

OVERVIEW of the Daf

1) Miscounting (cont.)

The Gemara finishes reconciling the contradictory Beraisos related to the halacha when two animals exit the pen and are pronounced as "tenth."

The Gemara challenges the implication that according to R' Yehudah the temurah of a ma'aser is left to die.

Since this challenge was refuted the Gemara suggests an alternative explanation of the latter Beraisai.

This explanation is unsuccessfully challenged.

2) An agent who miscounts

R' Pappi and R' Pappa disagree what happens when an agent sent to tithe animals miscounts.

R' Pappa's position that if the agent miscounts the animals do not become sanctified is unsuccessfully challenged. ■

הדרן עלך מעשר בהמה
 וסליקא לה מסכת בכורות



REVIEW and Remember

1. What is done with the temurah of a ma'aser animal ?

2. Is there a difference between an eleventh animal misnumbered "tenth" and a Shelamim ?

3. Who is the author of anonymous Beraisos in the Sifra ?

4. What is the point of dispute between R' Pappa and R' Pappi ?

*Today's Daf Digest is dedicated as a zechus
 for a refuah sheleimah for*

אברהם גרשון בן ציפי
 רפאל שלמה ברוך בן שיינדל ברכה
 שושנה בת עליזה
 שלום בן מינדל

Distinctive INSIGHT

An agent who acts contrary to the interests of the owner

דאמר ליה לתקוני שדרתיך ולא לעוותי

The Gemara discusses the designation of ma'aser by an agent who makes an error. R' Pappi says that if the agent counts the ninth as "ten," animal is consecrated, as the Mishnah (60a) ruled. The owner does not lose by this mistake, as the owner may still eat the animal, although he must wait until it develops a blemish before partaking of it.

If the agent calls the eleventh animal by the number "ten," his designation has no meaning, and the animal may be eaten. If it were to be sanctified, it would have the status of a shelamim, and this would cause the owner to have to forfeit the meat gifts of the kohen (the chest and hind leg). It is understood that the owner did not send the agent to act in a manner which is detrimental to him.

R' Pappa disagrees with R' Pappi. He contends that the agent's designating the ninth as "ten" is also meaningless. Even though this only results in the animal's being allowed to be eaten after developing a blemish, this is enough of a limitation whereby the owner would feel that the agent has caused him harm.

Sefer Reishis Bikkurim offers various explanations of the disagreement between R' Pappi and R' Pappa. R' Pappi holds that an agent's actions are invalid when he acts against the owner's interests, but this is only when the owner's own mistaken actions would have been ineffective. However, in this case, the actions of the owner himself would have been valid if he would have miscounted the ninth animal as "ten". Therefore, the agent's actions are valid. R' Pappa holds that although the Torah recognizes validity in this miscount, in this situation the agent erred in that he also called the tenth animal to be number ten. His mission is therefore cancelled, and none of his actions is valid.

Alternatively, R' Pappi holds like Rav Nachman in Nazir (32a) who says that a miscount only results in some degree of consecration when it is done unintentionally. However, if the owner intentionally called the ninth animal "number ten," the numbering has no effect to consecrate the ninth animal out of the corral. Therefore, when an agent makes an error, his mission is not cancelled, because the Torah recognizes mistakes as having some validity in this regard. Therefore, R' Pappi holds that this is true even if there is a double error, where the ninth was called "ten," and it was done by an agent who was instructed to perform properly; the designation is still valid.

R' Pappa holds like R' Chisda who says that calling the ninth as "ten" is meaningful even when done on purpose. This halacha only applies within the guidelines of the verse, when the count is reasonable (number nine or eleven). Here, where the agent called the ninth and tenth "number ten," his act is not valid. ■

HALACHA Highlight

Tithing animals nowadays

We are addressing Ma'aser in our times and the concern is for a transgression

Rashi¹ explains that R' Shimon bar Abba disagrees with R' Huna's earlier explanation (53a). R' Shimon bar Abba explains that nowadays we do not tithe animals out of concern that one may shear or work the tithed animal. R' Huna explains the reason we do not tithe animals nowadays is concern that one may erroneously place an orphaned animal that is not subject to the mitzvah of tithing together with other animals in his pen to be tithed. Rashi further explains that, according to R' Huna, even if one tithed his animals nowadays he is not obligated to treat the tenth animal with the sanctity of ma'aser. Tosafos² disagrees and contends that בדיעבד, if one tithed his animals in violation of the halacha the animal, becomes sanctified. The Gemara earlier refuted this explanation since the rationale behind this injunction applies even while the Beis HaMikdash is in existence. Nevertheless, it seems from Rashi's comment that although the Gemara felt that it refuted R' Huna's explanation, R' Huna

himself did not retract his position and maintains that it was not such a concern during the time of the Beis HaMikdash since people were more knowledgeable in the halachos related to korbanos and this minimized the concern³.

Maharit Algazi⁴ suggests that Rashi understands that according to R' Huna the reason why even בדיעבד the tithed animal is not sanctified is that Chazal uprooted the mitzvah of tithing animals altogether. This was done by removing the ownership of the flock from the owner temporarily. When the owner subsequently takes back possession of his flock it is considered as though he purchased those animals and there is no obligation to tithe purchased animals. Tosafos, on the other hand, maintains that "hefker beis din hefker" – beis din's declaration that a person's possessions are ownerless – is effective only if the property is actually removed from the owner's physical property. In this case since the animals never physically left the owner's property he never lost ownership of those animals and as such they can still be effectively tithed in violation of the injunction against tithing animals. ■

¹ רש"י ד"ה בזמן.

² תוס' ד"ה במעשר.

³ הערות במסכת בכורות ד"ה רש"י ד"ה בזמן הזה.

⁴ מהרי"ט אלגאזי קהלת יעקב סי' נ"ט. ■

STORIES off the Daf

The Mistaken Messenger

"הכא טעותא היא..."

Today's daf discusses a messenger who erred.

The Holocaust has proven to be one of the seminal traumas of Jewish history. Absolute annihilation was the goal of our enemies and their "thousand year Reich." While European Jewry was being murdered en masse, most Jews in other countries were unaware of the extent of the destruction; it was only afterward that people began to gain a sense of the enormity of what had happened. By the time a year or two had passed after the war, it was assumed that any relatives not yet locat-

ed had been murdered.

One successful businessman was devastated when he realized that he would likely never hear from his uncle again. Witnesses had confirmed that his uncle had been in the worst of the concentration camps, one from which survivors were few. After hearing no news other than that for more than a year after liberation, the nephew felt that it was clear what his uncle's fate had been. He felt a longing to memorialize his murdered relative's name, so he went into his shul and paid a handsome sum for the privilege of having his uncle's rather unusual name etched on a memorial plaque in a prominent place in the shul.

Thirty years passed and a stranger visited this very same synagogue. He was looking at the plaques for the

kedoshim when he spotted an unusual name: he saw the plaque erected so many years before by the nephew of the murdered man. "What a coincidence," he told himself. Suddenly, he was taken aback when he realized that the plaque was probably meant for his father, since his father and his grandfather's names were just too unusual a combination to come across by chance. Although his father had been caught in the Holocaust he had survived due to amazing miracles, but after the war he had never succeeded at finding any family.

The son made inquiries and confirmed that the plaque had indeed been put up in memory of his father and the two families were united.¹ ■

¹ כן שמעתי