since it is non-sacred and the poor cannot demand it from the owner, the *halakha* is lenient. The main *halakhot* of doubtfully tithed produce are discussed in tractate *Demai*.

HALAKHA

He must designate poor man's tithe by name, but he need not set it aside – קורא שם ואין צריך להפריש: Although the Sages instituted that doubtfully tithed produce must be treated as untithed produce, they instituted that one must separate only *teruma* of the tithe and second tithe. He does not have to set aside first tithe or poor man's tithe, as the obligation to do so is in doubt. However, he must designate the poor man's tithe by name, in accordance with the opinion of the Rabbis (Rambam *Sefer Zera'im, Hilkhot Ma'asrot* 9:3).

והחכמים אומרים: קורא שם ואין צריך להפריש. מאי לאו, למאן דאמר ספקו טובל – קסבר: אית ליה טובת הנאה, ובין דאית ליה טובת הנאה – לא מהניא.

And the Rabbis say: He must designate poor man's tithe by name, but he need not actually set it aside^{HN} and give it to anyone, as a poor person cannot claim the tithe without bringing proof that he has a right to it. Rav Yosef now suggests: **What, is it not that according to the one, i.e., the Rabbis, who says that the uncertainty as to whether or not poor man's tithe had been separated by the *am ha'aretz* renders the produce forbidden as untithed produce [tevel], and therefore the owner of the produce must designate the poor man's tithe by name, he holds that the owner of the produce has the benefit of discretion, meaning that he may give the poor man's tithe to the poor person of his choice. And since he has the benefit of discretion, the option that a woman who vowed not to benefit from people should take poor man's tithe is ineffective, as she would be receiving benefit from the owner of the tithe, since he could have given it to someone else.**

ולמאן דאמר [אינו] קורא שם – קסבר: ספקו אינו טובל, וכל שספקו אינו טובל – לית ליה טובת הנאה, ושרי ליה לאיתנווי?

Rav Yosef continues: **And according to the one, i.e., Rabbi Eliezer, who says that he need not designate poor man's tithe by name, he holds that the uncertainty as to whether or not poor man's tithe had been separated by the *am ha'aretz* does not render the produce forbidden as untithed produce.^N And whenever the case is that uncertainty does not render the produce forbidden as untithed produce, the owner does not have the benefit of discretion^N and does not choose to which poor person he will give it. And therefore one who vowed not to benefit from people is permitted to derive benefit from poor man's tithe, as he is not receiving it from anyone.**

אמר ליה אביי: דכולי עלמא ספקו טובל, ורבי אליעזר ורבנן בהא קמיפלא; רבי אליעזר סבר: לא נחשדו עמי הארץ על מעשר עני, בין דאילו מפקר נכסיה והוי עני, ושקל ליה הוא – לית ליה פסידא.

Abaye said to him: This proof is not conclusive, as it may be that everyone agrees that the uncertainty as to whether or not poor man's tithe had been separated by the *am ha'aretz* renders the produce forbidden as untithed produce, and that Rabbi Eliezer and the Rabbis^N disagree with regard to this issue: Rabbi Eliezer maintains that *amei ha'aretz* are not suspected of failing to set aside poor man's tithe. Therefore, one who purchases *demai* from an *am ha'aretz* need not be concerned that its poor man's tithe might not have been set aside. Rabbi Eliezer maintains this opinion because were the *am ha'aretz* to declare all his property ownerless and therefore become a poor man, and then take the poor man's tithe himself, he would suffer no loss when he set aside this tithe, and therefore it is assumed that he separated it.

NOTES

But he need not set it aside – ואין צריך להפריש: The Commentary on *Nedarim* and other commentaries understand this statement literally: It suffices for the buyer to look at a certain part of the pile of produce and declare that poor man's tithe shall be on that side. He does not have to actually set aside this portion at all. However, some early authorities maintain that the phrase: He need not set it aside, means that he does not have to give the tithe to the poor, but he is obliged to separate it physically from the rest of the produce (*Tosafot*; Ran; Meiri).

The uncertainty does not render it forbidden as untithed produce – ספקו אינו טובל: The Commentary on *Nedarim* explains: Because uncertainty as to whether poor man's tithe had been given does not render the produce forbidden as untithed produce, this shows that the Sages were lenient with regard to this tithe. Therefore, it is not treated like *teruma*, and the owner does not have the benefit of discretion. Most commentaries, however, maintain that according to this opinion even if poor man's tithe had certainly not been given, the produce is not forbidden as untithed produce. If one did not

separate poor man's tithe at all, the produce may be eaten and is not untithed produce, but he has missed the opportunity to perform a mitzva (*Tosafot*; Rosh; Ran).

A slightly different interpretation claims that if it is known with certainty that poor man's tithe had not been set aside, by Torah law the produce is not rendered untithed produce, but by rabbinic decree it is considered untithed produce. Therefore, in a case of uncertainty, it is not untithed produce at all, even by rabbinic law (*Shita Mekubbetzet*).

Whenever that uncertainty does not render it forbidden as untithed produce, he does not have the benefit of discretion – לית ליה טובת הנאה: *Tosafot* point out that the logical connection between these issues is unclear. Various explanations have been offered by the commentaries. The Rashba explains that the *halakha* of poor man's tithe is ambiguous: Is it similar to other gifts given to the poor, such as gleanings, forgotten sheaves, and *pe'a*, where the mitzva is for the owner to leave them to be taken by the poor, and with regard to which there is no benefit of discretion, or is it

comparable to *teruma* and first tithe, where there is a mitzva for the owner to actively give them, and therefore the owner has the right to give them to a person of his choice? In order to clarify this issue, the Gemara investigates whether poor man's tithe is like gleanings, forgotten sheaves, and *pe'a*, as a defining characteristic of these gifts is that they do not render produce untithed, or whether it is like *teruma*, which does render produce untithed. See *Tosafot* and the Ran for a similar interpretation.

And Rabbi Eliezer and the Rabbis – ורבי אליעזר ורבנן: According to this explanation, the *baraita* that permits a woman who vowed not to benefit from people to take poor man's tithe is in accordance with neither the Rabbis nor Rabbi Eliezer, and therefore a different interpretation must be found, i.e., that of Rava. The Gemara's explanation here is incidental to the discussion, as it seeks to clarify the dispute between Rabbi Eliezer and the Rabbis according to this opinion.

Distributed in the house – המתחלק בתוך הבית – The Commentary on *Nedarim* explains that this refers to one who was forced to bring his produce into the house, or who was unable to find paupers while in the threshing floor.

They can take gifts against his will – יטלו בעל כרחו – The *Tosefot Yom Tov (Bava Kamma 9:10)* cites the opinion of the *Beit Yosef* that they do not literally take it themselves. Rather, he must give it to them despite his vow. The *Hatam Sofer*, however, maintains that they take it from him against his will, as, if he gives it to them the concern with regard to his benefit of discretion is once again relevant.

Benefit of discretion – טובת הנאה – In general, benefit of discretion is not merely the satisfaction of giving, but rather a monetary benefit that a person enjoys by virtue of his ability to confer gifts upon a person of his choice, even if he is obligated to give these gifts. He may even accept a certain sum from concerned parties for giving the gift to a particular person, though not from the recipients themselves. The question here is whether this benefit of discretion is considered a substantive part of the monetary value of the object, or whether the fact that there is no market value to it means that it can be seen only as a kind of profit on the side, a personal benefit that does not inhere in the object he is conferring.

HALAKHA

Distributed in the house – המתחלק בתוך הבית – One who prohibited himself from deriving benefit from people may take gleanings, forgotten sheaves, and *pe'ea*. He is likewise permitted to accept poor man's tithe that is distributed in the threshing floor, but not that which is given out in the owner's house (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 7:10; see *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 6:10).

If one steals another's untithed produce – הגונב טבלו של חבירו – If one steals another person's untithed produce and eats it, he must pay him the value of the produce he stole, in accordance with the opinion of Rabbi Yehuda HaNasi (Rambam *Sefer Nezikim, Hilkhot Geneva* 2:4).

ורבנן סברי: נכסיה לא מפקר איניש, דמירתת דלמא זכי בהו איניש אחריןא, הלכך נחשדו.

And the Rabbis maintain that while it is theoretically possible for one to avoid having to actually part from his poor man's tithe, this is uncommon, as a **person does not ordinarily declare his property ownerless** for this purpose, as **he is afraid that perhaps someone else will acquire it** in the meantime. Consequently, one who sets aside poor man's tithe from his produce is assumed to incur a loss, and therefore **amei ha'aretz are suspected** with regard to this tithe. Accordingly, no satisfactory explanation has yet been given as to why the *baraita* permits a woman who vowed not to derive benefit from people to take poor man's tithe.

רבא אומר: כאן – במעשר עני המתחלק בתוך הבית, דכתיבא ביה נתינה: 'ונתתה ללוי לגר' וגו', משום הכי אסור ליה לאיתגנויי.

Rava says that it is possible to explain the apparent contradiction between the sources with regard to benefit from poor man's tithe without recourse to a tannaitic dispute: **Here**, the mishna is referring to **poor man's tithe distributed in the owner's house**,^{NH} i.e., poor man's tithe that had not been distributed in the threshing floor but was brought home and must now be distributed to the poor who visit the house, as the term **giving is written** in the verse with regard to such a tithe: **"And you shall give to the Levite, to the stranger, to the orphan, and to the widow"** (Deuteronomy 26:12), and the owner is entitled to give the tithe to the poor man of his choice, as the benefit of discretion is conferred upon him. **Due to that reason, it is prohibited** for one who vowed not to derive benefit from people to **derive benefit** from this type of poor man's tithe.

כאן – במעשר עני המתחלק בתוך הגרנות, כיון דכתיב ביה 'והנחת בשעריך' – שרי ליה לאיתגנויי.

There, however, the *baraita* is referring to **poor man's tithe that is distributed in the threshing floor**. Since with regard to such a tithe it is written: **"And you shall leave it at your gates"** (Deuteronomy 14:28), the owner cannot designate it for a particular person, and any poor person who comes by may take it from him. As the owner lacks the benefit of discretion, one who vows not to benefit from people is **permitted to benefit** from this poor man's tithe.

"כהנים ולוים נהניו לי וטלו" כו'. אלמא טובת הנאה אינה ממוין.

§ The mishna teaches that if one said: I will not let **priests and Levites benefit from me, they can take** the priestly and Levitical gifts from him against his will.^N The Gemara notes: **Apparently, the benefit of discretion^N to give his *teruma* and tithes to the priest or Levite of his choice is not considered to have monetary value.** The priests and Levites can take the gifts from the owner of the produce against his will, and the latter is not regarded as having conferred benefit upon them.

אימא סיפא: "כהנים ולוים אלו ולוים אלו נהניו לי" – וטלו אחרים. אכל להני – לא. אלמא טובת הנאה ממוין!

But say the **latter clause** of the mishna, which states that if the person said: I will not let **these specific priests and these specific Levites benefit from me**, these gifts are **taken by others**. **But these priests and Levites specified in his vow may not take these gifts.** **Apparently**, this ruling indicates that the **benefit of discretion** is considered to have **monetary value**, and therefore the owner can prohibit specific priests or Levites from deriving benefit from him.

אמר רב הושעיא: לא קשיא. הא – רבי ודא – רבי יוסי ברבי יהודה. דתנא: הגונב טבלו של חבירו ואכלו – משלם לו דמי טבלו. דברי רבי. רבי יוסי ברבי יהודה אומר: אינו משלם אלא דמי חולין שבו. מאי לאו בהא קמפילגי.

Rav Hoshaya said: This is **not difficult**; this second ruling is in accordance with the opinion of Rabbi Yehuda HaNasi, and that first ruling is in accordance with the opinion of Rabbi Yosei, son of Rabbi Yehuda, as it is taught in a *baraita*: **If one steals another's untithed produce^H and eats it, he must pay him the value of his untithed produce**, i.e., the full value of what he stole. This is the **statement of Rabbi Yehuda HaNasi**. Rabbi Yosei, son of Rabbi Yehuda, disagrees and says: **He pays him only the value of the non-sacred produce it contained**. The thief does not have to pay him the value of the *teruma* and tithe included in the untithed produce, as these portions do not belong to the owner of the produce. **What, is it not the case that they disagree about this:**