

OVERVIEW of the Daf

1) Firstborn donkey (cont.)

Rabbah concludes his proof to his assertion that even according to R' Shimon once the donkey is decapitated it is prohibited for benefit.

The Gemara rejects this proof and offers an alternative explanation of the Beraisa.

The rationale behind Rabanan's position according to this interpretation is explained.

On the third challenge the Gemara successfully challenges this interpretation.

Rava suggests another explanation of the dispute between R' Shimon and Rabanan which is parallel to a dispute between Nimos and R' Elazar.

The point of dispute between Nimos and R' Elazar is explained.

An alternative explanation of the dispute between Nimos and R' Elazar is suggested.

This explanation is unsuccessfully challenged.

R' Nachman in the name of Rabbah bar Avuha explains the dispute between R' Shimon and Rabanan consistent with Rabbah's explanation.

R' Nachman suggests support for his explanation but the proof is rejected.

R' Nachman suggests another proof for his position but this proof is also rejected.

Additional opinions regarding R' Shimon's position are presented.

According to another version R' Nachman was commenting on a Mishnah in Kiddushin.

Two explanations of the Mishnah are suggested; according to one explanation the Mishnah is consistent with all opinions whereas according to the second explanation the Mishnah follows R' Yehudah.

2) Redeeming a firstborn donkey

In the previous discussion a Beraisa was cited that discusses some halachos related to redeeming a firstborn donkey.

The reason it was necessary for the Tanna Kamma to emphasize that the redemption of the firstborn donkey can take place right away and that it can be redeemed with any amount is explained.

The rationale behind R' Yosi bar Yehudah's position that there is no redemption for less than a shekel is explained. ■

Distinctive INSIGHT

If the owner of the donkey does not redeem it

לא רצה לפדותו

The Gemara presented an opinion which stated that R' Shimon agrees that if an owner of a first-born donkey did not wish to redeem it, and he broke its neck instead, as required by the Torah, the carcass of the donkey remains prohibited from any benefit.

Abaye asked Rava (or Rava asked Rabbah) a question from a Beraisa about this opinion. The Beraisa states that in the case where a donkey was not redeemed, and its neck was broken, R' Yehuda rules that the donkey must be buried and it is prohibited from benefit. R' Shimon disagrees and says that "it" is permitted. This seems to clearly indicate that R' Shimon does not prohibit the carcass of the donkey, which directly contradicts that which we said before.

The Gemara explains that the dispute between R' Yehuda and R' Shimon is not referring to the status of the donkey after it is killed, because in that case R' Shimon would hold that the carcass is prohibited from benefit. Rather, that segment of the Beraisa is referring to the donkey while it is still alive. Here, R' Yehuda says the live donkey is prohibited, while R' Shimon holds that it is permitted for benefit.

Tur (Y.D. 321) rules that the case being discussed is where the owner of the donkey did not wish to redeem it, nor did he agree to give the donkey itself to the kohen. This is also the ruling of Rema. Derech Emuna explains that this does not mean to say that one who gives a first-born donkey to a kohen has fulfilled his mitzvah of redeeming it. The mitzvah is to give a redemption to the kohen, not the donkey. Rather, Tur means that the owner may give the donkey to the kohen, and the kohen will serve as the agent of the owner to sell it, and the kohen will take the money as the redemption. He adds that Rambam does not mention the option "or to give the donkey to the kohen" in his ruling of this halacha. This is because the sages prohibited giving the donkey to the kohen, as we are concerned that the kohen will continue to work with the donkey itself, and never perform the redemption at all.

Radba"z, however, rules that if the first-born donkey is given to the kohen, the owner has fulfilled his obligation. The kohen must still redeem it, in order to remove the status of its being prohibited for benefit. Sha'arei Yosher (5:19) explains that the obligation to redeem a first-born donkey is not incumbent upon the owner, in which case he would be personally responsible to complete this mitzvah with his personal funds. Rather, the redemption obligation is placed upon the donkey and its intrinsic value, so when the owner presents the donkey to the kohen, the owner can fulfill his mitzvah of giving this gift to the kohen. ■

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לזכר נשמת שרה לאה ע"ה בת ר' יוסף נ"י
שנולדה שבת פרשת חיי שרה — כ"ז חשוון תשמ"ז
הנאהבים והנעימים בחייהם ובמותם לא נפרדו

HALACHA Highlight

Paying a penalty in a circumstance of doubt

הוא הפסיד ממונו של כהן לפיכך יופסד ממונו

He caused a loss to the kohen's property; therefore his property should be lost

According to the Gemara the rationale behind the obligation to decapitate a firstborn donkey that was not redeemed is that it is a penalty. Since the owner caused the kohen a loss and did not give the firstborn donkey to a kohen he is penalized to lose his money and must decapitate it. The Gemara explains that according to R' Yehudah who maintains that while the animal was alive it was prohibited for benefit the loss is that while alive he could have redeemed the donkey for a small amount of money and now that it is decapitated he loses its potential value. According to R' Shimon, at least according to some opinions, the animal was permitted for benefit while alive and it loses value once it is dead. Tosafos¹ explains that since decapitating the donkey will cause a loss of money to the owner, if there is a doubt whether a donkey is the firstborn it would not be required to decapitate it. Maharit Algazi² further explains that one should not think that decapitating an unredeemed donkey is a mitzvah similar to mitzvos in general that must be fulfilled even when one is uncertain whether the mitzvah was performed. Since the purpose in decapitating the donkey is to cause the owner a monetary loss it is the same as all other monetary matters where we apply the principle המוציא – מחבירו עליו הראיה – the one who seeks to collect bears the burden of proof.

Minchas Chinuch³ questions the application of the principle of המוציא מחבירו to this case. That principle is limited to cases

REVIEW and Remember

1. Why according to R' Shimon is meat and milk cooked together permitted for benefit ?
2. What is the reason the camel does not require intent or preparation for tum'ah ?
3. Why is it necessary for the Beraisa to teach that one may benefit from the value and the body of a firstborn donkey ?
4. Why is it necessary for the Beraisa to teach that a firstborn donkey can be redeemed immediately and with any amount ?

that involve two people and it is uncertain whether Reuven must give money to Shimon. In such a case if Shimon takes the money improperly he would be in possession of stolen money. In the case of a doubt regarding an unredeemed donkey all that happens is that he will lose money and he should certainly be obligated to fulfill the positive command in this case even though it would cost him money. Consider someone who is unsure whether he fulfilled the mitzvah of lulav on the first day of Sukkos. Would anyone argue that he is exempt from acquiring a lulav in this case of doubt under the principle המוציא מחבירו? Certainly, one would have to purchase a lulav in that case and the same halacha applies here as well. ■

¹ תוס' ט: ד"ה לאפקועי.

² מהרי"ט אלגזי אות ד' סק"ה.

³ מנחת חינוך מצוה כ"ג אות ב'. ■

STORIES off the Daf

The Zealous Neighbor

"הוא הפסיד ממונו של כהן..."

When one man's donkey gave birth for the first time, the owner obviously had to fulfill the mitzvah of redeeming the firstborn of a donkey. Yet he was in no rush to do so.

When his neighbor noticed this lapse, he could hardly contain himself. Whenever the two would meet, he would rebuke the owner—to no avail. The owner was busy and no kohen was available. Naturally, he was loath to break the donkey's neck, so things stretched on and on.

After several months of being put off for no reason, the neighbor lost his equilibrium. By the time he calmed down he had taken care of his friend's problem: the firstborn donkey's neck was broken.

When the owner saw this he was furious. "How dare you? You owe me for my financial loss and also the money one must pay for stealing a mitzvah from his fellow!"

But the neighbor denied having done anything wrong. "I don't owe you a cent since I merely did what you should have done long ago."

When this question was brought to beis din for adjudication, they ruled that although an earthly court could not demand that he pay anything in compensa-

tion, in order to fulfill his heavenly duty the man who had broken the animal's neck must compromise with the owner. They arrived at this psak through the words of the Minchas Chinuch:

"It seems clear that just as someone besides the owner can redeem one's firstborn donkey with a sheep, he can also break its neck. But it seems logical that one who breaks such an animal's neck without its owner's permission has damaged his friend's property. It is possible that he even must pay. And it could very well be that he is even obligated to pay ten gold pieces—the fine that one who steals a mitzvah from his friend must pay."¹ ■

¹ מנחת חינוך, מצוה כ"ג, ס"ק ב' ■