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Kiddushin Daf 37

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Mishna

Any *mitzvah* which is dependent on the land is only performed in *Eretz Yisroel*, and that which is not dependent on the land, must be performed both in *Eretz Yisroel* and outside, except for *orlah* (the fruit that grows from a tree; the first three years of its life, they are forbidden for all benefit) and *kelayim* (the prohibition against planting together different species of vegetables, fruit or seeds; *kelayim* of a vineyard is forbidden for all benefit). Rabbi Eliezer says: Also except for *chadash* (the new crop of grain, which cannot be eaten until the *korban omer* is brought on the second day of Pesach). (36b – 37a)

Explaining the Mishna

Rav Yehudah explains the *Mishna*: Any *mitzvah* which is a personal obligation (and nothing to do with the ground or its produce, such as *Shabbos* or *tefillin*) applies to *Eretz Yisroel* and outside. If it is a *mitzvah* that involves the land or its produce, it applies only to *Eretz Yisroel*.

The *Gemora* provides the Scriptural source for this distinction. (37a)

Chadash

The *Mishna* had stated: Rabbi Eliezer says: Also except for *chadash*.

The *Gemora* inquires: Was Rabbi Eliezer presenting a lenient opinion or a stringent one?

The *Gemora* explains: If he was being strict, the argument is as follows: The *Tanna Kamma* said that all *mitzvos* involving the land or its produce applies only in *Eretz Yisroel* except for *orlah* and *kelayim*, which although they should only apply in *Eretz Yisroel* because they are *mitzvos* involving the land, a *halachah l’Moshe mi’Sinai* teaches us that they apply even outside of *Eretz Yisroel*. However, the *mitzvah* of *chadash* only applies in *Eretz Yisroel*. Although *moshav* (dwelling) is written by it (which would seem to connote anywhere in the world), this *Tanna* holds that *moshav* means “after they took possession and settled” in *Eretz Yisroel* (it took Yehoshua fourteen years to accomplish this). Rabbi Eliezer comes and argues, for he maintains that *chadash* applies even outside of *Eretz Yisroel*, for *moshav* means “anywhere that you dwell.”

If he was being lenient, the argument is as follows: The *Tanna Kamma* said that all *mitzvos* involving the land or its produce applies only in *Eretz Yisroel* except for *orlah* and *kelayim*, which although they should only apply in *Eretz Yisroel* because they are *mitzvos* involving the land, a *halachah l’Moshe mi’Sinai* teaches us that they apply even outside of *Eretz Yisroel*. And certainly the *mitzvah* of *chadash* applies outside of *Eretz Yisroel*, for *moshav* means “anywhere that you dwell.” Rabbi Eliezer comes and argues, for he maintains that *chadash* applies only in *Eretz Yisroel*, for *moshav* means “after they took possession and settled” in *Eretz Yisroel*. And when Rabbi Eliezer used the word “even,” he was referring to the first

rule stated in the *Mishna* (that all *mitzvos* involving the land or its produce applies only in *Eretz Yisroel*).

The *Gemora* attempts to resolve this from the following: Abaye said: Who is the *Tanna* in our *Mishna* that argues with Rabbi Eliezer? It is Rabbi Yishmael, as we learned in a *braisa*: [Rabbi Yishmael maintains that a *korban* needed libations to be brought with it only by a communal *bamah*, but not by a private altar. Therefore, the verse which states that libations should be brought “when you come to the land of your dwellings” cannot mean “in all places that you will dwell,” for the communal *bamah* was only in *Eretz Yisroel*.] This comes to teach us that whenever the Torah writes *moshav*, it means “after they took possession and settled” in *Eretz Yisroel*. These are the words of Rabbi Yishmael. Rabbi Akiva said to him: But it is written *moshavos* with respect to *Shabbos*, and yet the *mitzvah* of *Shabbos* applies even outside *Eretz Yisroel*? [Seemingly, the word *moshavos* should therefore mean “any place that you dwell”!?] Rabbi Yishmael replied: *Shabbos* applies everywhere can be derived through the following *kal vachomer*: If *mitzvos* which are not so stringent apply even outside *Eretz Yisroel*, then *Shabbos*, which is stringent, should certainly apply even outside *Eretz Yisroel*!

The *Gemora* concludes its proof: Since Abaye said: Who is the *Tanna* in our *Mishna* that argues with Rabbi Eliezer? It is Rabbi Yishmael; this proves that Rabbi Eliezer’s opinion is the stringent one. [Rabbi Yishmael holds that “*moshav*” means “after they took possession and settled” in *Eretz Yisroel*. Accordingly, the *Tanna Kamma* also holds like this, meaning that he would maintain that *chadash* applies only in *Eretz Yisroel*. Rabbi Eliezer would disagree and hold that it applies even outside *Eretz Yisroel*.] This is indeed a proof. (37a)

The *Gemora* explains Rabbi Yishmael to mean the following: Whenever the Torah writes *bi’ah* (coming into *Eretz Yisroel*) and *moshav*, it means that the *mitzvah*

applies “after they took possession and settled” in *Eretz Yisroel* (but it does not apply outside of *Eretz Yisroel*).

The *Gemora* explains the argument between Rabbi Yishmael and Rabbi Akiva. Rabbi Yishmael holds: Rabbi Yishmael holds that individuals did not bring libations while they were in the Wilderness (and therefore the new obligation teaches us that in *Eretz Yisroel*, after they took possession and settled there, they are commanded to bring libations even on a private altar). Rabbi Akiva holds that did bring libations while they were in the Wilderness (and therefore he cannot explain the verse to mean that when they enter *Eretz Yisroel*, they are obligated to bring libations, for they were already obligated to do this; rather, it means that the obligation is applicable even on a private *bamah*, and even before *Eretz Yisroel* was settled). (37a – 37b)

Bi’ah and Moshav

Abaye states: That which was learned above in the *Beis Medrash* of Rabbi Yishmael (that whenever the Torah writes *bi’ah* and *moshav*, it means that the *mitzvah* applies “after they took possession and settled” in *Eretz Yisroel*, but it does not apply outside of *Eretz Yisroel*) is at odds with a different teaching taught in the *Beis Medrash* of Rabbi Yishmael, for they taught: The Torah writes many times “*bi’ah*,” and it does not specify if the *mitzvah* will take effect only after the Land is settled, but it does specify one time (with respect of the *mitzvah* to establish a king) that it only takes effect after the Land is possessed and settled; so too, all *mitzvos*, where it says *bi’ah*, apply only after possession and settlement of the Land. [This teaching states that if the word *bi’ah* is mentioned, even without the word *moshav*, it connotes “after they took possession and settled” in *Eretz Yisroel*.]

The *Gemora* asks: Why doesn’t the *Tanna* of the first *braisa* learn like the second (that the word *bi’ah* alone is sufficient)?

The *Gemora* answers: It is because the verse regarding the king and the verse regarding *bikkurim* are two verses that teach the same thing (*it says bi'ah and the Torah writes specifically that they only apply after possession and settlement of the Land*) and the rule is that we do not learn from two verses that come as one.

The *Tanna* of the second *braisa* holds that these verses are necessary, for if the Torah would have written this only by the *mitzvah* of appointing a king, and not by *bikkurim*, we would have thought that *bikkurim* applies immediately, for one derives benefit from the crops. And if the Torah would have written this only by the *mitzvah* of *bikkurim*, and not by the *mitzvah* of appointing a king, we would have thought that appointing a king applies immediately, for it a king's way to conquer.

The *Gemora* explains that the first *Tanna* holds that we could have derived *bikkurim* from the *mitzvah* of establishing a king. And the *Gemora* explains why the second *Tanna* disagrees with that.

The *Gemora* asks: And now that we said that a *mitzvah* which is a personal obligation (*and nothing to do with the ground or its produce*) applies to *Eretz Yisroel* and outside, why does it say *moshav* by *Shabbos*?

The *Gemora* answers: Since *Shabbos* is written within the topic of the festivals, we might have thought that *Shabbos* requires sanctification (*by Beis Din*) the same way *Yom Tov* does. The word *moshav* teaches us that this is not the case (*for the Beis Din that would do the sanctification would be in Eretz Yisroel; the torah's writing of moshav, wherever you dwell, teaches us that Shabbos does not require sanctification, but rather, every seventh day is automatically Shabbos*).

The *Gemora* asks: Why does it say *moshav* by the prohibitions of eating forbidden fats and blood?

The *Gemora* answers: Since they are written within the topic of *korbanos*, we might have thought that the prohibitions would only apply during a time when *korbanos* were brought. The Torah teaches us that this is not the case (*moshav teaches us that they apply at all times, in all places*).

The *Gemora* asks: Why does it say *moshav* by the *mitzvah* of eating *matzah* and *marror* on *Pesach*?

The *Gemora* answers: Since the Torah says that the *matzah* and *marror* should be eaten together with the *korban pesach*, we might have thought that the *mitzvah* of eating the *matzah* and *marror* would only apply during a time when the *korban pesach* is brought. The Torah teaches us that this is not the case.

The *Gemora* asks: Why does it say *bi'ah* by the *mitzvah* of *tefillin* and the firstborn donkey?

The *Gemora* answers: This is needed for that which was taught in the *Beis Medrash* of Rabbi *Yishmael*: the Torah is telling us to perform this *mitzvah* in order that you should merit entering *Eretz Yisroel*. (37b)