Rava said that Rav Nahman said: The halakha is in accordance with the opinion of Rav Yehuda. Rava said to Rav Nahman: But isn’t it taught in a baraita in accordance with the opinion of Rabbi Ami? He replied: Although it is taught in accordance with the opinion of Rabbi Ami, Rav Yehuda’s rationale, that the wife may take the objects in question because they are assets of her paternal family and their complete removal from her domain would hurt the family’s prestige, is more reasonable.

The Gemara relates an incident: A certain woman brought into her marriage to her husband a robe [itztela] of fine wool [meileta], which was deemed guaranteed property by her marriage contract. Her husband subsequently died, and the orphans took that robe and spread it over the corpse as a shroud.49 The woman demanded that the robe be returned to her.

Rava said: The dead has acquired it,49 as deriving benefit from anything consecrated for the dead is prohibited. Nanai, son of Rav Yosef, son of Rava, said to Rav Kahana: But didn’t Rava say that Rav Nahman said that the halakha is in accordance with the opinion of Rav Yehuda? Accordingly, the woman’s robe must be returned. He said to him: Doesn’t Rav Yehuda admit that the robe has not yet been collected? And since it has not yet been collected, it remains in his possession, and his inheritors can render its use as a burial shroud prohibited.

The Gemara adds that in this regard Rava conforms to his standard line of reasoning, as Rava said: Consecration of property, the prohibition against benefiting from leavened bread on Passover,50 and the manumission of a slave51 release the property from a lien. If someone placed an asset under a lien for his debt and subsequently consecrated it; or if the asset under lien is leavened bread and the festival of Passover arrived; or if the asset is a slave and he freed him, the lien is released, and the creditor may claim his debt from the debtor’s other property. In the case of the robe as well, because it was placed over the corpse, it was consecrated for the dead. Consequently, it is prohibited to derive benefit from it. Therefore, it is released to the woman from under the lien.

Rava Yehuda said: If the wife brought with her into the marriage two belongings52 of guaranteed investment worth one thousand dinars, and they appreciated until they stood at two thousand, one of them she collects as payment of her marriage contract, as it is now worth her dowry of one thousand dinars. And as for the other one, she pays its monetary value and takes it from her husband because it is an asset of her paternal family.

GUARANTEED PROPERTY WAS SACRED TO THE TEMPLE OR USED FOR THE DEAD –ךֵּלִים

If a dead man’s inheritors consecrate his widow’s guaranteed property or place an object of that property on the corpse, rendering it prohibited to derive benefit from the property or item, the woman’s lien is released and she receives only its value (Shulhan Arukh, Even HaEzer 88:3).

HALAKHA

If the wife brought with her into the marriage two belongings, etc. – רבי יוסי משיב שבוע

The Ramban points out that according to this ruling, the baraita cited by the Gemara in support of Rabbi Ami’s opinion does not in fact lend his opinion any support: the halakha that slaves of guaranteed investment go free at the loss of a tooth or an eye by the husband can be explained by the fact that the wife’s possession of them is nullified through their manumission, and therefore it cannot prove that the slaves belong to the husband.

HALAKHA

If the wife brought with her into the marriage two belongings, etc. – רבי יוסי משיב שבוע

A controversy between Babylonian amoraim is cited in the Jerusalem Talmud with regard to this issue. However, the conclusion is the same as in this Gemara.
Her slaves may not partake of teruma — אֲמָרָה רַבִּי יֹסֵי: If an Israelite woman married a priest, and she subsequently died and left her pregnant, her slaves may not partake of teruma, as only one who was born enables others to partake of teruma, but a fetus does not. Conversely, a fetus does not disqualify its mother from partaking of teruma. Therefore, if the fetus is categorized as a priest disqualifed due to flawed lineage (halail), and it has non-halai' brothers, the mother partakes of teruma until it is born. This ruling apparently follows the Rabbis opinion (Rambam Sefer Zeraim, Hilchot Terumot 8:4, Tor. Yoreh D'ea 331).
Rav Yehuda said that Shmuel said: This is the statement of Rabbi Yosei. However, the Rabbis say that if the dead husband has children, the slaves partake of teruma due to the children, as they inherit the slaves. If he does not have children, they partake of teruma due to his brothers, who inherit his property. If he does not have brothers either, they partake due to the entire family, which inherits his property. The fetus does not disqualify them, as it does not yet own its share of the inheritance.

The Gemara asks: By saying that this is only Rabbi Yosei’s stance, Shmuel seemingly indicates that he himself does not maintain that opinion. However, Shmuel said to Rav Hana of Baghdad: Go and bring me an assembly of ten men and I will say to you before them a halakha that I seek to disseminate: One who transfers ownership of an object to a fetus, the fetus acquires it. Consequently, according to Shmuel, a fetus can own property, which is the premise of Rabbi Yosei’s stance that a fetus shares the inheritance even before he is born. The Gemara answers: Rather, although Shmuel said that it is only Rabbi Yosei’s stance, he holds likewise. What is Shmuel teaching us by saying so? He is teaching us that the Rabbis disagree with Rabbi Yosei.

The Gemara asks: But do they really disagree? Rabbi Zakkai raised an objection to this statement from a baraita: This was a testimony that Rabbi Yosei testified that he heard from the mouths of Shemaya and Avtalyon, and the Rabbis acknowledged his testimony. Apparently, they accepted his opinion. Rav Ashi said: Does that baraita state: And the Rabbis accepted his testimony? It states: And they acknowledged his testimony, which indicates that his opinion is reasonable. However, they did not accept his ruling.

The Sages taught in a baraita: If the priest who was married to an Israelite woman and died left children, both the slaves of usufruct property and the slaves of guaranteed investment may partake of teruma. The slaves of guaranteed investment are owned by the children, who are priests, and the slaves of usufruct property are owned by the woman, who partakes of teruma due to her children. If he left his wife pregnant and did not leave children, these slaves and those slaves may not partake of teruma. If he left children and left her pregnant, the slaves of usufruct property who belong to her partake of teruma just as she partakes due to her children. However, the slaves of guaranteed investment, who are inherited by the children, may not partake, due to the fetus’s share, as it too inherits them, as a fetus can disqualify one from partaking of teruma but it cannot enable one to partake. This is the statement of Rabbi Yosei.

Rabbi Yishmael, son of Rabbi Yosei, says in the name of his father: If the priest left behind a daughter, she enables the slaves to partake of teruma; however, a son does not enable them to partake. Rabbi Shimon ben Yohai says: If among the priest’s children there are males, the slaves partake of teruma. But if they are all females, they do not partake, lest the fetus be found to be a male, and daughters do not receive any of the inheritance where there is a son. The male fetus would be the sole inheritor, and it does not enable slaves to partake of teruma.

The Gemara asks: Why does Rabbi Shimon ben Yohai specifically explain that if the children are females, the slaves may not partake of teruma, lest the fetus be found to be a male? Derive the ruling that the slaves do not partake of teruma from the halakha that a female fetus also disqualifies its slaves from partaking of teruma. Since the priest has only daughters, they inherit from him, and the female fetus receives a share in the inheritance too. The Gemara answers: Rabbi Shimon ben Yohai stated one reason and another. One reason is that a female also disqualifies its slaves from partaking of teruma, and another reason is lest the fetus be found to be a male, and daughters have no share in the inheritance at all in a place where there is a son.
Minor orphans who came to court to divide up their father’s property, etc.

With regard to sons, some of whom are adults and others of whom are minors, whose father dies and who want to divide up their father’s property so that the adults can receive their share, the court appoints a steward for the minors, who selects for them a suitable share. The minors cannot object, even when they come of age, as the division was performed under the auspices of the court. This ruling follows Rav Nahman’s own opinion. However, the Riva rules in accordance with Shmuel (Shukh; Rambam Sefer Mishpatim, Hilkhut Nahalot 10:4, Shulhan Arukh, Hoshen Mishpat 28a-b).

Steward [apotropos] – מנהל: From the Greek ἀποτρόπος, epotropos, meaning one with the power of attorney, a trustee. It generally refers to anyone who has the right to run the properties or affairs of another.

The Gemara asks with regard to the first clause of Rabbi Shimon’s statement, that if among the priest’s children there are males, the slaves may partake of teruma. But even though sons inherit from their father, isn’t there a fetus to be accounted for, as perhaps he too is a male, and therefore has a share in the inheritance? The Gemara answers: Rabbi Shimon holds that we are not concerned about the minority of cases. Only a minority of fetuses are male inheritors, as roughly half are female, and some are stillborn. Therefore, the majority of fetuses will not become male children. And if you wish, say that actually he holds that we are concerned about the minority. However, we make an arrangement for the slaves, in accordance with what Rav Nahman said that Shmuel said.

This is as Rav Nahman said that Shmuel said: With regard to minor orphans who came to court to divide up their father’s property, the court appoints for each of them a steward [apotropos], and he selects for them a fine share. When the orphans have grown up, they may object to the manner in which the property was divided and redistribute it. And Rav Nahman himself said that when they have grown up they may not object, as, if they may object, what good is the power of the court? Here too, an appointed steward selects a share of the inheritance on behalf of the fetus, and this share does not include any of the slaves. Therefore, the slaves may partake of teruma. However, if all of the children are females, this arrangement is impossible because if the fetus is a son all the property belongs to him.

Based on the use of Rav Nahman’s ruling to explain Rabbi Shimon’s opinion, the Gemara suggests: Let us say that Rav Nahman’s opinion is corresponding to one side of a dispute between tunna’im, as the Rabbis disagree with Rabbi Shimon. The Gemara rejects this suggestion: No; it is possible that everyone in the dispute accepts Rav Nahman’s ruling, and here they disagree only with regard to whether we are concerned about the minority, as previously suggested, in a case where the arrangement was not made.

It was taught in the previous clause of the baraita that Rabbi Yishmael, son of Rabbi Yosei, says in the name of his father: If the priest left behind a daughter, she enables the slaves to partake of teruma; however, a son does not enable them to partake of it. The Gemara asks: What is different about a son, who does not enable them to partake, due to the fetus’s share, as it owns a share of the property if it is a male? A daughter should not enable them to partake either, due to the fetus’s share.

We are not concerned about the minority – המיעוטא. With regard to Rabbi Yosei’s opinion toward less probable possibilities, the early commentators raise a contradiction between the Gemara here, which indicates that Rabbi Yosei is not concerned about the minority of cases, and other statements of his that indicate that he does take such possibilities into account.

Some commentators claim that what is indicated here should be seen as a local ruling and not a principle (Meiri). Others differentiate between uncertainties with regard to the present reality, as is the case here, and uncertainties with regard to the future (see Ramban; Tosafot HaRosh). A third opinion distinguishes between ritual and monetary matters, as the former field often demands stringency, whereas with regard to monetary matters there is no such thing as stringency, since a stringent ruling for one party is a lenient one for the other.

The court appoints for them a steward – מנהל. According to Rashi, the court appoints a private steward for each orphan to select his share. The Riva argues that there is no need to divide up the property between the minor orphans at this stage. Rather, a steward is appointed only if there are both minor and adult orphans, and the adults demand to receive their share. In that case, the court appoints one steward for all the minors. He selects a fine share for all of them, and when they come of age they can divide it up among themselves.

There is also a dispute as to whether a steward has the authority to select property according to its monetary value, or whether he may participate only in the distribution of identical items. The Gemara here apparently supports the opinion that lends him the authority to select property according to its monetary value, as the steward here selects land for the fetus in exchange for slaves. Those who hold otherwise explain that a steward should prefer land for the orphan that he is representing, as the value of slaves is likely to depreciate over time. Therefore, this is an exchange that he may perform (Nimukei Yosef).
Abaye said: Here we are dealing with a case of an inheritance of insufficient property that is enough only to sustain the daughters until they come of age. With regard to this case, the Sages instituted that the daughters receive their sustenance while the sons get nothing.\(^8\) This is also a case where there is a surviving son together with the daughter.

Therefore, no matter what, the slaves do not partake of teruma. If this fetus, with which she is pregnant, is a son, it is no better than this son who already exists.\(^9\) Just as the existing son does not inherit the insufficient property, the same applies to the male fetus. If it is a daughter, it does not yet receive a share of the inheritance. This can be explained: Why does the daughter partake of the inheritance? It is by virtue of a rabbinic ordinance. Therefore, as long as the fetus has not emerged into the atmosphere of the world, the Sages did not establish that it should receive the inheritance. Consequently, the slaves partake of teruma by virtue of the existing daughter, as only she inherits them.

The Gemara asks: In what manner did you establish the baraita? You established it as referring to insufficient property. However, say the latter clause of the baraita: Lest the fetus be found to be a male, and daughters do not receive any of the inheritance where there is a son. Yet according to Abaye’s explanation, on the contrary, the insufficient property is the daughters’, whether or not there are any sons. The Gemara answers: In the latter clause we have come to a different case, in which there is sufficient property.

The Gemara raises another objection to Abaye’s explanation: Does an inheritance of insufficient property belong to the daughters? Didn’t Rabbi Asi say that Rabbi Yoḥanan said: If the male orphans proceeded to sell the insufficient property,\(^7\) although by rabbinic ordinance it is designated for the daughters’ sustenance, what they sold was sold. Apparently, the Sages did not expropriate the properties from the male inheritors, but merely designated them for the daughters’ sustenance. How, then, can the sons’ ownership be disregarded with regard to the slaves’ partaking of teruma?

Rather, what is the meaning of the word daughter in the context of the ruling that is taught by Rabbi Yishmael? It means female and is referring to the mother of the fetus. She enables her slaves of usufruct property to partake of teruma, as her husband’s heirs have no share in them, whereas the son does not enable the slaves guaranteed investment to partake, due to the fetus’s share. The Gemara asks: If so, this is the same as Rabbi Yosei’s statement in the first clause. What was added by Rabbi Yishmael? The Gemara answers: Indeed, the entire baraita is taught by Rabbi Yishmael, son of Rabbi Yosei. There are not conflicting versions of Rabbi Yosei’s opinion. Rather, Rabbi Yishmael is clarifying that he is the author of that baraita.

**MISHNA**

With regard to the fetus\(^8\) of a divorcée or a widow whose husband left her pregnant; and a man whose married brother died childless [yavam];\(^9\) and betrothal; and a married deaf-mute;\(^8\) and a nine-year-and-one-day-old boy\(^8\) who engaged in intercourse with a woman; if any of these men are Israelites and the woman is the daughter of a priest, they disqualify her from partaking of teruma. But if she is an Israelite and they are priests, they do not enable\(^8\) her to partake of teruma.

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**NOTES**

8 According to Torah law, if a man passes away, leaving sons and daughters, only the males inherit from him. Daughters inherit from him only if there are no sons. However, the Sages instituted as one of the stipulations of a marriage contract that the daughters of the married couple receive their sustenance from their father’s property until they come of age or marry. A marriage contract is essentially a promissory note, this stipulation places a lien on the inheritance. Consequently, the daughters’ right to the property takes precedence over the sons’, to the extent that if the property is meager and is sufficient only for the daughters’ sustenance, the sons get nothing, not even their own sustenance. Nevertheless, since the sons are the inheritors, if they unlawfully sell the property, the sale is valid.

9 It is no better than this son who already exists. However, the Rashba asks how it is possible that a rabbinical ordinance overrules the Torah law that the slaves do not partake of teruma. He leaves this difficulty unresolved.

10 In the Jerusalem Talmud, it is answered that according to Rabbi Yosei, by Torah law there is no obligation to separate teruma and tithes after the destruction of the First Temple; rather, the obligation is by rabbinic law.

**HALAKHA**

An inheritance of insufficient property goes to the daughters – לַבָּנוֹת. If a person died and left property, his daughters receive their sustenance from the estate until they come of age, and the rest is divided up among the sons. If the inheritance is sufficient only for the daughters’ sustenance, they receive their sustenance from the property until they come of age or get betrothed, even if the sons are forced to beg for their livelihood (Rambam Sefer Nashim, Hilkhot Terumot 19:19; Shulhan Arukh, Even HaEzer 112:14).

If the male orphans proceeded to sell the insufficient property, etc. – וְלֹא...וְלֹא...וְעָדִיף. If the father left only a meager inheritance and the sons proceeded to sell it, their sale is valid (Rambam Sefer Nashim, Hilkhot Terumot 19:17; Shulhan Arukh, Even HaEzer 112:14).

A fetus disqualifies but does not enable to partake – פּוֹסֵל. An Israelite woman who is pregnant from a priest may not eat teruma due to the fetus, and the daughter of a priest who is pregnant from an Israelite does not partake of teruma either, even if she has no other child from him (Rambam Sefer Zeraim, Hilkhot Terumot 8:2).

The fetus and a...yavam, etc. – בֵּן...וּמוּﬠָט. With regard to a fetus, a yavam, betrothal, a married deaf-mute, and a nine-year-and-one-day-old boy who engaged in intercourse with a woman, if any of these men are Israelites and the woman is the daughter of a priest, they disqualify her from partaking of teruma. If they are priests and she is an Israelite, they do not enable her to partake of teruma (Rambam Sefer Zeraim, Hilkhot Terumot 8:1).

**BACKGROUND**

A nine-year-and-one-day-old boy – בֵּן כְּשִׁים יָמִים וּמְיָמִין. Although most boys do not experience a significant bodily change at the age of nine, the development of the testicles begins to accelerate at around this time, with the attending increase in the capacity for intercourse. Though it roughly corresponds to the average age of this development, this specification, like other specific ages the Sages established for different levels of maturity, is somewhat arbitrary.
There is uncertainty as to whether he is nine years and one day old, etc. – 452ב. The commentaries point out that this cannot be referring to a case where it is currently uncertain whether or not the boy is nine years old, as in such a case the court would have had to follow his prescriptive physical status, i.e., that of a minor under the age of nine. Rather, the reference is apparently to a case where he is currently at least nine years old, and the court must determine in retrospect what his age was at the time of the incident. Since he no longer has the prescriptive status of a minor under the age of nine, his status at the time of the incident is deemed uncertain (see Maharshei, Rabbi Ovadia MiBartenura, and Tosafot Yom Tov).

If the house fell, etc. – 452ב. This clause appears unrelated to the rest of the mishna. One suggestion is that since the mishna includes cases of uncertainty in which the ruling is stringent, it adds this similar case as well (Rd; Rabbi Avraham min HaHat). In the Jerusalem Talmud, it is explained that the previous case of uncertainty, i.e., a boy whose adulthood is in doubt, is taught with regard to both the matter discussed in the first clause of the mishna, i.e., the partaking of teruma, and the rival wife’s issue of her levirate bond, which is discussed in the latter clause. If there is uncertainty as to whether the first wife was betrothed before or after the husband reached adulthood, then after the husband’s death the rival wife performs halitza and does not enter into levirate marriage. Therefore, the mishna cites this clause as well.

And this woman is his brother’s acquisition – 452ב. The early commentaries disagree whether the halakha that the yavam of a priest may not partake of teruma is Torah law (Tosafot Yeshanim) or rabbinic law (Tosafot, citing Rabbeinu Tam). According to the latter opinion, the verse that is cited is not a proper derivation from the Torah, but rather a support of the rabbinic law.

Likewise, in the case of a boy with regard to whom there is uncertainty as to whether he is nine years and one day old and uncertainty whether he is not, who engaged in intercourse with a woman; and in the case of a boy who betrothed a woman, with regard to whom there is uncertainty as to whether he has grown two pubic hairs and is considered an adult and uncertainty whether he has not grown, they too can disqualify the woman from partaking of teruma and cannot enable her to partake, as in the previous cases.

If the house fell upon a man and upon his brother’s daughter, to whom he was married, and it is unknown which of them died first, her rival wife performs halitza and does not enter into levirate marriage. Entering into levirate marriage is not possible, as, if the wife died after her husband, the surviving wife would be rendered the rival wife of a forbidden relative, since the yavam is the father of the wife who died. This status prevents the creation of a levirate bond between him and the surviving wife as well. On the other hand, halitza is necessary in case the wife died before her husband, thereby allowing the creation of a levirate bond between her rival wife and her father, the yavam.

GEMARA It is taught in the mishna that the fetus disqualifies its mother from partaking of teruma and does not enable her to do so. The Gemara explains: If she is the daughter of a priest married to an Israelite, and her husband died and left her pregnant, the fetus disqualifies her from partaking of teruma, as it is stated: “But if a priest’s daughter be a widow, or divorced, and have no child, and is returned to her father’s house, as in her youth, she may eat of her father’s bread” (Leviticus 22:13). The phrase “as in her youth” excludes a pregnant woman, whose body has changed from her youth. If she is an Israelite woman married to a priest, the fetus does not enable her to partake, as one who was born enables others to partake of teruma, whereas one who is not yet born does not enable others to partake.

It is taught in the mishna that the same principle applies to a yavam. The Gemara explains: If she is the daughter of a priest who has a levirate bond to an Israelite, he disqualifies her, as it is stated in the verse cited above: “And is returned to her father’s house, which excludes a widow waiting for her yavam, who has not returned to her father’s house, as a levirate bond was created with her yavam. If she is an Israelite woman with a levirate bond to a priest, he does not enable her to partake of teruma, as the Merciful One states in the Torah: “The purchase of his money, he may eat of it” (Leviticus 22:11), and this woman is his brother’s acquisition.” The bond with her yavam ensued from his late brother’s marriage to her, not through any action of his own.

The mishna teaches that the same principle also applies to betrothal. The Gemara explains: If she is the daughter of a priest betrothed to an Israelite, he disqualifies her,

HALAKHA

Uncertainty as to whether he is nine years and one day old, etc. – 452ב. In the case of a boy with regard to whom there is uncertainty as to whether or not he is nine years old who engaged in intercourse with a woman, and similarly in the case of one who married a woman and with regard to whom there is uncertainty as to whether or not he has grown two pubic hairs, they disqualify the woman from partaking of teruma and cannot enable her to partake of it (Rambam Sefer Zeraim, Hilkha Terumot 8:7).

If a house fell upon a man and upon his brother’s daughter – 452ב. If a man had two wives, one who was related to the yavam and the other who was not, and the man and the wife related to the yavam both died and it is unknown which of them died first, the rival wife performs halitza and not levirate marriage (Shulhan Arukh, Even HaZer 173:8).

A yavam disqualifies and does not enable to partake of teruma – 452ב. An Israelite widow waiting for her yavam, who is a priest, does not partake of teruma; despite their bond. The daughter of a priest waiting for an Israelite yavam does not partake of teruma either, due to their bond (Rambam Sefer Zeraim, Hilkha Terumot 8:5).