

OVERVIEW of the Daf

1) Being exact

It is suggested that the question of whether according to Rabanan people can be exact is subject to a dispute between Tannaim.

This suggestion is rejected.

The Gemara proves that according to Rabanan it is not possible to be exact even in matters in the hands of humans.

2) Clarifying the Mishnah

The rationale behind R' Tarfon's opinion is explained.

R' Chiya bar Abba in the name of R' Yochanan explains that according to R' Akiva the kohen takes the weaker lamb.

R' Chiya bar Abba unsuccessfully challenges this interpretation.

R' Yochanan explains the rationale behind R' Meir's position.

Rava explains the rationale behind R' Yosi's opinion.

R' Elazar asserts that all opinions agree that in a case of a doubtful bechor-lamb when the kohen receives nothing the owner must give the priestly gifts from that animal.

The Gemara searches for the opinion that must "agree" with this ruling.

R' Pappa asserts that all opinions agree that in a case of doubtful ma'aser animal that the owner is exempt from giving the kohen gifts.

The Gemara searches for the opinion that must "agree" with this ruling.

The Gemara questions why according to R' Tarfon the remaining lamb is divided.

R' Ami answers that R' Tarfon retracted his earlier ruling.

R' Chiya suggests a parable to explain R' Tarfon's and R' Akiva's respective opinions.

In light of this interpretation the Gemara searches for the point of dispute between R' Tarfon and R' Akiva.

3) MISHNAH: The Mishnah discusses numerous cases of ewes giving birth to different combinations of lambs and the owner's obligation in each of these cases.

4) Clarifying the Mishnah

The necessity for all the cases in the Mishnah is explained. ■

Distinctive INSIGHT

Giving one of the two twin male offspring to the kohen

אמר רבא עשו את שאינו זוכה כזוכה

The Mishnah discussed the case of a sheep that had not yet ever given birth, and then this sheep appears to give birth to two male offspring simultaneously. R' Yose HaGalili rules that both offspring could have been born as bechorim, and they must both be given to the kohen. Chachamim, R' Tarfon and R' Akiva all hold that the kohen only receives one of the twin males, as they hold that the two sheep could not have both been born as bechorim. Chachamim say that the owner may give either of the offspring to the kohen, while R' Tarfon rules that the stronger of the two should be given to him. According to the conclusion of our Gemara, R' Akiva's opinion is that the owner takes the stronger of the two animals for himself.

What is done with the second animal which remains with the yisrael? R' Meir says due to the doubt involved, it must be treated as a possible bechor, and it should graze until it develops a blemish. At that point it may be sheched, and the appropriate parts must be given to a kohen as his gifts. R' Yose disagrees and he says that it is exempt from the mitzvah of giving gifts to the kohen. R' Yochanan explains that R' Meir holds that the kohen has a claim to say that if the animal taken by the yisrael is really the bechor, the entire animal should really be his. If it is not the bechor, the kohen can claim that he is at least due the gifts from its meat. In explanation of the view of R' Yose, Rava uses the term "we consider the one who did not actually merit as if he did already merit." Rava explains that R' Yose holds we consider this animal as having been presented to the kohen, although he never actually received it into his possession. We then further say that with the development of a blemish, that animal is given by the kohen to the yisrael in consideration of the first animal, which the kohen did receive.

Rashi in Gittin (30a) explains that this legal maneuver is applied as a rabbinic enactment. Sefer Reishis Bikkurim explains that according to R' Yose, in a case of twin male offspring, the yisrael does not actually fulfill the mitzvah just by presenting one of the two animals to the kohen if he gives him the wrong animal. The sages introduced the idea to merit the kohen with the second animal in order to allow the yisrael to fulfill his mitzvah.

Rambam (Hilchos Bikkurim 9:3) rules in our case that if the kohen takes one of the two doubtful bechorim, the second one, left with the yisrael, is exempt from the gifts for the kohen. Kesef Mishnah points out that this is according to R' Yose, the minority view, and the Gemara in Gittin (ibid.) says that the Mishnah should not be read according to him. R"l Kurkos answers that the Gemara in Gittin did not apply the rule of R' Yose, but in our Gemara where the kohen received the first animal, we can apply R' Yose's ruling using the explanation of Rava. ■

*Today's Daf Digest is dedicated by Mr. Martin Samber & family
in loving memory of
their father, grandfather and great grandfather*

ר' אברהם בן ר' משה ע"ה

HALACHA Highlight

Destroying something to possibly fulfill a mitzvah

נמצא מכון בין שתי עיירות לא היו עורפין

If it was found between two cities they would not decapitate

Teshuvos Doveiv Meisharim¹ writes that when one is uncertain whether he is obligated to perform a mitzvah, even if it is a Rabbinic mitzvah, he is obligated to perform that mitzvah. Even if the mitzvah involves the destruction of something and if it were to turn out that he was not obligated to perform the mitzvah the object would have been destroyed for no reason, nevertheless, he should fulfill the mitzvah. The rationale is that there was a benefit in destroying the object since it afforded one the chance to possibly fulfill a mitzvah and as long as there was some benefit in the destruction of the object one does not violate the prohibition of destroying something. For this reason people tear their garment even when they are uncertain whether they are obligated to rend their garment in mourning.

Teshuvos Maharal Tzintz² rules that if the uncertainty could be clarified and it is possible that upon clarification it will emerge that there was no mitzvah one should not fulfill the mitzvah if in the process he will destroy something. A passive approach is preferred in this case and one should wait to clarify whether the mitzvah applies. This justifies the practice of people who do not destroy what may be chometz immediately upon finding it on Pesach. They first confirm that it is chometz before destroying it. Although destroying chometz is a mitzvah, nevertheless, the fulfillment of the mitzvah is delayed since it could turn out that there is no mitzvah to destroy that "chometz" and one would have unnecessarily destroyed the "chometz." The rationale behind this approach

REVIEW and Remember

1. What is the point of dispute between Tanna Kamma and R' Eliezer regarding the eglah arufah ?
2. Why does R' Meir require an owner to give priestly gifts of a possible bechor ?
3. How does R' Chiya explain R' Tarfon's and R' Akiva's respective opinions ?
4. Why is it necessary for the Mishnah to present so many different cases that revolve around the same principle ?

is that Chazal did not instruct one to destroy property and possibly violate the prohibition against destroying property if there is only a possibility of fulfilling a mitzvah. Tel Torah³ cites proof to this principle from our Gemara. Chachamim rule that when a corpse is found between two cities neither city performs the eglah arufah ceremony. The Gemara entertains the possibility that the cities are exempt because it is impossible to be exact. The difficulty with this approach is that there is a mitzvah to perform so why not obligate both cities to perform the mitzvah in order to assure fulfillment of the mitzvah. He answers that since fulfillment of the mitzvah would involve unnecessarily killing a heifer there is no mitzvah to fulfill a possible mitzvah if it involves destroying property. ■

¹ שו"ת גובב מישרים ח"ב סי' ט"ז.
² שו"ת מהרא"ל צינץ סי' ה'.

³ טל תורה שבברכת משה חולין כ"ח: ד"ה ודע. ■

STORIES off the Daf

The Missing Coins

"ובאחד שהפקיד אצל בעל הבית..."

The halachos of shomrim can sometimes complicate a person's desire to do chessed for his fellow Jew. Although one wishes to do the favor, he might feel somewhat uncomfortable: what if he errs? Will he actually have to pay for his mistake since he agreed to do his friend a favor?

One person found himself in exactly this situation. When his friend heard that he was travelling to a nearby city, he requested that he take six gold pieces with him to repay a loan. He really wanted to

help his friend so he agreed to put the six gold pieces with his own money in his purse, but made one stipulation. "I accept no אחריות, no halachic responsibility if anything goes wrong."

When the traveler arrived at the nearby town he noticed a very small slit in his money belt. Four gold pieces had fallen out in the interim.

The shomer paid the remaining two gold pieces and explained that four of the original coins had been lost. The man who owed the money claimed that the shomer was obligated to at least pay three more gold pieces. "It seems unfair to say that all the money lost was mine. Simple mathematics dictates that since he had twenty gold pieces of his own money in the purse, he must assume that most of the money

lost was his."

When this question reached the Terumas HaDeshen, zt"l, he agreed with the shomer. "Since the shomer stipulated ahead of time that he has no אחריות, and showed you that he was placing your money in his purse with the other twenty gold pieces, he can definitely claim that the only your money was lost.

"This is clear from the Gemara in Bchoros 18. There we find that if someone deposited his nondescript sheep in a flock of sheep for a shepherd to watch and one animal died, the depositor has to prove that his animal is still living. If he cannot do so, he sustains the loss. The same is true in our case."¹ ■

¹ שו"ת תרומת הדשן, סי' שייך ■