

One who sells the fruit of a palm tree to another – **המוכר פירות דקל לחברו**: One who sells next year's fruit of his palm tree can retract even after the fruit has grown. However, if the purchaser seizes the fruit, he is not compelled to return them. As usual, the *halakha* is in accordance with the opinion of Rav Nahman rather than that of Rav Huna with regard to monetary matters (*Haggahot Maimoniyot*; *Rambam Sefer Kinyan, Hilkhot Mekhira* 22:2; *Shulḥan Arukh, Hoshen Mishpat* 209:4).

One who says...this field that I am about to buy, etc. – **האומר..שדה זו שאני לוקח וכו'**: One cannot transfer ownership of an article that is not yet in his possession, as it is equivalent to an entity not yet in the world. For example, if one said to another: When I buy this field it will belong to you, his words are of no effect. The *halakha* is not in accordance with the opinion of Rav, as his principle is rejected (*Rambam Sefer Kinyan, Hilkhot Mekhira* 22:2; *Shulḥan Arukh, Hoshen Mishpat* 211:1).

LANGUAGE

Basket [*kanta*] – **כַּנְתָּא**: Some say that this is from the Greek *κανήτιον*, *kanètion*, meaning a small basket made from reeds. Alternatively, the original root of this word may be the Semitic *kaneh*, reed.

רב הונא מאי היא – דאיתמר: המוכר פירות דקל לחברו, אומר רב הונא: עד שלא באו לעולם יכול לחזור בו, משבאו לעולם אין יכול לחזור בו.

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^h 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.**

ורב נחמן אומר: אף משבאו לעולם יכול לחזור בו. אומר רב נחמן: מודינא דאי שמיט ואכיל לא מפקינן מיניה.

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.**

רב – דאמר רב הונא אומר רב: האומר לחברו "שדה זו שאני לוקח, לכשאקנה קנייה לך מעבשיו" – קנה.

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,^h when I buy it, it is acquired by you from now, the addressee has acquired the field, despite the fact that it did not belong to the speaker at the time of his statement.**

רבי ינאי ברבי חייא, דרבי ינאי היה ליה אריסא דהיה מייתי ליה פנתא דפירי כל מעלי שבתא. ההוא יומא נגה ליה ולא אתא. שקל עשר מפירי דביתייהו עליהו, אתא לקמיה דרבי חייא.

Rabbi Yannai also agrees with the opinion of Rabbi Hiyya, as demonstrated by the following episode:^h **Rabbi Yannai had a sharecropper working his land who would bring him a basket [*kanta*]^l of fruit every Shabbat eve. One day he was late and did not come. Rabbi Yannai took tithe 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 tithe 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 Hiyya to inquire whether his separation of tithes was effective.**

אמר ליה: שפיר עבדת, דתניא: "למען תלמד ליראה את ה' אלהיך כל הימים" – אלו שבתות וימים טובים. למאי הלכתא? אילימא לעשורי ומיכל – איצטרך קרא למישרי טלטול דרבנן?

Rabbi Hiyya 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

ההוכחה בדברי רבי ינאי – The proof from the case of Rabbi Yannai – Some commentaries maintain that Rabbi Hiyya's proof does not refer to the permission to tithe on Shabbat itself, or even to the ability to tithe 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 tithe 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 Yeshanim*).

Others claim that the prohibition against separating tithes for produce that is not adjacent to the tithe 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 Hiyya, 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 commentaries maintain that these tithes were not separated here on behalf of something that was not adjacent, as Rabbi Yannai and Rabbi Hiyya are of the opinion that the tithe 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 (Rambam). A similar explanation applies to Rabbi Eliezer ben Ya'akov's statement later in the Gemara (see Ritva).

NOTES

You shall not deliver – לא תסגיר: 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 (Meiri).

Detached and attached fruit – פירות תלושים ומוחברים: 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 Ya’akov 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 Ya’akov’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*).

אָלָא לָאו כִּי הָאֵי גְוֹנָא. אָמַר לִיה: וְהָא אֶקְרִינָן בְּחַלְמָא: “קְנָה רְצוּץ”, מָאֵי לָאו הֲכִי קְאָמְרִי לִי “הִנֵּה בְּטַחְתָּ לָךְ עַל מְשַׁעֲנַת הַקְּנָה הַרְצוּץ הַזֶּה?”

לֹא. הֲכִי קְאָמְרִי לָךְ: “קְנָה רְצוּץ לֹא יִשְׁבוֹר וּפְשָׁתָהּ כִּהָא לֹא יִכְבָּנָה.”

רַבִּי – דְּתַנְיָא: “לֹא תִסְגִּיר עֶבֶד אֶל אֲדוֹנָיו” רַבִּי אָמַר: בְּלוֹקֵחַ עֶבֶד עַל מְנַת לְשַׁחְרוֹו הַפְּתוּב מְדַבֵּר. הֲכִי דְמִי? אָמַר רַב נַחֲמָן בַּר יִצְחָק דְּכְתַב לִיה: “לְכַשְׁאֶקְחָךְ הָרִי עֲצֻמְךָ קִנְיִ לָךְ מֵעַבְשָׁיו.”

רַבִּי מֵאִיר – דְּתַנְיָא: הָאֹמֵר לְאִשָּׁה “הֲרִי אֶתְּ מְקוּדָשָׁתְּ לִי לְאַחַר שְׂאֵתְגִייר”, “לְאַחַר שְׂתִתְגִייר”, “לְאַחַר שְׂאֵתְחָרֵר”, “לְאַחַר שְׂתִתְחָרֵר”, “לְאַחַר שְׂיָמוּת בַּעֲלִיךְ”, “לְאַחַר שְׂתָמוּת אַחֲוֵתֵךְ”, “לְאַחַר שְׂיַחֲלוּץ לָךְ יְבָמִיךְ” – אֵינָהּ מְקוּדָשָׁת. רַבִּי מֵאִיר אָמַר: מְקוּדָשָׁת.

רַבִּי אֶלְיעֶזֶר בֶּן יַעֲקֹב – דְּתַנְיָא: יֵתֵר עַל בֶּן אָמַר רַבִּי אֶלְיעֶזֶר בֶּן יַעֲקֹב: אֶפִּילוּ אִם אָמַר “פִּירוֹת עֲרוּגָה זוֹ תְלוּשִׁים יְהוּ תְרוּמָה עַל פִּירוֹת עֲרוּגָה מְחוּבְרִים” אוֹ “פִּירוֹת עֲרוּגָה מְחוּבְרִים עַל פִּירוֹת זוֹ תְלוּשִׁין לְכַשְׁבִּיאוּ שְׁלִישׁ וְיִתְלָשׁוּ” וְהִבִּיאוּ שְׁלִישׁ וְנִתְלָשׁוּ – דְּבִרְיוֹ קָיָיִמִין.

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” (II Kings 18:21)? In other words, you rely on an unsubstantiated idea.

Rabbi Hiyya said to him: No; The dream referred to a different verse, one that deals with the Messiah, as they said to you as follows: “A bruised reed he shall not break and the dimly burning wick he shall not quench; according to truth he shall bring forth justice” (Isaiah 42:3). In other words, Rabbi Yannai acted correctly, in accordance with the ways of truth. This exchange shows that both Rabbi Hiyya and Rabbi Yannai agree that an entity not in the world can be acquired.

With regard to Rabbi Yehuda HaNasi, his opinion is as it is taught in a *baraita*: The verse states: “You shall not deliver^N a slave to his master” (Deuteronomy 23:16). 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 Yitzhak 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 Ya’akov, his opinion is as it is taught in a *baraita*: Moreover, Rabbi Eliezer ben Ya’akov said that even if one said: The detached fruit of this garden bed^H shall be *teruma* for the currently attached fruit of this garden bed^N 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 applying the sanctity of *teruma* to it.

HALAKHA

פירות ערוגה זו תלושים – פירות ערוגה זו תלושים – פירות ערוגה זו תלושים: The detached fruit of this garden bed, etc. – produced a third of their growth at the time. Some authorities maintain that the *halakha* here is not in accordance with the opinion of Rabbi Eliezer ben Ya’akov in this particular case, as the Gemara here and Rabbi Yohanan in tractate *Kiddushin* (62a) disagree with him (*Shulhan Arukh, Yoreh De’a* 331:55).

רבי עקיבא – דתנן: "קונם שאני עושה לפיך" – אינו צריך להפר. רבי עקיבא אומר: יפר, שמא תעדיף עליו יתר מן הראוי לו.

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.

בעו מיניה מרב שישת: עד אחד ביבמה מהו? טעמא דעד אחד משום דמילתא דעבידא לאיגלווי לא משקר והכא נמי לא משקר, או דלמא טעמא דעד אחד משום דאיהי דייקא ומינסבא, והכא כיון דזימנין דרחמא ליה לא דייקא ומינסבא.

§ 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*,^N 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*,^N as she already knew him beforehand, she is not exacting in her investigation before she marries again.

אמר להו רב שישת: תניתיה: אמרו לה מת בנגד ואחר כך מת בעליך, ונתביבמה, ואחר כך אמרו לה חילוף הדברים – תצא, והולד ראשון ואחרון ממזר. היכי דמי? אילימא תרי ותרי – מאי חזית דסמכת אהני, סמוך אהני!

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 *mamzer*. 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*?

ועוד ממזר? ספק ממזר הוא! וכי תימא לא דק, והא מדקתני סיפא: הראשון ממזר והאחרון אינו ממזר – שמע מינה דקא קתני!

And furthermore, why should the child be a definite *mamzer*? At worst he is an individual whose status as a *mamzer* 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 *mamzer* and one of uncertain status, but from the fact that it teaches in the latter clause of the mishna: The first is a *mamzer* and the last is not a *mamzer*, one can learn from here that the mishna was taught specifically in this manner, i.e., the *mamzer* the *tanna* referred to is a definite *mamzer*.

NOTES

One witness with regard to a *yevama* – עד אחד ביבמה – This problem is also raised in the parallel discussion in the Jerusalem Talmud, where it is apparently left unresolved (see *Penei Moshe* and *Korban HaEda*). 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* – כיון דזימנין דרחמא ליה – 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 commentaries 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 (Meiri).

One witness for a *yevama* – **עַד אֶחָד בִּבְמָה** – 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 *yavam* 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 (*Beit Shmuel*; Rambam *Sefer Nashim, Hilkhot Yibbum VaHalitza* 3:5; *Shulhan Arukh, Even HaEzer* 158:3).

אֵלָּא לָאוּ שָׁמַע מִיָּנָה: חַד, וְטַעַמָּא דְּאָתוּ בִּי תַרִּי אֶכְחָשׁוּהּ, הָא לָאוּ הָכִי – מְהֵימֵן.

וְאִיכָּא דְּאָמַר: הָא לָא תִּיבְעֵי לָךְ, דְּאִפִּילוּ אִיהִי נְמִי מְהֵימְנָא, דְּתַנְּנָן: הָא שָׂא שְׂאָמְרָה "מֵת בְּעָלִי" – תַּנְּשֵׂא: "מֵת בְּעָלִי" – תַּתִּיבְבִּים. כִּי תִּיבְעֵי לָךְ לְמִשְׁרֵי יְבָמָה לְעֻלְמָא.

מֵאֵי טַעַמָּא דְּעַד אֶחָד – מְשׁוּם דְּמִילְתָּא דְּעֵבִידָא לְאִיגְלוּיִי לָא מְשַׁקֵּר, הָכָא נְמִי לָא מְשַׁקֵּר, אוּ דְּלָמָּא טַעַמָּא דְּעַד אֶחָד מְשׁוּם דְּאִיהִי דְּיִיקָא וּמִינְסַבָּא, וְהָא לָא דְּיִיקָא וּמִינְסַבָּא, דְּמִסְתַּנָּא הוּא.

Rather, isn't it correct to **conclude from here** that only **one** witness testified at first, **and the reason for the halakha is that two people came and contradicted him**, as the testimony of two witnesses certainly overrules 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.^h

The Gemara provides an alternative version of the discussion. **And some Sages maintain another version that says: Let the dilemma not be raised,^N as even a wife herself is also deemed credible^N 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 *yavam* 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

NOTES

Let the dilemma not be raised – **הָא לָא תִּיבְעֵי לָךְ** – This apparently simple observation led the early and later commentaries 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 she is 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 *yavam*. It follows *a fortiori* that one witness who has no apparent interest in the outcome is deemed credible in this case (Ra'avad).

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 *karet*, i.e., adultery, whereas one who permits herself to other men besides the *yavam* is merely subject to violating a regular prohibition, of marrying someone other than her *yavam*. 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 to transgress (see Meiri and Ritva).

דְּאִפִּילוּ אִיהִי נְמִי מְהֵימְנָא – **מְהֵימְנָא**: Some commentaries 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*).