

OVERVIEW of the Daf

1) Ma'aser sheni (cont.)

A Baraisa continues to rule about using ma'aser sheni to purchase animals outside of Yerushalayim.

A contradiction between two rulings of R' Yehudah concerning the use of ma'aser sheni is noted.

R' Elazar resolves this contradiction.

R' Yirmiyah challenges this resolution and forces R' Elazar to slightly revise his explanation.

The ruling in the Mishnah cited by R' Yirmiyah related to using ma'aser sheni funds to purchase non-kosher animals, slaves or land is challenged.

Shmuel rebuts the challenge.

This rebuttal is unsuccessfully challenged.

2) **MISHNAH:** The Mishnah discusses using items for kiddushin that are prohibited from benefit.

3) Identifying the sources for the Mishnah's rulings

A Baraisa is cited that provides the source that orlah may not be used for kiddushin.

Chizkiyah and R' Ashi offer alternative sources that vineyard kilayim may not be used for kiddushin.

R' Ashi's explanation is successfully refuted.

The source that an ox condemned to be stoned may not be used for kiddushin is identified.

The use of the exposition to teach that an ox condemned to be stoned may not be used for kiddushin is unsuccessfully challenged.

Additional unsuccessful challenges to the prohibition against deriving benefit from an ox condemned to death are presented. ■

REVIEW and Remember

1. What happens when one unknowingly uses ma'aser sheni funds to purchase an animal?

2. Which is more responsible for a theft: the mouse or the hole?

3. How is it possible to use an item that is prohibited from benefit to betroth a woman?

4. What is the source that one is not permitted to benefit from the skin of an animal condemned to death?

Today's Daf Digest is dedicated
 לע"נ הרב ראובן בן הרב יצחק
 Rabbi Rudolph Weiss
 by his son Harry Weiss

Distinctive INSIGHT

To what extent is פטר חמור prohibited from benefit?

ופטר חמור וכו' אינה מקודשת מכרן וקידש בדמיהן מקודשת

Rambam (Bikkurim 12:4) rules that it is prohibited to derive any personal benefit from a first born male donkey (פטר חמור) until it is redeemed. If the owner sold this animal before redeeming it, the money he receives retains this status, and the money is prohibited from benefit. מחנה אפרים questions this ruling, as Rambam himself rules that the money received for איסורי הנאה is not prohibited from benefit. ראב"ד also disagrees with Rambam, and he says that the money obtained for the sale of the animal does not acquire the status of the animal. His proof for his opinion is that if the money is the same as the animal, the owner would be able to give the money itself to the kohen as fulfillment of the obligation to give this animal to him (where he did not redeem it with a sheep), and this is not the halacha.

שערי יושר answers that, in general, items which are restricted from benefit do not have monetary value. If someone sells such an item, the purchase price is technically not the money given for the item itself, but, instead, is interpreted to be either a gift or somewhat of a misunderstanding between the seller and buyer (which, if not returned, would constitute גזל).

Meiri (to 57b) challenges the position of Rambam from our Mishnah, where kiddushin to a woman is valid when a man gives money he received for selling a first born male donkey. This seems to prove that the money is not prohibited from benefit for the man. Meiri answers that Rambam must hold that the restriction to not benefit is only applied to the seller himself, but others may benefit from the money. In this case, although the man is restricted from benefiting from the money, the woman who receives the money is allowed to use it.

The Achronim explain that Rambam holds that the nature of the prohibition of benefit of פטר חמור is different than other items which have a prohibition of benefit. All other items are prohibited to sell, and if they are sold, the sale is void, and the money received does not acquire the status of being prohibited. The male first born of a donkey is supposed to be exchanged for a sheep. In fact, the sheep might be worth much less than the donkey. When the owner exchanges it, he might be giving a sheep worth a fraction of the value of the donkey, but he still may now keep the higher value donkey by giving the sheep worth only a token amount. From the perspective of the owner, this donkey is going to now be of significant value. Therefore, if it is sold instead the money remains prohibited to the seller, as was the animal itself. ■

HALACHAH Highlight

Selling meat during the Nine Days

אבל במתכוין להוציא מעות מעשר שני לחולין

But when he intends to use the ma'aser sheni money for mundane purposes

The owner of a meat restaurant once inquired about whether it is permitted to serve customers during the nine days. The owner was concerned that closing the store would cause his regular customers to eat somewhere else and possibly not return to his store. On the other hand, serving meat would seem to violate the prohibition against placing a stumbling block before the blind – לפני עור – and should therefore be prohibited.

Rav Ovadiah Yosef¹ wrote that the issue that must be clarified is when the prohibition of לפני עור is violated. The Gemara Avodah Zarah (6b) writes that the prohibition of לפני עור is violated when one presents a friend with the opportunity to violate a prohibition that he would not otherwise have transgressed. If, however, the sinner could violate the prohibition even without the assistance of his friend that friend does not violate the prohibition of לפני עור. Mishnah Lamelech² qualifies this principle and explains that this leniency applies only when the transgressor did not require the assistance of any Jew to commit the transgression, but if he needed a Jew's assistance the prohibition of לפני עור will be

violated by whatever Jew assists in the performance of the transgression. Other authorities disagree and maintain that any time the transgressor could violate the prohibition without your assistance; you do not violate the prohibition against לפני עור.

Since there are other restaurants that will be open during the nine days selling meat it should be permitted, in accordance with the lenient approach cited above. A difficulty with this approach is the opinion of the Rishonim who maintain that although the Biblical prohibition of לפני עור is not violated when the sinner could commit the transgression by himself, nonetheless, it violates the Rabbinic restriction against offering assistance to someone to commit a transgression. Rav Ovadiah Yosef, however, explains that the Rabbinic restriction of מסייע applies only for Biblical transgressions but if the prohibition is only Rabbinic the prohibition against מסייע will not apply. Although there are authorities who disagree with this position, since Ramban and Tosafos in our Gemara² follow the position that anytime the transgressor could violate the prohibition without assistance, the one providing assistance will not violate a restriction, even Rabbinically, against assisting him to commit that transgression. These two lenient positions can thus be combined to produce a lenient ruling permitting the restaurant owner to open the restaurant during the Nine Days. ■

1. שו"ת יחווה דעת ח"ג סי' ל"ח.

2. תוס' ד"ה אבל במתכוין. ■

STORIES Off the Daf

Designation at a Distance

"ואם לקח יאכל כנגדן..."

A certain man was having a very difficult time paying his bills. His father-in-law had money but refused to help him, suggesting instead that he try harder to make enough to support his family. The son-in-law resented this sentiment greatly. Not only had his father-in-law failed to help him, he had given him a mussar schmuss! He decided to "try harder," but in a way that would teach his father-in-law a lesson. He borrowed money for a month's duration. When the time was almost up, he pocketed a valuable object from his father-in-law's home, doing it in

a way that could never be traced. He sold it to a person who would never tell that he had purchased stolen property.

But the father-in-law was no fool. He declared that the value of the stolen object would be consecrated to tzedakah. Predictably, the man who had purchased the stolen object felt deeply uncomfortable to have an object of hekdedesh in his possession. He forced the son-in-law to take it back. Since the son-in-law also didn't want it, he returned it to his father-in-law.

The father-in-law then wondered if he was really obligated to give the object to the poor. He consulted with his rav who was not certain, so the rav asked the Chasam Sofer, zt"l, for a ruling.

The Chasam Sofer answered, "We find in Kiddushin 56 that if one pur-

chases a defiled animal, a slave, or land with ma'aser sheni money, he must redeem the ma'aser sheini money with chulin which he uses in Yerushalayim. The Gemara explains that the seller is no longer in the vicinity, yet the buyer can change the status of the money in the seller's hand to chulin. Although at first glance tzedakah should have the same halachah as ma'aser sheini, this Gemara is not relevant to our case. The reason is that the Gemara in Bava Kama states that one may not sanctify something out of his immediate possession, and Tosafos in Kiddushin explains that this is the halachah. In short, you need not give the object to the poor since it was out of your possession at the time you made your declaration."¹ ■

¹ שו"ת חתם סופר, חו"מ, סימן קס"ט