

OVERVIEW of the Daf

1) Undefined nedarim (cont.)

Abaye unsuccessfully challenges R' Zeira's resolution to the contradiction whether one treats undefined nedarim stringently or leniently.

Another challenge, this time successful, is presented against R' Zeira's suggested explanation that our Mishnah follows the opinion of R' Elazar.

The Gemara suggests that the original contradiction between the Mishnah and the Baraisa, concerning the question of whether undefined nedarim are treated stringently or leniently, could be resolved by distinguishing between R' Yehudah and R' Shimon.

The assertion that the Mishnah reflects the opinion of R' Yehudah is successfully challenged.

Rava suggests a revised understanding of R' Yehudah's position.

This explanation is challenged.

Rava states that because the Baraisa cited challenges his position, his explanation is refuted.

R' Ashi suggests an explanation that could even account for the difficult Baraisa.

2) Undefined teruma

A contradiction in the Mishnah is noted whether undefined teruma is treated stringently or leniently.

Abaye suggests that the second ruling of the Mishnah reflects the opinion of R' Elazar the son of Tzadok ■

REVIEW and Remember

1. What is the halacha when there is a doubt whether a child is a בכור?
2. Explain the dispute between R' Yehudah and R' Shimon.
3. When is it reasonable to assume that a person would not allow himself to enter into a case of doubt?
4. What are the חרמי כהנים?

Distinctive INSIGHT

Why is an unspecified vow treated stringently?

דתניא הריני נזיר אם יש בכרי הזה מאה כור והלך ומצאו שנגנב או שאבד רבי יהודה מתיר ורבי שמעון אוסר

The Gemara attempts to show that Rabbi Shimon is the author of our Mishnah which had ruled that an unspecified neder must be interpreted stringently. Here, in the Baraisa, we find a person who declares that he will be a nazir if a certain pile contains one hundred bushels. When he went to count it, the pile was stolen or lost. Rabbi Shimon rules that despite the uncertainty, the person must fulfill the vow and observe nezirus.

Although the Gemara understands the opinion of Rabbi Shimon to be congruous with the law in our Mishnah, Tosafos notes that there is a distinction that can be made. In the Baraisa, in the case of the uncounted pile of grain, Rabbi Shimon rules that the person only accepted nezirus if the pile had a full volume of grain. When the doubt arises, we say that the person meant to be stringent even though the situation cannot be resolved, but this fulfillment of nezirus is still only due to doubt. In our Mishnah, in the case of an unspecified neder, Rabbi Shimon acknowledges that this vow, with its ambiguity, is valid with certainty, and lashes would even be meted out if it is violated.

Tosafos, however, struggles with this approach. If the ruling in the Mishnah teaches that an unspecified neder is valid with certainty, and not due to doubt, perhaps we can then say that even Rabbi Yehuda would agree that it is treated stringently, whereas in a case of a doubtful neder (in the case of the missing pile) he would rule that it is treated leniently.

In Igros Moshe (3:68), R' Moshe Feinstein, zt"l, explains that our dealing with סתם נדריים stringently is not due to our assumption that the person probably had in mind to accept a prohibition upon himself. Rather, we are uncertain whether the speaker meant to utter a vow or not. Consequently, we must treat it stringently due to our doubt (ספק דאורייתא). This is a ספק. The speaker knows that his being unclear will cause us to treat our doubt לחומרא. Therefore, he realizes that his unclear words will immediately be treated in a harsher manner, and as a valid neder. Based upon this understanding, this is why our Gemara states that our Mishnah is authored by Rabbi Shimon, who treats doubtful vows strictly, and not according to Rabbi Yehuda who uses a lenient approach in a case of doubt. ■

HALACHAH Highlight

Doubtful fulfillment of the mitzvah of pidyon haben

ספק בכורות אחד בכורי אדם...המוציא מחבירו עליו הראיה

[Concerning] uncertain firstborns, whether a first born person ... the one who seeks to collect bears the burden of proof

Although the Gemara clearly rules that when there is a case that involves a doubt the burden of proof to collect the money of pidyon haben rests upon the kohen and a pidyon haben does not have to be performed, nonetheless there is a debate amongst the Poskim under what conditions this rule is invoked.¹ All authorities agree that when there is a doubt whether there is an obligation to perform a pidyon haben this principle is invoked. Thus, for example, when a child is born and it is not known whether he qualifies as a first born who requires a pidyon haben, halacha states that there is no obligation for the father to make a pidyon haben. The debate revolves around cases when it is certain that it is necessary to perform the pidyon haben and the doubt relates to whether the pidyon haben was performed correctly.

Rav Yaakov Ettlinger², the Teshuvos Binyan Tziyon, suggests that when the doubt relates to whether the pidyon haben was performed correctly it is possible that the principle

of *המוציא מחבירו* would not be invoked. Rav Yechezkel Michel Epstein³, the Aruch Hashulchan, also addresses this issue and rules definitively that when it is known that this child meets the criterion that necessitates a pidyon haben and a doubt arises whether the mother is the daughter of a kohen or levi, the child requires a pidyon haben. The reason is that most Jews (*רוב*) are not kohanim or levi'im, and when addressing uncertainties related to matters of prohibition halacha follows the majority.

Mahari Kurkus⁴, in his commentary to the Rambam, also draws the same distinction and explains the rationale behind it as follows. When the doubt relates whether there is an obligation to perform a pidyon haben, the doubt relates primarily to whether there is a debt that the father owes the kohen. That question is a monetary matter and the rule of *המוציא מחבירו* is invoked. On the other hand, when it is clear that there was an obligation to perform a pidyon haben and the question is whether it was performed properly it is considered a case of doubt related to the fulfillment of the mitzvah (*ספק איסור*) and concerning these doubts the matter is resolved by the principle *לחומרא*.

- 1. ע' ספר אוצר פדיון הבן ח"א פ"ה סע' א' הע' ב'
- 2. שו"ת בנין ציון סי' כ"ב
- 3. ערוה"ש יו"ד סי' ש"ה סע' מ"ט
- 4. מהר"י קורקוס על הרמב"ם פי"א מהל' ביכורים הי"ח

STORIES Off the Daf

The blackmailed Kohen

לא מעייל איניש נפשיה לספיקא

There was once a woman whose husband died after a long marriage. She married again, this time to a kohen. At the time of her husband's death, she believed that since she had borne her husband a number of children, she was not a yevamah. However, since her deceased husband had outlived all of the children, she did really need chalitzah—a fact that was only pointed out to her some time into her new marriage. After the performance of chalitzah, she would be forbidden to her second husband just as if she had been divorced rather than widowed.

After the unfortunate woman was

released through chalitzah, she decided to refuse her kohen second husband a divorce until she received a very substantial sum of money from him. She knew that he would have great difficulty getting a *היתר מאה רבנים* since he was very busy with his numerous financial concerns. In any event, having to obtain such a *היתר* would cause him great embarrassment that he would likely prefer to avoid at any cost. The woman figured that, at the very least, she could settle herself financially for life if she would no longer be able to rely on the support of her current husband.

The husband consulted with his local Rav, who felt his pain, but didn't have a solution to the problem. "I will consult with the Gadol Hador, perhaps he will have a solution for you."

The Rav put his question before

Rav Chaim Ozer Grodzensky, zt"l. The great Rav answered, "This unfortunate kohen may remarry without a *היתר* *מיאה רבנים*. Rabbeinu Gershom Meor Hagolah created a cherem against taking a second wife only if it is certain that one has a first wife! If the marriage with the first wife is questionable there is no cherem. An example of this concept in the Gemara in Nedarim 19 which states that a person doesn't forbid something to himself on the basis of something questionable, like a man who made a conditional oath of nezirus that later could not be verified. Similarly, we can say that the cherem was never meant to apply when the first marriage was questionable.

Rav Chaim Ozer concluded, "This case is even better, since it would have been impossible for the two to have married at all!" ■

