

HALAKHA

Benefit of discretion – טובת הנאה: The benefit of discretion is not considered to have monetary value. Consequently, if a man betroths a woman with the priestly gifts he set aside, she is not betrothed. Similarly, if a priest acquired possession of them without the owner's knowledge he is not obligated to return them. Furthermore, one cannot acquire an item in exchange for the benefit of discretion (Rambam *Sefer Nashim, Hilkhot Ishut* 5:6 and *Sefer Zera'im, Hilkhot Terumot* 12:15; *Shulhan Arukh, Hoshen Mishpat* 203:1).

דְּרַבִּי יְהוּדָה סָבַר: טוֹבַת הַנְּאֻה מְמוֹן, וְרַבִּי יוֹסֵי בֶר רַבִּי יְהוּדָה סָבַר: טוֹבַת הַנְּאֻה אֵינָה מְמוֹן?

That Rabbi Yehuda HaNasi holds that the benefit of discretion is considered to have monetary value, and therefore a thief must pay the full value of the untithed produce. The owner has monetary rights in the priestly and Levitical gifts, by virtue of the fact that he may give his *teruma* and tithes to the priest and Levite of his choice. And Rabbi Yosei, son of Rabbi Yehuda, holds that the benefit of discretion is not considered to have monetary value, meaning that the owner of the produce has no monetary rights whatsoever in the *teruma* and tithes included in the untithed produce.

לֹא, דְּכוּלֵי עֲלָמָא טוֹבַת הַנְּאֻה אֵינָה מְמוֹן. אֲלֵא הִכָּא בְּמִתְנֻת שְׁלֵא הוֹרְמוּ קָא מִיפְלָגִי.

The Gemara rejects this explanation: No, as everyone agrees that the benefit of discretionⁿ is not considered to have monetary value. Rather, here they disagree with regard to whether priestly and Levitical gifts that have not yet been separatedⁿ are considered as if they have already been separated, meaning the dispute is whether the untithed produce is categorized as a mixture of regular produce and tithes, or as a non-sacred category in and of itself. If they are not seen as having already been separated, the thief must restore everything he took. But if they are regarded as having already been separated, then the thief returns only the non-sacred portion of the produce, as the priestly and Levitical gifts did not belong to the owner.

וְאֵי טוֹבַת הַנְּאֻה אֵינָה מְמוֹן, מַה לִּי הוֹרְמוּ מַה לִּי לֹא הוֹרְמוּ?

The Gemara counters this argument: But if the benefit of discretion is not considered to have monetary value, what is the difference to me if the gifts have already been separated, and what is the difference to me if they have not yet been separated?ⁿ Either way, the owner of the produce has no monetary rights in the portions of *teruma* and tithes contained in the untithed produce.

אֲלֵא הֵינּוּ טַעְמָא דְּרַבִּי: קְנִסוּהָ רַבְּנֵי לְגַנְבֵי, כִּי הֵיכִי דְלֹא לִיגְנוּב. וְרַבִּי יוֹסֵי בֶר רַבִּי יְהוּדָה סָבַר: קְנִסוּהָ רַבְּנֵי לְבַעַל הַבַּיִת, כִּי הֵיכִי דְלֹא לִישְׁתֵּי לְטִיבְלִיהָ.

Rather, one must explain that this is the reasoning of Rabbi Yehuda HaNasi: The Sages penalized the thief so that he would not steal again by requiring him to repay the full value of what he stole, despite the fact that the owner of the untithed produce has no monetary rights in the *teruma* and tithes included in it. And Rabbi Yosei, son of Rabbi Yehuda, holds that the Sages penalized the ownerⁿ of the produce, awarding him only the value of the non-sacred portion of the produce, so that in the future he would not delay with his untithed produce, but rather separate its *teruma* and tithes as soon as the produce is harvested. Had he set aside and distributed the gifts promptly they would not have been stolen.

NOTES

With regard to gifts that have not been separated – בְּמִתְנֻת: The Ran explains that Rabbi Yehuda HaNasi obligates the thief to repay the entire amount, because it is he who maintains that gifts that have not been separated are not considered to have been separated. Consequently, the entire untithed produce belongs to the owner, and therefore the thief must restore all of it, or, as noted by the Meiri, double the amount, in accordance with the *halakha* with regard to theft. *Tosafot*, however, note that in the Jerusalem Talmud it is explained in the opposite manner: Rabbi Yehuda HaNasi maintains that the gifts are considered as separated, whereas according to Rabbi Yosei son of Rabbi Yehuda they are not considered as separated. The Meiri explains Rabbi Yehuda HaNasi's reasoning as follows: Since the gifts are considered to have been separated, the owner already enjoys the benefit of discretion, even if this is not considered to have monetary value, and therefore the thief must repay him the entire amount.

produce includes a portion that does not belong to the owner of the produce but is the property of the priests or Levites, and therefore the thief does not have to return that part to the owner (Ran). According to the Meiri's explanation, the Gemara means that even if the gifts have been separated and their owner has the benefit of discretion, that benefit is nevertheless not considered to have monetary value, and so the thief is not obligated to repay it.

Yehuda, that he is not reimbursed for the non-separated gifts, is straightforward, while Rabbi Yehuda HaNasi, who holds that he is reimbursed, contends that the Sages nevertheless penalized the thief by obligating him to repay more, as though the benefit of discretion did have monetary value. Conversely, if the benefit of discretion has monetary value, it is Rabbi Yehuda HaNasi's opinion that is easily understood, whereas according to Rabbi Yosei, son of Rabbi Yehuda, the owner is penalized for leaving his produce untithed.

The Sages penalized the owner – קְנִסוּהָ רַבְּנֵי לְבַעַל הַבַּיִת: The early authorities are puzzled by this answer, as, if the benefit of discretion has no monetary value, why is not being paid for the non-separated gifts considered a penalty for the owner? The Ran maintains that this answer does not address the issue of whether the benefit of discretion has monetary value. Rather, the Gemara is explaining the dispute between Rabbi Yehuda HaNasi and Rabbi Yosei, son of Rabbi Yehuda, both according to the opinion that it has monetary value and according to the opinion that it does not. The Gemara first states that everyone agrees that the benefit of discretion has no monetary value, in which case the opinion of Rabbi Yosei, son of Rabbi

According to the Commentary on *Nedarim*, it is all one answer: In truth, the benefit of discretion has no monetary value, but Rabbi Yehuda HaNasi maintains that the Sages penalize the thief by making him pay more. Rabbi Yosei, son of Rabbi Yehuda, says that since the benefit of discretion has no monetary value, there is nothing for the thief to restore; he adds that it is the owner who deserves a penalty, and he should therefore be satisfied with the restoration of the loss he actually suffered. The Rashba, after summarizing the various explanations, favors this explanation.

What is it to me if they have been separated, what is it to me if they have not been separated – מַה לִּי הוֹרְמוּ מַה לִּי לֹא: Even if the gifts have not been separated, the untithed

I will not produce anything for my father – שְׂאִינִי עוֹשֶׂה עַל-אָבִי: If a woman vows that she will not produce anything for her father, or for her brother, or for her husband's father or brother, her husband cannot nullify the vow, as she is under no obligation to produce anything for them. It is neither a vow of affliction nor a vow adversely affecting the marriage relationship (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 12:11; *Shulhan Arukh, Yoreh De'a* 234:70).

As perhaps she will exceed – שְׂמָא תַעֲדִיף: If a woman expends extra effort and performs more work than required, the surplus belongs to the husband, as implied by the unattributed mishna, contrary to the opinion of Rabbi Akiva. The Rema claims that this applies only if the husband provides her with the sustenance and money he is legally obligated to give her (*Shulhan Arukh, Even HaEzer* 80:1).

He should nullify the vow, as perhaps he will divorce her – יִפְרֹ, שְׂמָא יִגְרֶשְׁנָה: If a woman vowed not to perform work for her husband, the vow does not take effect, as she is obligated to do so. Nevertheless, her husband should nullify the vow, as perhaps he will one day divorce her and she will then be forbidden to him forever (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 12:10; *Shulhan Arukh, Yoreh De'a* 234:71).

רְבָא אָמַר: שְׂאִינִי תְרוּמָה, דְּהֵיִינוּ טַעֲמָא דִּיטְלוּ עַל בְּרַחוּ – מִשּׁוּם דְּתְרוּמָה לָא חֻזְיָא אֱלָא לְכַהֲנָיִם, וְכִיּוֹן דְּקָא אֲתֵי לְמִסְרָא עֲלֵיהּוּ – שְׂוִיָא עֲפְרָא בְּעֻלְמָא.

Rava said that there is another way to reconcile the apparent contradiction in the mishna: As stated, the second case, where the person prohibits specific priests and Levites from benefiting from him, indicates that the benefit of discretion is considered to have monetary value. However, *teruma* is different, as this is the reason that priests can take *teruma* from him against his will in a case where one prohibited all priests from deriving benefit from him: **Because *teruma* is fit only for priests, and since he came to render it prohibited to them, he made it, for him, like mere dust.**^N If this *teruma*, which certainly cannot be eaten by Israelites, is now forbidden to priests as well, the owner has effectively removed it from his own possession. Therefore, the priests do not derive any benefit from him if they take it.

מִתְנִי' "קוֹנָם שְׂאִינִי עוֹשֶׂה עַל פִּי אָבִיא, וְעַל פִּי אֲבִיךָ, וְעַל פִּי אֲחִי, וְעַל פִּי אֲחִיךָ" – אֵינּוּ יָכוֹל לְהִפְרֹ. שְׂאִינִי עוֹשֶׂה עַל פִּיךָ" – אֵינּוּ צְרִיךְ לְהִפְרֹ.

MISHNA If a woman said: **I will not produce anything for my father,**^H as that is *konam* for me, **or: For your father, or: For my brother, or: For your brother,** her husband cannot nullify such vows, as they do not fall under the category of vows that adversely affect the relationship between him and her. By contrast, if she said: **I will not produce anything for you,** including the work that she is obligated to do for him according to the terms of her marriage contract, as that is *konam* for me, her husband **need not nullify** the vow at all. It is automatically void, since she is obligated to perform those tasks.

רַבִּי עֲקִיבָא אָמַר: יִפְרֹ, שְׂמָא תַעֲדִיף עֲלֵיוּ יוֹתֵר מִן הֵרָאוּ לוֹ.

Rabbi Akiva says: **He should nevertheless nullify** the vow, as **perhaps she will exceed**^{NH} the required amount of work and do **more for him than is fitting for him** to receive. If she does more than the fixed amount of work that a woman is obligated to perform for her husband, the vow will be valid with respect to the excess to which he is not entitled, and he might inadvertently come to benefit from something that is forbidden to him.

רַבִּי יוֹחָנָן בֶּן נוּרִי אָמַר: יִפְרֹ, שְׂמָא יִגְרֶשְׁנָה וְתֵהִי אֲסוּרָה עֲלָיו.

Rabbi Yohanan ben Nuri^N also says that he **should nullify** the vow, but for a different reason: **Perhaps he will one day divorce her,**^H at which point the vow will take effect and **she will then be forbidden to him** forever, i.e., he will be unable to remarry her, lest he come to benefit from her labor.

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Made it like mere dust – שְׂוִיָא עֲפְרָא בְּעֻלְמָא: The Commentary on *Nedarim* explains that since *teruma* is fit only for priests, then by rendering it prohibited to them the owner has forfeited any right that he has in the *teruma*, including the benefit of discretion, as he himself cannot eat it. He therefore has nothing from which priests can derive benefit, and they can take the *teruma* without concern for his vow. Most early authorities accept some version of this explanation. The *She'iltot deRav Ahai Gaon*, as explained by the *Hatam Sofer*, asks why the owner is not able to take a vow rendering the produce forbidden to the priests. He answers that the Torah granted the owner of *teruma* only the benefit of discretion, but not the right to forbid it to the priestly tribe.

The early authorities also pose a different question: This answer works only with respect to *teruma*, which is forbidden to all non-priests. What about first tithe, which is permitted to all? Rabbeinu Tam, in his *Sefer HaYashar*, answers that this statement is in accordance with the opinion of Rabbi Meir, who maintains that first tithe is forbidden to Israelites. The Ritva similarly states that this mishna follows the opinion that only Levites may set aside *teruma* of the tithe, and the prohibition against non-Levites benefiting from first tithe is due to the *teruma* of the tithe it contains, rather than the tithe itself.

Perhaps she will exceed – שְׂמָא תַעֲדִיף: The Gemara in tractate *Ketubot* (64b) discusses the precise amount of work a woman must do for her husband. The product of any work she performs over and above this amount does not belong to him. The Gemara there (66a) explains that this does not

apply to all cases in which she exceeds the fixed amounts, but only to certain situations, such as when a wife earns more by working harder.

Rabbi Yohanan ben Nuri – רַבִּי יוֹחָנָן בֶּן נוּרִי: Based on the Gemara in tractate *Ketubot* (66a), most commentaries explain that this tannaite dispute concerns the ownership of the sum in excess of her fixed obligations. The Rabbis maintain that anything she produces, even by working harder, belongs to her husband, and therefore there is no reason for him to nullify the vow. Rabbi Akiva, however, claims that the excess belongs to the woman, which means the husband must nullify her vow, as she can render that surplus forbidden to him. Rabbi Yohanan ben Nuri agrees with the Rabbis that the excess is the husband's, but he harbors a different concern, with regard to the potential prohibition in the event of a divorce.

According to the Commentary on *Nedarim*, Rabbi Akiva and Rabbi Yohanan ben Nuri disagree about the application of a vow to something that does not yet exist. Rabbi Akiva maintains that a woman can render forbidden an entity that is not yet in the world only if she produces a surplus, as the vow applies to the extra amount as soon as she produces it. She cannot, however, vow to render it forbidden so that it takes effect after her divorce, as even if she does produce something at that time, the husband will not necessarily have access to her handiwork. In contrast, Rabbi Yohanan ben Nuri maintains that even in the latter case she can render forbidden an entity that does not yet exist.

If one consecrates his wife's earnings – המקדיש מעשה ידי – אשתו: If one consecrates his wife's earnings to the Temple treasury, she may do her work and partake of the fruit of her labor, and even the surplus is non-sacred. The *halakha* follows the opinion of Rabbi Yoḥanan HaSandlar (see 85b), as Shmuel ruled in his favor (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 6:28; *Shulḥan Arukh, Even HaEzer* 81:1).

גמ' אמר שמואל: הלכה כרבי יוחנן בן נורי. למימרא דקסבר שמואל אדם מקדיש דבר שלא בא לעולם? ורמינהי: המקדיש מעשה ידי אשתו,

GEMARA Shmuel said: The *halakha* is in accordance with the opinion of Rabbi Yoḥanan ben Nuri. The Gemara asks: Is this to say that Shmuel maintains that a person can consecrate an entity that has not yet come into the world? According to Rabbi Yoḥanan ben Nuri, her vow is valid with respect to things she will do after her divorce, even though at present she is not divorced and she has not yet produced anything. And the Gemara raises a contradiction from a mishna (*Ketubot* 58b): If one consecrates his wife's earnings,^h

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Daf 85 Amud b

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הרי זו עושה ואוכלת – She may work and sustain herself – The Gemara in tractate *Ketubot* (58b) offers two explanations of this statement. Either it is referring to a woman who is not being sustained by her husband, in which case she may sustain herself from her earnings, or it follows the opinion of Rav Huna that a woman can say to her husband: I will not be sustained by you and, in turn, I will not work, i.e., you will not keep my earnings.

HALAKHA

A person cannot consecrate an entity that has not yet come into the world – אין אדם מקדיש דבר שלא בא לעולם – One cannot consecrate an entity that is not yet in existence (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 6:26).

הרי זו עושה ואוכלת. והמותר, רבי מאיר אומר: הקדש, רבי יוחנן הסנדלר אומר: חולין. ואמר שמואל: הלכה כרבי יוחנן הסנדלר. אלמא: אין אדם מקדיש דבר שלא בא לעולם!

she may work and sustain herself^N from her earnings, as the consecration is ineffective. And with regard to the surplus earnings, i.e., if she produced more than she needs for her sustenance, Rabbi Meir says the surplus becomes consecrated property, whereas Rabbi Yoḥanan HaSandlar says that it is non-sacred. And Shmuel said that the *halakha* is in accordance with the opinion of Rabbi Yoḥanan HaSandlar. Apparently, Shmuel's opinion is that a person cannot consecrate an entity that has not yet come into the world,^h and therefore a man cannot consecrate earnings that his wife will produce only in the future.

וכי תימא: בי קאמר הלכה כרבי יוחנן בן נורי – על העדפה הוא דקאמר,

And if you would say that when Shmuel is saying that the *halakha* is in accordance with the opinion of Rabbi Yoḥanan ben Nuri he was saying only that the *halakha* is such with regard to the surplus, there is a difficulty. One might say that since Rabbi Yoḥanan ben Nuri disagrees with Rabbi Akiva, he apparently maintains that a woman's surplus earnings belong to her husband, and therefore she cannot render them forbidden to him through a vow, and it is only with respect to this point that Shmuel said that the *halakha* is in accordance with the opinion of Rabbi Yoḥanan ben Nuri. If this is the case, there is no contradiction between his ruling here and his ruling in *Ketubot* that the *halakha* with regard to one who consecrates his wife's earnings is in accordance with the opinion of Rabbi Yoḥanan HaSandlar.

לימא: הלכה כרבי יוחנן בן נורי בהעדפה, אי נמי: הלכה כתנא קמא. אי נמי: (אין) הלכה כרבי עקיבא!

But if so, let Shmuel clearly say: The *halakha* is in accordance with the opinion of Rabbi Yoḥanan ben Nuri with regard to the surplus. Alternatively, he could have said that the *halakha* is in accordance with the opinion of the first *tanna*, who also maintains that the surplus belongs to the husband. Alternatively, he could have said that the *halakha* is not in accordance with the opinion of Rabbi Akiva, who asserts that the surplus belongs to the wife.

אלא אמר רב יוסף: שאני קונמות, הואיל ואדם אוסר פירות תבירו עליו – אוסר נמי דבר שלא בא לעולם עליו.

Rather, Rav Yosef said that the apparent contradiction between Shmuel's rulings can be resolved in the following manner: Although one cannot consecrate an entity that has not yet come into the world, *konamot* are different; since a person can prohibit to himself another's produce by means of a *konam*, even though one cannot consecrate another's produce to the Temple, he can also prohibit to himself an entity that has not yet come into the world. With regard to consecration, however, a person cannot dedicate to the Temple treasury something that is not currently in his possession, and he cannot consecrate an entity that has not yet entered the world, either.

A person cannot prohibit another's produce to that other person – אין אדם אוסר פירות חבירו על חבירו: If one says to another: So-and-so's produce is forbidden to you, his words are of no consequence (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 5:3; *Shulhan Arukh, Yoreh De'a* 225).

With a woman who says my hands are consecrated to the One Who made them – באומרת יקדשו ידי לעושיהן: According to some authorities the vow of a married woman takes effect only if she says: My hands are consecrated to the One Who made them. This is because, although the vow does not apply at that time, it can take effect later, since the husband has rights to her earnings (Rema). The *Taz*, citing *Beit Yosef*, maintains that the vow would take effect even if she vows that her husband should not benefit from her earnings (Rambam *Sefer Hafla'a, Hilkhot Nedarim* 12:10; *Shulhan Arukh, Yoreh De'a* 234:71; see also *Shulhan Arukh, Even HaEzer* 81:2).

אמר ליה אביי: בשלמא אדם אוסר פירות חבירו עליו – שהרי אדם אוסר פירותיו על חבירו, אלא יאסור דבר שלא בא לעולם על חבירו! שהרי אין אדם אוסר פירות חבירו על חבירו!

Abaye said to him: This is no proof at all. Granted, a person can prohibit another's produce to himself, since a person can prohibit his own produce to another. But does it follow that he can also prohibit an entity that has not yet come into the world to another person, seeing that a person cannot prohibit another's produce to that other person,^h as he has jurisdiction neither over the produce nor over the person to whom he wishes to prohibit it? Yet in the mishna here the woman prohibits her future earnings, which do not yet exist, to another person, i.e., her husband.

אלא אמר רב הונא בריה דרב יהושע: באומרת "יקדשו ידי לעושיהן", דידיהם היא איתנהו בעולם.

Rather, Rav Huna, son of Rav Yehoshua, said: Here the mishna is dealing with a woman who says: My hands are consecrated to the One Who made them.^{NH} Therefore, the case does not involve the issue of an entity that has not yet come into the world, as her hands are already in the world.

וכי אמרה הכי – קדשה? והא משעבדן ידיה לבעלה – דאמרה: לכי מגרשה. השתא מיהת לא מגרשה, וממאי דכי אמרה הכי מהניא?

The Gemara challenges this interpretation: And if she said her vow like this, are they consecrated and forbidden? But aren't her hands pledged to her husband, to do the work she is obligated to perform for him? The Gemara answers: The mishna is referring to a woman who said: The vow will take effect when I become divorced. The Gemara raises a difficulty: She is not divorced now in any event, and from where is it learned that when she says her vow like this, the vow is effective? How is it learned that she can consecrate something in such a manner that it will become consecrated only in the future?

NOTES

To the One Who made them [*le'oseihen*] – לעושיהן: The Rid reads this word as *lema'aseihen*, for their actions, which means that the vow should apply not to the hands themselves but to the products of her hands, although it is formulated in such a way that the vow refers to something that exists. According to *Tosafot* (16b; see Ran there) it appears that she does not actually have to vow in this manner, but rather her vow is explained in this fashion even if she does not say so explicitly.

This field that I am selling – שדה זו שאני מוכר: If one person says to another: With regard to this field that I am selling to you, when I will buy it back from you it shall be consecrated, the field becomes consecrated upon its repurchase. This is because the current owner presently has the power to consecrate it, as stated by Rabbi Illa (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 6:29).

This field that I sold to you – שדה זו שמכרתי לך: If one person says to another: With regard to this field that I sold you, when I will buy it back from you it shall be consecrated, then even if he repurchases the field it does not become consecrated. This is because he had no power to consecrate it at the time, and a person cannot consecrate an entity that has not yet come into the world (Rambam *Sefer Hafla'a, Hilkhot Arakhin VaHaramim* 6:27; *Shulhan Arukh, Hoshen Mishpat* 212:9).

Perek XI
Daf 86 Amud a

אמר רבי אילאי: ומה אילו אומר לחבירו "שדה זו שאני מוכר לך, לבשאקחנה ממך תקדיש" מי לא קדשה?

Rabbi Illa said: And what is the *halakha* if one person says to another before selling him a field: This field that I am selling^h to you now, when I will buy it back from you, let it be consecrated? Is the field not consecrated when it is repurchased? In similar fashion, a woman can consecrate her future handiwork, even though the sanctity cannot presently take effect.

מתקיף לה רבי ירמיה: מי דמי? "שדה זו שאני מוכר לך" – השתא בידיה היא, אשה בידה להקדיש מעשה ידיה? הא לא דמי אלא לאומר לחבירו "שדה זו שמכרתי לך, לבשאקחנה ממך תקדיש" מי קדשה?

Rabbi Yirmeya objects to this comparison: Are the two cases comparable? When a person says: Let this field that I am selling to you now be consecrated when I buy it back from you, now at least the field is still in his possession, and he can therefore consecrate it now, stipulating that the consecration should take effect only when it returns to his ownership. As for the woman, however, is it currently in her power to consecrate her handiwork? At present it does not belong to her. This case is comparable only to that of one who said to another: With regard to this field that I sold to you^h in the past, when I will buy it back from you, let it be consecrated. In such a case, is the field consecrated when it is repurchased?