

OVERVIEW of the Daf

1) Identifying the author of the Mishnah (cont.)

The Gemara asserts that the ruling related to temurah follows R' Akiva's position.

2) Sources

The source that a temurah cannot make a temurah is identified.

The source that an offspring cannot make a temurah is identified.

The Gemara provides the source for R' Yehudah's position that an offspring can make a temurah and records Rabanan's response to that source.

3) **MISHNAH:** The Mishnah discusses which items can make a temurah.

4) Beis HaMikdash upkeep

A Baraisa elaborates on the Mishnah's ruling regarding animals sanctified for Beis HaMikdash upkeep.

The assertion that something sanctified for Beis HaMikdash upkeep is not called a korban is unsuccessfully challenged.

5) The repetition of the temurah prohibition

A Baraisa explains why the temurah prohibition is given twice.

The Gemara unsuccessfully challenges the logic of Rabbi's opinion in the Baraisa.

R' Nachman bar Yitzchok and Rava clarify R' Shimon's position in the Baraisa.

Rava's explanation of R' Shimon's position raises a

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REVIEW and Remember

1. What korbanos cannot make a temurah?

2. Why are two pesukim necessary to teach the prohibition against making a temurah?

3. According to R' Shimon is it possible to make a temurah from a donative Olah?

4. According to the Gemara's conclusion what was R' Avin's question?

Distinctive INSIGHT

Are the community and partners in violation of temurah?

הציבור והשותפין אין עושין תמורה

Rambam (Hilchos Temurah 1:1) writes that if a community or if partners declare an animal to be temurah, their designation has no effect, and the non-sanctified animal remains unchanged. Nevertheless, Rambam writes that a community and partners are still admonished not to make a statement of temurah, and although such a statement is disregarded in terms of practical meaning, they are deserving of lashes for their illegal attempt to cause temurah. Kesef Mishnah explains that the ruling of Rambam is evident in the wording of our Mishnah, where it says, "A community and partners cannot cause temurah," which suggests that their efforts will be futile, but the Mishnah did not say that it is permitted for members of a group to make a statement of temurah.

Minchas Chinuch (Mitzvah 357:7) points out that our Mishnah also states that "birds and minchah offerings are not eligible for temurah declarations." According to the insight of Kesef Mishnah, we should derive from this that although such a declaration would not be effective, one should be liable for lashes if he makes a temurah statement in regard to them, because the Mishnah does not explicitly say that this is permitted.

Lechem Mishneh says that the source for Rambam's ruling is from the Gemara earlier (4b) according to the text of the Rishonim (Rashi, R' Gershom and Shitta) that the law of temurah is not defined as a negative command which is connected with a positive commandment (לאו (הניתק לעשה) where lashes are not applied, because the violation of temurah applies more comprehensively than the positive command. A community and partners are included in the negative command, but the effect of the sanctity applying to the new animal does not occur with a community or partners. This is why lashes are applied for temurah. We see from this Gemara that the prohibition of temurah applies to a community, but the ability to cause temurah to the unsanctified animal does not apply to them.

Lechem Mishnah notes, however, that the Gemara on 2b seems to say the reverse. There, the Gemara says that we need a special verse to teach that women are included in this law, because without a special posuk we might have

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HALACHAH Highlight

Partnerships and tzibbur

הציבור והשותפין אין עושין תמורה

A tzibbur and partnership can not make a temurah

The Mishnah teaches that the tzibbur and partners cannot make a temurah. The fact that the Mishnah divides them into separate categories implies that a tzibbur is fundamentally different from a partnership. Teshuvos Chelkas Yaakov¹ notes that it is essential to differentiate between a tzibbur and a partnership since there can be many practical differences between them. One area where this distinction could be significant is in the area of charging interest. There are some authorities who maintain that money that belongs to the tzibbur is not money that each individual in the tzibbur can claim is his own, rather it is money that belongs to the entity that is called tzibbur. As such, liabilities and prohibitions are not the responsibility of the individuals that constitute the tzibbur. Accordingly, these authorities rule leniently with regards to corporations which they consider to be comparable to a tzibbur.

Chelkas Yaakov maintains that a tzibbur is comparable to a partnership with a few important distinctions. In a regular partnership, if one of the partners wants to leave the partnership he must transfer his share of the partnership to the remaining partners. When it comes to a tzibbur it is unnecessary for someone who is leaving the tzibbur to trans-

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thought that temurah is a limited law, because we know that a communally-owned animal and partners are not included in the violation. This Gemara clearly says that a communally-owned animal is not included, and no lashes would be administered in this case. Lechem Mishnah suggests that Rambam did not have this segment in his text, but he rather has a text similar to that which Rashi has there. Sha'agas Aryeh (Responsa #82) also arrives at an understanding of Rambam as explained by Lechem Mishnah, and he writes that Rashi's text is therefore the most accurate. ■

fer his share in the tzibbur to the remaining members of the tzibbur. For example, money that belongs to a city is considered the property of everyone who currently lives in the city and anyone who leaves the city loses his share of that money. Another distinction is that in a partnership each partner is personally liable for the partnership as opposed to a tzibbur where the members of the tzibbur are not personally liable for the debts and obligations of the tzibbur. Accordingly, Chelkas Yaakov contended that Biblically the prohibition against interest does not apply to a bank since each of the shareholders does not have personal responsibility for the money of the bank. Nevertheless, he maintains that there is a Rabbinic prohibition against interest that applies to the tzibbur and interest-bearing loans must be accompanied by a heter iska. ■

1. שו"ת חלקת יעקב יו"ד סי' ס"ו. ■

STORIES Off the Daf

The Community's Power

"הציבור והשותפין אין עושין תמורה..."

On today's daf we find that a community cannot make temurah. We see that a community is protected from falling into a certain class of error. This is one instance where we learn about the power of people being part of a single entity greater than themselves. And, of course, if the entire tzibbur is working on improving themselves in a certain area this gives even more strength to the endeavor, since it is a group effort.

In the words of Rav Yisrael Eliyahu Weintraub, zt"l, "It is obvious that the merit of a community is greater than that of an individual. For example, the tzibbur has the right to stand before the King; they are not blocked from getting in, since every community is like a miniature version of the entire Jewish people. As we find in Sanhedrin 39, the Shechinah rests everywhere that ten Jews gather together. When it comes to prayer, davening with a minyan helps to ensure that one's prayers are heard."

He added, "If one is forced to pray alone, he must daven with intense self-sacrifice if he wants his prayer to have the power that a tzibbur would have

conferred. Only in this manner will he really cleave to God and truly stand before the King in prayer. But in our generation such intensity is very rare.

Rav Weintraub concluded, "How great is the power of the community. In Temurah 15 we find that the tzibbur never dies. This means that the Jewish people will never be extinguished!"¹ ■

1. אגרות דעת, מכתב מ"ז ■

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challenge to an inquiry posed by R' Avin and the Gemara leaves that challenge unresolved.

הדרן עלך הכל ממירין