HALAKHA

If a wife vowed: Let my hands be consecrated to her earnings, or if she vowed that her husband may not benefit from her earnings, the vow does not take effect, as her hands belong to him. Nevertheless, he should nullify the vow, because if he later divorced her, the vow would take effect retroactively and he would be prohibited to remarry her, as he cannot possibly avoid any benefit from any action she performs. The halakha is not in accordance with the opinions of either the first tanna or Rabbi Akiva, but with the ruling of Rabbi Yohanan ben Nuni (Ketubot 59a). Furthermore, the rationale for this halakha is not as stated in the Gemara here. Rather, it is based on the principle that consecration and vows release any previous claim on the property, and they also apply to an entity not yet in the world (Bet Yosef). Some authorities maintain that this halakha refers only to a case where she said: Let my hands be consecrated to their Maker, as Rav, as stated here (Rema, citing Tur; Rambam Sefer HaHafetz, Hilkat Nedomim 12:10, Shulhan Arukh, Yoreh De'ah 294:71, Shulhan Arukh, Even HaEzer 2:2).

NOTES

He should nullify the vow lest she exceed – ḥakam: ḥakam. The commentators discuss how the husband can nullify the vow in this case, in light of the principle that a husband can nullify only those of his wife's vows that pertain to him personally (Tosafot). They answer that because the vow will apply to anything additional she earns, and this extra portion is not always clearly defined, this vow is likely to complicate their relationship, and therefore he is permitted to nullify it. Alternatively, by sanctifying her hands to God, it is as though a certain measure of sanctity applies to her, which means she must be very careful with the use of her own hands. Consequently, the vow entails affliction, and a husband is permitted to nullify a vow of affliction (Tosafot).

Rav Huna agrees with the opinion of Rav, etc. – ḥakam: Rabbi. This series of opinions of various Sages, typically from different generations, is as the case here, is called a ḥakam, an opinion. The tradition of the ġelamim is that the halakha is not in accordance with a ḥakam. In other words, whenever the Gemara lists an opinion in the form of a chain, it is indicating that the halakha is otherwise. Rabeinu Hananel explains similarly. The standard reason for this general principle is that when the Gemara provides an exhaustive list of all the Sages who maintain a particular opinion this indicates that those who hold the reverse opinion are too many to enumerate, and as is well known, the halakha is in accordance with the majority opinion. A person can transfer to another an entity that has not yet come into the world – ḥakam: ḥakam. According to this opinion, the entity is considered as though it already existed. Consequently, it may be acquired in one of two ways: Either by a full acquisition at the moment of the declaration, or by the one having the one who transfers the property establish a future time when the transaction will occur. It follows that according to the opinion of Rav Huna, one who sells the fruit of a palm tree determines that the acquisition will take place when the fruit grows, and he can therefore retract until that moment in time. Conversely, Rav implements the other method and states that the man sells the field immediately, despite the fact that it is not yet in his possession (Yosef Lekah).

If a wife said: Konam, i.e., this is forbidden like consecrated property, in reference to anything that I will prepare for your mouth, that is, the payment for any work I perform shall be forbidden to you, he is not required to nullify the vow, as it is automatically void, since she was under a prior obligation to give him her earnings as part of their marriage agreement.

Rabbi Akiva says: He should nullify the vow, lest she exceed more than is fitting for him. A husband is entitled only to a certain sum from his wife's earnings (see Ketubot 64b). If he earns only the sum of money to which he is entitled, the vow certainly does not go into effect. However, she might earn more, in which case the vow would apply with regard to the additional amount. To avoid this scenario, it is preferable for the husband to nullify the vow. This shows that according to the opinion of Rabbi Akiva a vow applies even with regard to an entity that has not yet come into the world. In this case, the entity is the earnings for work she has yet to perform.

The Gemara refutes this proof: But wasn't it stated with regard to that mishana that Rav Huna, son of Rav Yehoshua, said: This mishana is not referring to a woman who renders the earnings for work she has yet to perform forbidden, but to a wife who says: Let my hands be consecrated to their Maker. In other words, she declares that it is as though her hands were sanctified, which means that anything produced by them is forbidden. Since these hands are in the world, she has not attempted to acquire something that does not exist. Therefore, there is no proof from here with regard to Rabbi Akiva's opinion on that issue.

 PERSONALITIES

Rabbi Yannai – ḥakam: Rabbi Yannai, who was a student of Rabbi Yehuda HaNasi, was a member of the first generation of amoraim in Eretz Yisrael. He lived in Akbara in the Upper Galilee, where he established an academy and taught Torah. Rabbi Yehuda HaNasi, with whom Rabbi Yannai studied and whose son married his daughter, predicted that he would become the leader of the Jewish community. According to the Gemara, Rabbi Yannai was a very wealthy man who owned four hundred vineyards. His students include Rabbi Yohanan ben Nuni and Reish Lakish, both of whom quote his teachings throughout the Talmud.

Rabbi Yehuda HaNasi – ḥakam: Rabbi Yehuda ben Abba, from the city of Kafr in Babylonia, was among the last of the amoraim. He descended from a family of distinguished lineage that traced its ancestry back to King David and produced many Sages. He was recognized as a leading Torah scholar even when he lived in Babylonia. Upon moving to Eretz Yisrael with his family, he became a disciple-colleague of Rabbi Yehuda HaNasi, with whom he maintained a very close relationship. Some Sages praised him in exaggerated terms by saying that the Torah was almost forgotten until he came from Babylonia and reestablished it. Although Rabbi Yehuda HaNasi initially apparently received financial support from the house of the Nasi, he ultimately became a successful merchant in international business ventures, particularly the silk trade. His twin daughters, Pazi and Tavi, became the matriarchs of significant families of Torah scholars. He also had twin sons, Yehuda, the son-in-law of Rabbi Yannai, and Hizkiya. Both were among the leading Torah scholars in the transitional generation between amoraim and amoraim, and they replaced him at the head of his academy in the city of his residence, Tiberias. All the students of Rabbi Yehuda HaNasi were his colleagues, and he was also close to the tanna Rabbi Shimon ben Halafta. The younger students of Rabbi Yehuda HaNasi, namely Rabbi Hanina, Rabbi Oshaya, Rabbi Yannai, and others, studied Torah from him and to a certain extent were his students as well. His brothers' sons, Rabbi bar Hana, and above all, the great amorain Rav, were his primary disciples. He also appears as a central character in the Zohar. Rabbi Yehuda was buried in Tiberias and his two sons were later buried alongside him.
The Gemara specifies the particular contexts in which the aforementioned opinions, all of which concur, were issued: Rav Huna, what is the source for his ruling? As it was stated: With regard to one who sells the fruit of a palm tree to another before the fruit has grown, Rav Huna said: Until the fruit has come into the world, he can retract the sale, as it has yet to take effect. However, after the fruit has come into the world, he can no longer retract, despite the fact the fruit had not yet sprouted when he made the acquisition.

And Rav Nahman said: Even after they have come into the world he can retract, as the acquisition was defective from the outset. He maintains that one cannot transfer ownership of an entity that does not yet exist. Rav Nahman said: Even so, I concede that if the buyer seizes the fruit and consumes it, the court does not remove them from him, because despite the faulty acquisition he was promised a sale of fruit.

The Gemara cites the proof that Rav also accepts the ruling that one can acquire an entity that does not yet exist, as Rav Huna said that Rav said: With regard to one who says to another: This field that I am about to buy, when I buy it, it is acquired by you from now on, the addressee has acquired the field, despite the fact that it did not belong to the speaker at the time of his statement.

Rabbi Yannai also agrees with the opinion of Rabbi Hyya, as demonstrated by the following episode. Rabbi Yannai had a sharecropper working his land who would bring him a basket of fruit every Shabbat eve. One day he was late and did not come. Rabbi Yannai took title from the fruit in his house for the fruit he expected to receive. He did this in case the fruit arrived near the beginning of Shabbat, as one may not title on Shabbat. However, Rabbi Yannai was uncertain whether it is indeed possible to separate tithes for an entity that has not yet reached one’s possession. He therefore came before Rabbi Hyya to inquire whether his separation of tithes was effective.

Rabbi Hyya said to him: You acted well, as it is taught in a baraita, with regard to a verse that discusses tithes: “And you shall eat before the Lord your God… in order that you should learn to fear the Lord your God all the days” (Deuteronomy 14:23). With regard to the emphasis of “all,” these are Shabbatot and Festivals. With regard to what halakha was this stated? If we say it was stated in regard to the issue of tithing and eating on Shabbat, this halakha is redundant. Was a verse necessary to permit the prohibition against moving objects, which applies by rabbinic law? Since the prohibition against moving objects is from the Sages, the Torah is certainly not referring to this halakha.

### NOTES

Some commentators maintain that Rabbi Hyya’s proof does not refer to the permission to title on Shabbat itself, or even to the ability to title an entity not yet in the world. Rather, he is referring to the issue of whether one may separate tithes for produce that is not adjacent to the title itself in a situation where he does not need the produce for the performance of a mitzva, either to prevent a more serious transgression than separating tithes for non-adjacent produce, or for the delight of Shabbat (Tosafot; Tosafot Yehoshai).

Others claim that the prohibition against separating tithes for produce that is not adjacent to the title itself is a decree of the Sages. According to this opinion, the verse is simply teaching the mitzva of the delight of Shabbat, i.e., that one must rejoice on Shabbat through food and drink, in this case by ensuring that one has tithed produce to eat. Admittedly, the accepted source for this mitzva is from the Prophets (Isaiah 58:13), but it actually stems from the Torah itself. As for the proof for the opinions of Rabbi Yannai and Rabbi Hyya, it does not result from the issue they discussed. On the contrary, the very fact that they were not at all concerned that the fruit might be considered an entity not yet in the world proves that in their opinion one can acquire something not yet in his possession.

Yet other commentators maintain that these tithes were not separated here on behalf of something that was not adjacent, as Rabbi Yannai and Rabbi Hyya are of the opinion that the title of an entity not yet in the world takes effect only when it comes into existence, and therefore it is considered separated when the fruit grows, as though the separation occurred at that very moment in time (Ramban). A similar explanation applies to Rabbi Eleazar ben Yarak’s statement later in the Gemara (see Ritva).
You shall not deliver – מְחוּבָּרִים. Some commentaries explain that according to the Rabbis if a master guarantees before buying a slave that he will free him, this is not binding. Consequently, if the slave ran away he may be restored to his master without transgressing the prohibition of: “You shall not deliver” as that prohibition applies only to a promise issued at the time of purchase (Meir).

Detached and attached fruit – פֵּירוֹת. The Gemara indicates that attached fruit cannot be separated as teruma for attached fruit, unless the latter is already ripe and ready to be plucked at the time of the stipulation, as it is accepted that the halakha is not in accordance with the opinion that one can acquire an entity not yet in the world. However, the early authorities raise the difficulty that there is a principle that statements of Rabbi Eliezer ben Yaakov are measured and clean, which means that the halakha is always in accordance with his rulings. Consequently, they maintain that although in general the halakha is that if the attached fruit had not developed a third of their growth at the time of the separation, the separation of teruma is of no effect, Rabbi Eliezer ben Yaakov’s statement can be explained as referring to produce that will be used as fodder. This produce does not have to be ripe for teruma to be set aside for it. Consequently, the teruma is valid from the moment he separates it, as the owner can detach this produce at any time (Rabbeinu Nissim on Kiddushin).

Rather, is it not referring to a case like this, of one who tithed an entity that was not yet in the world, in honor of Shabbat? Rabbi Yannai said to Rabbi Hiyya: But they read before me in a dream these two words: Bruised reed. What, is it not the case that they said to me as follows: “Behold you trust upon the staff of this bruised reed” (11 Kings 18:21)? In other words, you rely on an unsubstantiated idea.

With regard to Rabbi Yehuda HaNasi, his opinion is as it is taught in a baraita: The verse states: “You shall not deliver a slave to his master” (Deuteronomy 21:16). Rabbi Yehuda HaNasi says: The verse is speaking of one who buys a slave on the condition to free him. This owner may not keep his acquisition as a slave. The Gemara clarifies: What are the circumstances? Rav Nahman bar Yitzbak said: It is referring to a case where one wrote to a slave in the document of acquisition: When I acquire you as a slave, you are acquired by yourself from now. In this case, the buyer transfers ownership of an entity not yet in the world, as the slave did not yet belong to him.

Rabbi Meir, his opinion is as we learned in a mishna (Bava Metzia 16b): One who says to a woman: You are hereby betrothed to me after I convert; after you convert; after I am freed; after you are freed; after your husband dies; after your sister dies; after your yavam performs halitza with you, she is not betrothed. Rabbi Meir says she is betrothed, as the acquisition of a betrothal applies even to an entity not yet in the world, in this case, a woman available for betrothal.

Rabbi Eliezer ben Yaakov, his opinion is as it is taught in a baraita: Moreover, Rabbi Eliezer ben Yaakov said that even if one said: The detached fruit of this garden bed shall be teruma for the currently attached fruit of this garden bed when its fruit will be detached, or if he said: The attached fruit of this garden bed shall be teruma for the currently detached fruit of this garden bed when the fruit reach a third of their growth, i.e., a third of their ripeness, and are detached, and if they actually reached a third and were detached, then his words are upheld and the teruma takes effect, despite the fact that the stipulation was issued before the attached fruit had ripened and before the obligation of teruma applied to the detached fruit. This halakha shows that one can acquire an entity not yet in the world; in this case he acquires the fruit by the sanctity of teruma to it.
Rabbi Akiva, his opinion is as we learned in the aforementioned mishna, that if a wife says: Konam that I will prepare for your mouth, the husband is not required to nullify the vow. Rabbi Akiva says: He should nullify the vow, lest she exceed more than is fitting for him, as he maintains that the vow applies even to entities not yet in the world.

§ They raised a dilemma before Rav Sheshet: In a case of one witness who testifies that a woman’s husband is dead, with regard to a yevama, what is the halakha? Can the court rely on this witness? The Gemara explains the sides of the dilemma: Is the reason that the testimony of one witness in the case of a missing husband is accepted because one does not lie about something that will be discovered, and here, too, he will not lie, in case the husband later arrives? Or, perhaps the reason for the eligibility of one witness is because the woman herself is exacting in her investigation before she marries again. But here, since she sometimes loves the yavam, as she already knew him beforehand, she is not exacting in her investigation before she marries again.

Rav Sheshet said to him: You learned the answer to this question in the mishna: If they said to her: Your child died and afterward your husband died, and she entered into levirate marriage, and afterward they said to her that the matters were reversed, she must leave her husband, and the first child and the last one are each a manzer. Rav Sheshet analyzes this case: What are the circumstances? If we say they are two and two, i.e., two witnesses came first and said one account, followed by two other witnesses who claimed the reverse, what did you see to make you rely on these second witnesses when you can equally rely on the first pair? The first witnesses do not lose their credibility merely due to the testimony of the second pair, so why should she have to leave the yavam?

And furthermore, why should the child be a definite manzer? At worst he is an individual whose status as a manzer is uncertain, as there are two conflicting sets of testimonies. And if you would say that the tanna of the mishna was not precise in his failure to distinguish between a definite manzer and one of uncertain status, but from the fact that it teaches in the latter clause of the mishna: The first is a manzer and the last is not a manzer, one can learn from here that the mishna was taught specifically in this manner, i.e., the manzer the tanna referred to is a definite manzer.

NOTES

One witness with regard to a yevama – דא קרא כדברכת: This problem is also raised in the parallel discussion in the Jerusalem Talmud, where it is apparently left unresolved (see Peri Mohe and Korban Hadla). The Gemara there focuses on a question discussed later: Is the statement: They said to her, a general phrase that includes a single witness, or is it a precise expression that refers specifically to two witnesses?

Since she sometimes loves the yavam – יבש יזרוח ואמר משה קי זהKay: Admittedly, the hypothetical possibility that she might love someone else applies to any wife who says her husband is dead, but this case is different, as she is automatically tied to a particular man upon her husband’s death (Rid). Others add that in general it is likely that close feelings will develop between a woman and her brother-in-law, which might lead her to love him (Rashba). The opposite scenario is also possible, that their family ties will lead her to a particularly strong hatred of him, as stated in the Gemara later. Yet other commentators cite an alternative version of the text, which is not mentioned by any of the other early authorities. Sometimes she hates him. The reference is to the husband, i.e., it is possible that her hatred for him will lead her to prefer any other man (Meir).
One witness for a yevama – The court accepts the testimony of one witness who says that a woman’s husband has died, and she may enter into levirate marriage on that basis, as proven by Rav Sheshet in the first version of the discussion. Likewise, if one witness states that a yevama has died he is deemed credible, which means that the yevama is free to marry anyone she chooses. The testimony is fully accepted, like the testimony of one who informed a woman that her husband is dead. Although the Gemara provides refutations of Rav Sheshet and Rava’s answer, these arguments are not accepted (Rif). Others state that the Rosh rules that one witness cannot permit a yevama, in accordance with the refutation of the Gemara (Vilna Gaon). Apparently, all concede that the court should be lenient in exigent circumstances, when all other investigations have been fruitless (Bekh Shmuel; Rambam Sefer Nashim; Hilkei Yibbum VaHalitza 3:5; Shuham Arukh, Even HaEzer 158:3).

Let the dilemma not be raised –琎(ih) (and the reason for the halakha is that two people came and contradicted him, as the testimony of two witnesses certainly overrides that of a single witness! It may be inferred from this that if it were not so, the lone witness is deemed credible. This shows that the court will accept the testimony of one witness even to allow a woman to enter into levirate marriage.)

The Gemara provides an alternative version of the discussion. And some Sages maintain another version that says: Let the dilemma not be raised, as even a wife herself is also deemed credible〈when she says her husband is dead, as we learned in a mishna (114b): With regard to a woman who said: My husband is dead, she may marry. Likewise, if she claimed: My husband is dead, she should enter into levirate marriage. If so, one witness is certainly deemed credible when he says her husband has died. The case where you could raise the dilemma is with regard to permitting a yevama to all other men, if a witness claims that the yevanim is dead.

In this case as well, the Gemara clarifies the sides of this dilemma: What is the reason that one witness is deemed credible? Is it because one does not lie about something that will be discovered, and therefore here too he would not lie? Or, perhaps the reason for accepting the testimony of one witness is because the wife is exacting in her investigation before she marries again, but this yevama is not exacting in her investigation before she marries again. Why not? Because she is not exacting in her investigation. This expresses the Gemara wanted to address a more problematic case. When a woman testifies that her husband is dead, she renders herself vulnerable to a prohibition that involves karrei, i.e., adultery, whereas one who permits herself to other men besides the yevanim is merely subject to violating a regular prohibition, of marrying someone other than her yevanim. Therefore, the question arises as to whether the court simply relies on the consideration that one will not lie about a matter that is likely to be revealed, or whether it also takes into account the severity of the prohibition that she is likely transgress (see Meriri and Ritva).

Let the dilemma not be raised –琎(ih) This apparently simple observation led the early and later commentators to raise several questions, for which they offer various resolutions. The basic problem is that although the mishna does provide an answer to this dilemma, the resolution applies only if it was clear that the woman had no children and the testimony refers to the husband’s death alone. However, a more general question arises: Is one witness deemed credible when he testifies that her child died before her husband, and is she therefore obligated in levirate marriage? After all, the mishna unambiguously indicates that she herself is not deemed credible in this regard.

One suggestion is that this problem indeed requires clarification in its own right, but Rav Sheshet dealt with the particular case that was raised before him, that of a woman who is presumed to be childless (Tosafot). Some point out that this interpretation does not fit the wording of the Gemara, as the phrase: Let the dilemma not be raised, is a general expression that includes all relevant cases (Tosafot Yeshanim). Others suggest the following interpretation: If a childless wife herself testifies that her husband is dead, it is accepted that there is no concern that she might be lying due to her affection for the yevanim. It follows a fortiori that one witness who has no apparent interest in the outcome is deemed credible in this case (Razavadi).

This explanation is rejected by the Ramban, who maintains that the ruling in the case of one witness when there are children remains unresolved. Rather, the Gemara wanted to address a more problematic case. When a woman testifies that her husband is dead, she renders herself vulnerable to a prohibition that involves karrei, i.e., adultery, whereas one who permits herself to other men besides the yevanim is merely subject to violating a regular prohibition, of marrying someone other than her yevanim. Therefore, the question arises as to whether the court simply relies on the consideration that one will not lie about a matter that is likely to be revealed, or whether it also takes into account the severity of the prohibition that she is likely transgress (see Meriri and Ritva).

As even she is also deemed credible –琎(ih) Some commentators claim that the two versions of this discussion differ with regard to the credibility of one witness as opposed to the woman herself (Tosafot). According to the first version, a single witness is more credible than the wife, while the second version maintains the reverse. It is easy to understand why the court should prefer the testimony of one witness, as he has no personal stake in the matter. As for why the court should trust the woman more, some explain that it is assumed that a wife would not dare to fabricate a claim on her own that her husband is dead, due to the consequences if her claim is later proven false. However, if her contention is supported by a witness she grows bolder and is less concerned about the potential negative repercussions of a false report (Tosafot Yeshanim).