

OVERVIEW of the Daf

1) Clarifying R' Yosi's position

Rav declares that R' Yosi's opinion as recorded in the Mishnah should be ignored in favor of his opinion as recorded in a Baraisa.

Shmuel maintains that his opinion in the Mishnah is more authoritative than his opinion in the Baraisa.

Rav notes two cases where halacha follows R' Yosi and Shmuel mentions another two cases where halacha follows R' Yosi.

The four cases are presented.

The Gemara wonders how Shmuel would rule concerning the two cases mentioned by Rav, and how Rav would rule concerning the two cases mentioned by Shmuel.

2) טומטום

R' Ami unsuccessfully challenged R' Yehudah's assertion that a טומטום that is discovered to be male cannot father children.

A related Baraisa that contains the opinion of R' Yosi the son of R' Yehudah is recorded.

The difference between R' Yehudah's and his son R' Yosi's opinion is explained.

3) Cohabiting with an אנדרוגינוס

Rav is cited as ruling that a male who has any sort of relations with an אנדרוגינוס is liable to stoning.

This position is successfully challenged from a Baraisa and Rav explains that he follows the opinion of R' Simai.

The dispute between R' Eliezer and R' Simai concerning relations with an אנדרוגינוס is explained.

4) R' Eliezer's position concerning an אנדרוגינוס

R' Shizvi in the name of R' Chisda asserts that R' Eliezer does not maintain that an אנדרוגינוס is considered a male for all matters.

Proof to this assertion is found in a ruling of R' Eliezer concerning use of an אנדרוגינוס animal as a Korban. ■

REVIEW and Remember

1. According to R' Yosi, what is the sex of an אנדרוגינוס
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2. How long does it take for a grafted branch to take hold?
.....
3. What should be investigated when the wife of a טומטום has children?
.....
4. Is it permitted to offer an אנדרוגינוס or טומטום animal as a Korban?
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Distinctive INSIGHT

The calendar date when planting must cease before Shemitta
לדברי האומר שתי שבתות צריך שתי שבתות ושליש

Rav issued a statement that the halacha follows Rebbe Yosi in the halacha of אנדרוגינוס and in the halacha of planting saplings. The second reference is to a Mishnah (Shvi'is 2:6) where the guidelines are listed for the limits until when planting can be done before Shemitta. Tanna Kamma requires that a sapling be placed into the ground no less than thirty days before Shemitta commences. Rabbi Yehudah contends that if a tree has three days for its roots to take hold, this is sufficient. Rebbe Yosi and Rabbi Shimon rule that the minimum time interval is two weeks. These are the three opinions in the Mishnah, and, as we saw above, Rav rules according to Rebbe Yosi.

Rav Nachman explains that each of the opinions presented in the Mishnah must be concluded before the period of תוספת—an additional thirty days which the rabbis added prior to Shemitta itself. Therefore, the thirty days required by Tanna Kamma actually add up to thirty days plus the thirty of תוספת. The three days of Rebbe Yehudah now are three days in addition to the thirty additional days, and Rebbe Yosi and Rebbe Shimon require two weeks plus thirty days.

Rambam (Hil. Shemitta v'Yovel 3:11) rules that one may plant up until 44 days before Shemitta (the 15th of Av would be the latest date to plant). If one planted later than this, the plant must be uprooted.

Noda B'Yehudah (O.C. 2: #84) explains that in this case, we do not say מקצת היום ככולו—that part of the day counts as the entire day. Therefore, it would be necessary to plant a sapling a full forty four days prior to Shemitta, and not on the 44th day beforehand. This means that the last day to plant is on the 15th of Av. The statement of Rebbe Yosi is that we require “two weeks—שתי שבתות,” and we do not find any leniency to say that “part of a week counts as a full week.”

Chazon Ish (Shevi'is 26:2) discusses this issue at length, and he disputes the conclusion of the Noda B'Yehudah. He holds that one may even plant a sapling on the 16th of Av up until just before sundown.

Meiri writes explicitly that planting must be completed on the 16th of Av, and any later than this would result in the plant having to be uprooted. This concurs with the ruling of Chazon Ish. Rambam, however, apparently understands as the Noda B'Yehudah explains, that we do not say “a part of the day counts as a day” when the time interval was presented in terms of weeks. ■

Today's Daf Digest is dedicated by the Okner family
In memory of their grandmother
מרת שרה בת ר' בערל, עי"ה
Mrs. Sarah Matthew

HALACHAH Highlight

Taking someone's picture without permission

אין אדם אוסר דבר שאינו שלו

A person cannot prohibit something that is not his

There is a dispute concerning the parameters of the prohibition against making an image of a person. Shulchan Aruch¹ rules that the prohibition is limited to where the image protrudes outwards but if the image is engraved it is permitted. Rav Dovid Halevi², the Taz, on the other hand, cites the opinion of Ramban that an engraved image of a person is also prohibited. Rav Avrohom Danzig³, the Chochmas Adam, rules that one should be careful regarding that position. This dispute has interesting ramifications when it comes to the issue of taking a photograph. It would seem that according to Shulchan Aruch there is no prohibition whereas according to Taz it would violate a prohibition.

Rav Shmuel Halevi Wosner⁴, the Shevet Halevi, suggests that since it is the camera that makes the image, rather than a person, perhaps the prohibition against making the image of a person is not violated. Rav Moshe Shternbuch⁵, the Teshuvos V'Hanhagos, leans towards prohibiting the activity but writes that many people are lenient and allow others to take their picture since they are not the one taking the pho-

tograph. Rav Menashe Klein⁶, the Mishnah Halachos, concludes that it is permitted but it is an act of piety for one to be strict and refrain from having one's picture taken.

A related issue is whether one can prohibit another from taking his picture. Rav Yosef Chaim Zonenfeld⁷, the Salmas Chaim, was asked about this matter and the questioner asserted that since taking another's picture does not damage or hurt him it should be permitted. On the other hand one could argue that it should not be permitted for the photographer to benefit from another's property without permission. Rav Yosef Chaim Zonenfeld responded that the restriction against doing business with another's property is limited to actions with another's property but merely drawing someone's image does not violate this principle since the artist hasn't taken the property of the model. Therefore, it is encompassed by the principle that one does not have the capacity to prohibit something that is not in his domain. ■

1. שו"ע יו"ד סי' קמ"א סע' ד'
2. ט"ז שם ס"ק י"ב
3. חכמת אדם כלל פ"ה סע' ח'
4. שו"ת שבט הלוי ח"ז סי' קל"ד סק"ה
5. שו"ת תשובות והנהגות ח"ג סי' רס"ג
6. שו"ת משנה הלכות ח"ז סי' קי"ד
7. שו"ת שלמה חיים ח"ב סי' י"ט ■

STORIES Off the Daf

The early rains

שלשים צריך שלשים ושלשים

Today's Gemara discusses the various opinions how long before shemittah one must stop planting. There has been an ongoing struggle for nearly one hundred years to try and convince the non-religious settlements in Israel to observe this holy mitzvah. The staunchly secular who reject Torah and mitzvos view the farmers who straddle the fence with sarcasm and criticism, and they make it difficult for them to make this great commitment. The truth is that it is very challenging for the farmers to overcome their natural instinct for survival, because it really seems that if they don't work they will certainly

lose their whole crop and livelihood. The Keren Hashivi'is was established many years ago to raise money to support farmers. This helps them overcome their fears and observe this mitzvah that demands much self-sacrifice and trust in Hashem.

1980 was a shmittah year and the yishuvim that raised cotton had to harvest early. The bitterly secular taunted their religious neighbors for their foolishness in doing an early harvest and causing themselves certain loss. The Keren aided those who kept shemittah that cycle, but its resources were limited. Many who were more religious also had a big test with their cotton crop. Would they be able to strengthen their emunah sufficiently to overcome this challenge?

In addition to the problems with the cotton crop, all religious farmers

needed rain early since they had already done all the planting. Without early rain, even those plants would not grow. In Israel, it is very unusual for it to rain early. But that year, there were several early rains. Those who hadn't planted early had a very difficult time plowing and planting later, because their tractors sank into the muddy fields and were practically useless. Miraculously, all of the early rains came just in time to develop the crop, paused long enough to enable the early harvest, and later, when the rains returned, the farmers who did not plan to observe shemittah received a big surprise. All cotton left in the fields was completely destroyed by a second spate of early rain. Anyone who didn't keep shemittah that year lost their entire crop and wound up observing shemittah against their will! ■

