26 Teves 5776
Jan. 7, 2016

DAF Notes
Insights into the Daily Daf
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Gittin Daf 25

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Bereirah

Rav Hoshaya inquired of Rav Yehudah: If someone told a scribe, "Write a *get* for whichever one (of my wives) who will come out of the doorway first" (*and their names were identical*), what is the law?

Rav Yehudah said to him: You already learned (the answer to this) in our Mishna: And furthermore, if the husband told a scribe, "Write a *get* for the wife which I will decide to divorce," the *get* is disqualified (to use) to divorce with it. This indicates that we cannot use *bereirah* (and a person cannot later decide which wife he was referring to). [*The Gemora uses the terminology "ein bereirah," we do not apply the bereirah principal. This means that we do not say that retroactively, it has become clarified as to which one of his two wives he was referring to.*]

The *Gemora* asks on this from the following *Mishna*: If someone told his sons, "I will slaughter a korban pesach for the first one of you that ascends to Yerushalayim," the halachah is: Once the first son enters with his head and the majority of his body, he acquires his portion, and acquires the portions for his brothers along with him. [*This implies that even if he entered after the korban pesach was slaughtered, he retroactively receives a portion of the korban. It must be this way, for the halachah is that a person must be registered on the korban pesach before it is slaughtered. This proves that we do apply the principle of bereirah!?*]

Rav Yehudah replied: Hoshaya, my son! What is the comparison between *pesach* and *gittin*? Rabbi Yochanan stated with respect to this *Mishna* that the father only said that condition in order to encourage his sons to perform *mitzvos* (*but in truth, they were all registered on the korban beforehand*).

The *Gemora* proves this, for the *Mishna* stated: Once the first son enters with his head and the majority of his body, he acquires his portion, and acquires the portions for his brothers along with him. Now, it is understandable if you will say that they were already registered in this *korban pesach* (*before the father made this condition*), this (that the other brothers acquire a share) is correct. However, if you will say that they weren't registered (from the beginning), can they become registered after it has been slaughtered? But it was taught in a *Mishna*: They may be registered or withdraw from the *korban* (pesach) until it was slaughtered? [*This implies that partnerships could not be made after the animal was slaughtered!*]

The Gemora cites a *braisa* that supports this (*that they must have already been partners*): There was an incident where the daughters came (*to Yerushalayim*) before the sons. The daughters appear to be zealous and the sons lazy. [*Being that the braisa does not say that the daughters acquired a portion and the sons did not, this implies that they indeed all had a portion from before, and the father was merely trying to motivate them.*]

Abaye asked the following question on this entire previous discussion: Rav Hoshaya inquired about a case where one attributed (the designation) to the decision of others (*for the husband's designation as to which wife he*

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

will divorce was dependent on others; namely it depended on who walked out first), and he (Rav Yehudah) resolved this for him from a case where one attributed (the designation) to the decision of himself (*for in the Mishna's case, it was his choice as to which wife he wants to divorce*)!? [*Perhaps this is a legitimate distinction as to when the principal of bereirah applies and when it does not!*] Rav Hoshaya then returned and asked a question on this from a case (*regarding korban pesach*) one attributed (the designation) to the decision of others (*as to when the sons will arrive*)!

Rava said: Why is this difficult? Perhaps the one who holds of the principle of *bereirah* does not make a distinction between the case where one attributed (the designation) to the decision of himself and a case where one attributed (the designation) to the decision of others – (in both cases) he holds the principle of bereirah; and the one who does not hold of the principle of *bereirah* does not make a distinction between the case where one attributed (the designation) to the decision of himself and a case where one attributed (the designation) to the decision of others – (in both cases) he does not hold of the principle of bereirah?

Rav Mesharshiya said to Rava: We see that Rabbi Yehudah is someone who, in the case where one attributed (the designation) to the decision of himself, does not hold of the principle of *bereirah*, and where one attributed (the designation) to the decision of others, he does hold of the principle of *bereirah*!

He proves this: It is evident that Rabbi Yehudah, in a case where one attributed (the designation) to the decision of himself, does not hold of the principle of *bereirah* from the following *braisa*: If someone buys wine from amongst the Cutheans[1] (*and he does not have a vessel to separate the tithes required to allow him to drink the wine in an orderly fashion*), he should say the following: "The two *lugin* (*a measurement*) that I will eventually separate (*from the one hundred lugin in total*) are *terumah* (*tithe for the kohen*), ten are *ma'aser rishon* (*tithe for the Levite*), nine are for *ma'aser sheini* (*to be eaten in Yerushalyim*)[2]," and he redeems the *ma'aser sheini* (*with coins*), and he can drink right away; these are the words of Rabbi Meir. Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon forbid this leniency. [*Rabbi Yehudah is not applying the principal of bereirah when it is dependent upon his own decision later on.*]

It is also evident that Rabbi Yehudah, in a case where one attributed (the designation) to the decision of others, holds of the principle of *bereirah* from that which we learned in the following *Mishna*: What is she during those days? [*The case is where a man gave his wife a get, and he said, "This get will be valid 'from now,' if I die from this particular sickness. The question is regarding her status of the wife after the giving of the get but before the husband died.*] Rabbi Yehudah says: She is like a married woman (during the interim) in all regards (*i.e. she can still eat terumah if her husband is a kohen*), and when he dies it is a valid *get*. [*Evidently, Rabbi Yehudah does subscribe to the principal of bereirah when it is dependent upon the decision of others, namely, God in this case, Who decides when this man shall die*.]

Rav Mesharshiya said to Rava. We see that Rabbi Shimon (as well) is someone who, in the case where one attributed (the designation) to the decision of himself, does not hold of the principle of *bereirah*, and where one

[1] *Converts to Judaism after an outbreak of wild animals in Eretz Yisroel and their conversion was debated as to its validity; they observed some commandments, but not others*

[2] Even though he is now separating the tithes, and thereby making the wine permitted, he is only designating what the actual tithes are at a later point, through the principle of *bereirah*.

attributed (the designation) to the decision of others, he does hold of the principle of *bereirah*!

It is evident that Rabbi Shimon, in a case where one attributed (the designation) to the decision of himself, does not hold of the principle of *bereirah* from the aforementioned *braisa* (*where he agreed with Rabbi Yehudah regarding the wine*).

It is also evident that Rabbi Yehudah, in a case where one attributed (the designation) to the decision of others, holds of the principle of *bereirah* from that which we learned in the following *braisa*: If a person says, "I am going to cohabit with you (*in order to acquire you as a wife*) on condition that my father will approve," even if his father does not approve, she is betrothed to him (*for we assume that a person does not intend to act promiscuously, and he wants to betroth her even if his father does not consent to the marriage*). Rabbi Shimon ben Yehudah said in the name of Rabbi Shimon: If his father approves, she is betrothed to him. If not, they are not. [*Obviously, Rabbi Shimon holds of bereirah when it is dependent upon the decision of others!*]

Rava said to him: Rabbi Yehudah and Rabbi Shimon make no distinction, whether it is a case where one attributed (the designation) to the decision of himself and whether it is a case where one attributed (the designation) to the decision of others, and they subscribe to the principal of *bereirah* , and there (*in the case of the wine*), it (the reason they disagree) is because of the reason taught (at the conclusion of the braisa): They said to Rabbi Meir: Do you not agree that we should be concerned that the wineskin might break (*before the terumah and ma'aser were actually separated*) and it will emerge that he was retroactively eating *tevel* (*untithed produce*)! Rabbi Meir answered them: We will concern ourselves with this only when the wineskin actually breaks. [*In conclusion, Rava holds that they always hold of the principle of bereirah even when it is* a case where one attributed (the designation) to the decision of himself. *The case of the wine has a different reason altogether; nothing to do with the principal of bereirah.*] (25a – 26a)

INSIGHTS TO THE DAF

Two Lugin

The *Gemora* cites a *braisa*: If someone buys wine from amongst the Cutheans (*converts to Judaism after an outbreak of wild animals in Eretz Yisroel and their conversion was debated as to its validity; they observed some commandments, but not others*), he should say the following: "The two *lugin* (*a measurement*) that I will eventually separate (*from the one hundred lugin in total*) are *terumah* (*tithe for the kohen*), ten are *ma'aser rishon* (*tithe for the Levite*), nine are for *ma'aser sheini* (*to be eaten in Yerushalyim*)," and after redeeming the *ma'aser sheini* (*with coins*), he can drink right away. These are the words of Rabbi Meir. Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon forbid this leniency.

Rashi explains the *braisa* to be referring to a case where he does not have a vessel to separate the tithes required to allow him to drink the wine in an orderly fashion.

Some explain it that he did not have any *tahor* vessels.

Rashi in *Sukkah* (23b) explains that the fellow purchased the wine *bein hashemashos* (*close to sunset*) on Friday and he did not have time to separate the *ma'aser* before *Shabbos*. Since it is forbidden to separate *ma'aser* on *Shabbos*, he did not have what to drink.

Tosfos challenges Rashi's explanation, for if that would be the case, he would not even be allowed to orally declare it to be *ma'aser*, for it is forbidden to fix his produce on *Shabbos*!?

The Kaftor va'Ferach answers that Rashi holds that the manner prescribed in the *Gemora* is permitted, for he is

not actually fixing it on *Shabbos*. He is separating the *ma'aser* after *Shabbos* and retroactively the produce is remedied on *Shabbos*. It emerges that he did nothing on *Shabbos*.

Tosfos explains that the remedy discussed in the *Gemora* is only when it is still *bein hashemashos*. At that time, there was a Rabbinic decree not to separate *ma'aser*, but one, at that time, is permitted to orally declare it to be *ma'aser*.

Cutheans

Tosfos explains that although the Cutheans observed the *mitzvos* that are expressly written in the Torah, and therefore, it would be safe to assume that they already separated *terumah* and *ma'aser*, nevertheless, they are only trusted with respect to the food which they eat. However, the produce which they sell to others, they are not trusted, for the Cutheans were not particular about the transgression of *lifnei iver* (*placing a stumbling block in front of a blind man*). Tosfos in *Sukkah* (23b) explains further that understood that verse only in its literal sense. They maintained that it is forbidden to place a stumbling block in front of a blind man, but there is no prohibition against causing someone else to sin.

However, Tosfos asks: Would selling the produce without separating *terumah* and ma'aser not be regarded as stealing from the *Kohanim*? Stealing is a prohibition that they seemingly did observe!

Tosfos answers that since *terumah* and *ma'aser* is considered money that has no claimants (*for which Kohen is regarded as its owner*), it was not considered stealing in their eyes.

Other Rishonim add that, in truth, it is not regarded as stealing. Stealing is only when one takes something away from an owner who can make a claim to it. Since the *Kohanim* cannot forcibly take the produce from him, it is not considered stealing.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What are the two reasons for the opinion that holds that a woman may not appoint a *sh'liach* to receive her *get* from the *sh'liach* of the husband?

A: Either because it is disrespectful to him, or because it resembles the case where she acquired her courtyard after the *get* was placed there.

Q: If one would have two wives with the same name, and he wrote a *get* to divorce the older one; can he use the *get* to divorce the younger one with?

A: No! It's missing *lishmah*.

Q: If there are two Yosef ben Shimon's in one city, and a fellow in that city produces a document that Yosef ben Shimon owes him money; may he collect the money from one of them?

A: No!

PRACTICAL HALACHAH FROM THE DAF

Deeds of Sale that Take Effect on Shabbos

R' Akiva Eiger's brother, R' Bunim, sent him the following question: is it permitted to draw up a deed of sale before *Shabbos*, with the stipulation that the transaction will take effect on *Shabbos*? A similar question was raised four years ago in the Meoros Journal (#94, Gittin 38a) in regard to automatic vending machines owned by Jews, and patronized by gentiles on *Shabbos*. In essence, both questions revolve around the same inquiry into the prohibition against conducting business on *Shabbos*. Are only acts of business prohibited, or even transactions that occur automatically?

Melachos that are begun on erev *Shabbos*: The *Gemora* states that in most cases, it is permitted to begin a *melachah* on erev *Shabbos*, even though that *melachah*

will complete itself on *Shabbos*. For example, one may soak fabric in dye on erev *Shabbos*, and allow it to continue soaking on *Shabbos*. Traps may be set on erev *Shabbos*, although they may spring on their prey on *Shabbos* (*Shabbos* 18a). Although man is forbidden to work on *Shabbos*, there is no prohibition against letting one's possessions work on their own.

Nevertheless, the Avnei Nezer (O.C. 51) explains that this might not apply to business transactions. When a fabric is soaked in dye, it needs no further interaction with its owner. Even if he should die, G-d forbid, it would continue absorbing the color. The person is therefore entirely disassociated with the continued progress of the *melachah*. Therefore it is permitted to begin such a *melachah* on erev *Shabbos*. However, in a business transaction, there are two elements: the agreement, and the actual transfer of ownership. Although the agreement was reached on erev *Shabbos*, the transfer of ownership does not take place until *Shabbos*. If the person would die in the interim, the transaction would be null and void. He is still involved in the sale, even if he need make no more actions to carry it out. We may therefore pose the question: is the conclusion of a sale included in the prohibition, or only the agreement between the two sides to reach that conclusion?

The Maharam Shik (O.C. 131) rules that it is permitted to arrange a deal to take effect on *Shabbos*, while R' Akiva Eiger (159) rules that it is forbidden. One of the proofs cited to permit this stems from our sugya. As we know, it is forbidden to separate *terumos* and *maasros* on *Shabbos*. Since by separating the tithes one causes the fruit to become permitted, our Sages deemed this comparable to fixing a broken object, and forbade it. Nevertheless, we find in our *Gemora* that one may stipulate on erev *Shabbos*, that certain designated fruit should become *terumos* and *maasros* once *Shabbos* begins. Clearly, it is permitted for the tithing to take effect on *Shabbos*, provided that the actions to reach this effect were completed on erev *Shabbos*. Presumably, the same is true with a business transaction. It is permitted for the transaction to take effect on *Shabbos*, provided that the deal was completed on erev *Shabbos*.

Two halves of the same person: The Avnei Nezer (ibid) rejects this proof, explaining that as a general rule, when two people perform a *melachah* together, one beginning it and one concluding it, they are both exempt from punishment. If a single person begins a *melachah* on erev *Shabbos*, and concludes it on *Shabbos*, he is also exempt from punishment based on this same principle. He performed only half the *melachah* on *Shabbos*. Although he is not to be punished, it is still forbidden *le'chatchilah* to do so. Yet, in the case of carrying in a *karmelis*, which is only a Rabbinic prohibition, it is permitted to lift up an object on erev *Shabbos*, and carry it out on *Shabbos*. So too, we may apply this distinction to tithing. Preparing the tithes for separation is half of the prohibition, performed on erev *Shabbos*, whereas the tithing taking effect on *Shabbos* is the other half. Since tithing is only a Rabbinic prohibition, it is permitted to perform half the prohibition on *Shabbos*, just like carrying in a *karmelis*.

Business transactions, however, are not merely a Rabbinic prohibition. They are based on a possuk from Tanach, "If your refrain on *Shabbos*… from pursuing your interests," (Yeshaya 58. See Rashi, Beitza 37a). Therefore, although only half the transaction takes place on *Shabbos*, it is still forbidden.