

Daf Notes

Insights into the Daily Daf

3 Adar 5772

Temurah Daf 11

February 26, 2012

Daf Notes is currently being dedicated to the neshamah of
HaRav Refoel Dov ben HaRav Yosef Yechezkel o"h.

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of Life.

Visit us on the web at <http://www.daf-yomi.org/>,
where we are constantly updating the archives from the entire Shas.

Produced by Rabbi Avrohom Adler

To subscribe, please send email to: aneinu@gmail.com

Daily Daf

Consecrating a Fetus

[The Gemora had cited a dispute about consecrating a fetus. Bar Padda had said that one cannot consecrate it, while Rabbi Yochanan says that one can.]

The Gemora suggests that the dispute (between Bar Padda and R' Yochanan) is in fact a dispute that Tannaim differ on as well, for it was taught: If one slaughtered a chatas and found a four months' old fetus alive inside, one braisa states: It is only eaten by male Kohanim, within the curtains of the Courtyard, and for one day (and a night). [It is treated exactly as a chatas. The shechitah of the mother is effective for the fetus as well.] A different braisa, however, taught: It is eaten by all people (not only Kohanim), and it can be eaten everywhere (not only in the Courtyard), and it may be eaten forever. Now (assuming that the fetus was present at the time of the consecration), isn't the difference of opinion among Tannaim explained as follows: One master holds that consecration has effect on fetuses (and that is why it is treated as a chatas), whereas the other master maintains that consecration has no effect on a fetus (and the fetus can only become sanctified when it comes into being; since it is not fully developed, it is not regarded as 'coming into being,' and does not become holy when it leaves its mother's womb)? [The Gemora is presently of the opinion that if the animal conceived after it was designated as a chatas, the fetus remains in a nonconsecrated state until it is born.]

The Gemora rejects this line of reasoning, and explains that these Tannaim differ on the following point (and they are

referring to a case where the animal conceived after it was designated as a chatas): One Tanna holds that the offspring of sacrifices become sanctified when they come into existence (after they are born, and not from the time of conception), while the other Tanna maintains that the offspring of sacrifices are sanctified even in the womb of their mother.

Alternatively, the Gemora suggests: Both braisos are the teaching of one Tanna (and he holds like R' Yochanan that one can consecrate a fetus, for it is regarded as separate entity, and he also maintains that if a consecrated animal becomes pregnant, the fetus becomes consecrated only when it comes into being, but there is no contradiction between the two braisos, for they are referring to two different cases): One braisa deals with a case where one consecrated an animal and then it became pregnant (and therefore it can only become consecrated as the offspring of a chatas when it comes into being), and the other braisa refers to a case where he consecrated it in a pregnant condition (and therefore he directly consecrated the fetus at that time, and that is why the braisa rules that it is treated as a chatas).

The Gemora asks on Bar Padda (who holds that one cannot consecrate a fetus) from a Mishna: Rabbi Elozar said: A tereifah, kil'ayim (mixed breed) a fetus extracted through Caesarean section, tumtum (where a thick membrane covers its genitals, and therefore the gender is not known) and an androgynous (a hermaphrodite – one that has both male and female genitals) cannot become consecrated, nor can they cause consecration (to others). And Shmuel explained this as follows: They do not become consecrated through temurah

(the owner illegally attempts to exchange a different animal with the original *korban*), nor do they cause consecration by effecting *temurah* (unto others). And it has been taught in a *braisa* that Rebbe said: Since they do not become sanctified, how can they cause sanctity (unto others)? He must be referring to a case where one consecrated an animal and then it became a *tereifah*, or where one consecrated a fetus and it was then extracted through the Caesarean section. [R' Elozar is teaching us that an animal, that became consecrated as an offspring of its mother and later was born with a defect, cannot produce a *temurah*.] Consequently we see that a fetus can become holy (contrary to the opinion of Bar Padda)!?

[The *Gemora* agrees that this refutes our initial understanding of Bar Padda, and accordingly, revises its understanding of his opinion.] They said: Regarding an unblemished (fetus) in the womb of an unblemished animal, even Bar Padda agrees that it becomes consecrated; they differ only regarding an unblemished (fetus) in the womb of a blemished animal. Bar Padda holds that since the mother cannot be consecrated with physical sanctity, it (the fetus) can also not be consecrated (although if the mother was unblemished, the fetus could be consecrated by itself; see commentators for an explanation of this distinction), whereas Rabbi Yochanan holds that these (the mother and its fetus) are two independent animals; the mother is indeed not consecrated (due to its blemish), but the fetus can be consecrated.

The *Gemora* cites another version: But the cases of *kil'ayim*, *tumtum* and an *androgynous* (that they cannot cause sanctity to others) can only be explained with reference to the offspring of *kodashim* (who were conceived in the wombs of *kodashim*), and in accordance with the opinion of Rabbi Yehudah, who used to say that one can effect a *temurah* with an offspring of *kodashim* (however, these animals may not). Now, the *Gemora* notes, only these are not consecrated in full (on account of their defects, and that is why they cannot produce a *temurah*), but other fetuses could become consecrated (while they are inside their mother's womb, and even to such an extent that when they are born, they can produce a *temurah*; this is unlike the opinion of Bar Padda)!?

Abaye answered: Regarding an unblemished (fetus) in the womb of an unblemished animal, even Bar Padda agrees that it becomes consecrated; they differ only regarding an unblemished (fetus) in the womb of a blemished animal. Bar Padda holds that since the mother cannot be consecrated with physical sanctity (but rather, only for its monetary value), it (the fetus) can also be consecrated only for its monetary

value, whereas Rabbi Yochanan holds that the fetus is not regarded like the thigh of its mother, and although the mother is indeed not consecrated (due to its blemish), the fetus can be consecrated – even physically. (11a)

Limb of the Animal

The *Mishna* had stated: [Rabbi Yosi holds that one can make *temurah* from a full sacrifice onto a limb of a regular animal, but not from a limb of a sacrifice onto a regular animal, and then he stated the following proof:] Rabbi Yosi said: Just as the consecration of a limb of an animal as an *olah* makes the whole animal an *olah*, so should making a *temurah* on a limb of an animal make the whole animal a *temurah*.

The *Gemora* cites a *braisa*: If one said, "The leg of this animal shall be consecrated as an *olah*," one might have thought that the entire animal becomes an *olah*, therefore it is written: *All that any man gives from it to Hashem shall be holy*. This teaches us that only 'from it' shall be holy, but not all of it. One might think then that the leg shall become unconsecrated (through redemption), therefore it is written: *shall be*. It retains its present sanctity. What then should be done? It is sold for the purchase of an *olah* and the money will be non-sacred with the exception of the value of the consecrated leg; these are the words of Rabbi Meir. Rabbi Yehudah, Rabbi Yosi and Rabbi Shimon say: From where do we know that if a man said, "The leg of this animal shall be consecrated as an *olah*," the entire animal becomes an *olah*? It is written: *All that any man gives from it to Hashem shall be holy*. This includes the entire animal.

The master had said: It is sold for the purchase of an *olah* (and the buyer will then consecrate the remainder of the animal and offer it on the altar).

The *Gemora* asks: But isn't the buyer bringing an animal (for an *olah*) missing a limb (for the limb belongs to the seller who consecrated it; it emerges that the buyer is not fulfilling his vow, for he vowed to offer up an entire animal)?

Rava answers: It is referring to a case where the buyer had declared that he undertakes to bring an *olah* consisting of its vital organs (and therefore, it is insignificant to him that the leg was consecrated from beforehand by someone else). (11a – 11b)

Consecrating its Vital Organs

[Rabbi Yehudah maintains that only the limb which is consecrated is sanctified, but if one consecrates a vital organ, the sanctity spreads to the entire animal.]

Rav Chisda said: Rabbi Yehudah (*who maintains that only the limb which is consecrated is sanctified*) agrees (*that the sanctity would spread to the entire animal*) where he consecrated a part of the animal (*that its removal*) would render the animal *tereifah* (*for when he consecrates a vital organ, the sanctity spreads to the entire animal*).

Rava says: [*The qualification of R' Yehudah's ruling applies to a case where he consecrated*] a part of the animal (*that its removal*) would render the animal *neveilah*. **[A tereifah is an animal which, due to an injury, cannot live more than twelve months. A *neveilah* (in this context) is an animal which will imminently die.]**

Rav Sheishes said: [*The qualification of R' Yehudah's ruling applies to a case where he consecrated*] a part of the animal (*that its removal*) would kill the animal (*immediately, such as the heart or the esophagus*).

The *Gemora* asks: What is the practical difference between Rav Chisda and Rava?

The *Gemora* answers: The difference is whether a *tereifah* can live (*longer than twelve months or not*). Rav Chisda holds according to the one who says that a *tereifah* cannot live (*and consequently, since the animal cannot live, then he has consecrated something the removal of which results in the death of the animal, and therefore he holds that Rabbi Yehudah will agree in such a case that the sanctity spreads to the entire animal*), whereas Rava will hold according to the one who says that a *tereifah* can live (*and therefore it is not something the removal of which will result in the death of the animal; accordingly, only that limb would be sanctified; if, however, he consecrates a part of the animal that its removal would render the animal *neveilah*, the sanctity would spread to the entire animal*).

The *Gemora* asks: And what is the practical difference between Rava and Rav Sheishes?

The *Gemora* answers: The difference between them is regarding the ruling of Rabbi Elozar, for Rabbi Elozar said: If

the thigh was removed and the cavity (*up until the joint to the body*) was noticeable (*for all the skin and flesh was removed*), the animal is immediately regarded as a *neveilah* (*and although it is still alive, it contaminates like *neveilah*, for it is considered as already dead*). Rava will agree with Rabbi Elozar (*and therefore if one consecrated the thigh up to the cavity, it is something the removal of which results in death, and the sanctity will spread to the entire animal*), whereas Rav Sheishes will not (*and therefore, the consecration of this area will not cause its sanctity to spread to the entire animal*).

[These *Amoraim* all maintain that even according to Rabbi Yehudah, one who consecrates part of an animal – a part which the soul is dependent, its sanctity will spread to the entire animal.] The *Gemora* asks from a *braisa*: Rebbe said: The opinion of Rabbi Yehudah (*that the consecration of one limb does not render the entire animal holy*) seems more reasonable to me where the consecration is on part of the animal that the soul is not dependent, and the opinion of Rabbi Yosi (*that the consecration of one limb does render the entire animal holy*) where the consecration is on part of the animal that the soul is dependent. Now, can we not infer from this that Rabbi Yosi differs with Rabbi Yehudah (*even in connection with the consecration on part of the animal that the soul is not dependent, and R' Yehudah would differ with R' Yosi even in connection with the consecration on part of the animal that the soul is dependent*)? Now, that which was said that the opinion of Rabbi Yehudah seems more reasonable where the consecration is on part of the animal that the soul is not dependent, and implies that Rabbi Yosi disagrees with this is understandable (*and does not create any difficulty, since R' Yosi, indeed does differ in this, and holds that the consecration of a limb – even one that the soul is not dependent, cause the sanctity to spread throughout the entire animal*); but from that which was stated that the opinion of Rabbi Yosi seems more reasonable where the consecration is on part of the animal that the soul is dependent, does that not imply that Rabbi Yehudah differs (*and holds that the consecration of a limb that the soul is dependent does not cause the sanctity to spread throughout the entire animal*)? Shall we say that this refutes all (*of the *Amoraim* mentioned above*)?

The *Gemora* answers: No. The *braisa* is as if it is missing words, and must be read as follows: The ruling of Rabbi Yosi (*that the consecration of one limb does render the entire animal holy*) is acceptable even to Rabbi Yehudah regarding a part of the animal which the soul is dependent, for even Rabbi Yehudah does not differ with Rabbi Yosi except in regard to

the consecration of a part of the animal which the soul is not dependent, but in regard to the consecration of a part of the animal which the soul is dependent, he agrees with him (*that the entire animal becomes sanctified*).

Rava inquired: What is the *halachah* by a bird? [According to R' Yosi who holds that the consecration of a limb spreads to the entire animal, what if one consecrated a limb of a bird; does the sanctity spread to the entire bird or not?]

The *Gemora* explains the inquiry: The Torah says 'an animal' (where R' Yosi derives this law from), and this is not an animal, or perhaps shall we say that the torah mentions *korban* – offering in this verse, and a bird is also an offering?

The *Gemora* leaves the question unresolved.

Rava inquired: What is the *halachah* if one consecrated the animal's limb with a mere monetary sanctity (to be sold, and its proceeds should be used to buy an *olah*)? Should physical sanctity rest up on it? Do we say that since one limb is consecrated for the value, it spreads to the entire animal, and once monetary sanctity has taken hold of the entire animal, physical sanctity takes a hold of it; or perhaps, in order to acquire physical sanctity – enough to be offered as a sacrifice – two extensions would be necessary, and one extension is said, but not two?

The *Gemora* asks: But why does he not resolve the inquiry from his own teaching, for Rava said: If a person dedicated a male ram specifically so that it should only have monetary sanctity, it in fact acquires physical sanctity (*and it is offered as an olah*)?

The *Gemora* answers: That is not difficult, as one ruling is dealing with a case where he consecrated the entire animal, but the inquiry is referring to a case where he consecrated only one organ of its body.

The *Gemora* leaves this inquiry unresolved. (11b)

INSIGHTS TO THE DAF

Temurah: a Forced Dedication

By: Meoros HaDaf HaYomi

We are still asking what *temurah* is. In our last issue we discussed the definition of the prohibition of *temurah*. In this article we shall focus on the way *temurah* takes effect. A person who sanctified a sacrifice must not exchange it for another but if he did so, "it and its *temurah* will be holy; it shall not be redeemed." Both are sanctified, the first sacrifice and its *temurah*. Thus this person sanctified two sacrifices, the first in the usual way and the second by means of the *temurah*, which only took effect partially as the *temurah* became a sacrifice but the sanctity did not leave the first sacrifice, as he had wanted.

The Tanaim disagree in our mishnah (10a) as to if the *halachah* of *pashtah* ("it spread"), practised in sanctifying a sacrifice, applies to *temurah*. If a person says "The leg of this animal shall be an '*olah*'", the whole animal becomes an '*olah*', as the *Gemara* interprets from a verse that the sanctity spreads through the whole animal. These Tanaim did not disagree about this *halachah* (see Rashi, 10b, s.v. *Ee Rabbi Yehudah*) whereas concerning *temurah*, the Tanaim disagreed whether *temurah* takes effect if a person said "The leg of this animal shall be instead of this sacrifice."

We must conclude that according to the Tana Kama, who holds that the *temurah* doesn't take effect, there is a fundamental difference between a person who sanctifies an animal in the usual way and a person who sanctifies one by means of *temurah* because if there's no difference, why, if a person sanctifies an animal's leg, the "sanctity spreads through it all" whereas if a person declares a leg of an animal to be *temurah*, he doesn't sanctify the leg and therefore the sanctity does not spread through it all?

Let us hear the wonderful explanation of HaGaon Rabbi Elchanan Wasserman zt"l concerning the difference between them. As we want the leg declared as *temurah* to cause the whole animal to become sanctified because of *pashtah*, we must clarify the definition of *pashtah*. How does the sanctity spread? Then we must examine how the sanctity of an exchanged animal takes effect.

Indeed, what is *pashtah*? We could understand that the sanctity "takes hold" of the leg and then, as Hashem decreed, it spreads to the whole animal. We could also understand that the Torah innovated that if a person sanctifies an animal's leg, we must regard his act as a complete sanctification of the whole animal. (To clarify further, the two aspects are: does the sanctity spread by itself after it applies to the leg, or does the animal's owner himself sanctify the whole animal, as the

Torah said that he who sanctifies a leg actually sanctifies the whole animal). Rabbi Wasserman proves from Kidushin 7a that the second aspect is correct: the Torah decrees that the act of sanctifying the leg is the actual act which sanctifies the whole animal.

Now we continue to the halachah of *temurah*. There's a basic difference between sanctifying an animal in the usual way and sanctifying one by means of *temurah*. He who sanctifies an animal applies sanctity to it himself as the animal belongs to him and he has the power to sanctify it whereas the sanctity that applies by means of *temurah* takes effect against his will, as he doesn't want the sanctity unless it fulfills his wish - to remove the sanctity from the first sacrifice. If not, he doesn't want the second animal to be holy but the Torah decreed that "it and its *temurah* will be holy". Thus **he** didn't sanctify the second animal at all but the Torah sanctified it perforce.

Therefore, why should we compare the halachah of spreading the sanctity in an animal whose leg was sanctified **by its owner** to a person who declares his animal's leg *temurah*? The Torah innovated that if a **person** sanctifies his animal's leg, we must regard his act as sanctifying the whole animal whereas this person who performed *temurah* doesn't want to sanctify his animal's leg if the exchange won't be entirely effective. On the contrary, he opposes the sanctification. On his part, he never sanctified even the hoof of his animal if his wish would not be fulfilled. Can we now compare between a sanctifier and a person who performs *temurah* and ask why the halachos which apply to the sanctifier don't apply to the person who performs *temurah*? (If the halachah of *pashtah* would work by means of a spontaneous spreading the sanctity, logic would decree also regarding someone who performs *temurah* because the halachah of *pashtah* teaches us that sanctity can spread – and in this vein see *ibid*, where he explained the matter in another way; but as the halachah of *pashtah* applies to **the person** who sanctifies something, we cannot learn therefrom). (*Kovetz Shi'urim*, II, remarks on Chulin, os 30).

DAILY MASHAL

The Karaite's Opinion

Our *daf* and many *sugyos* in *Mesechta Temurah* involve the well-known difference of opinions as to whether "a fetus is a limb (*yerech*) of its mother." In other words, is the fetus considered part of its mother or a separate entity?

The Rambam (*Hilchos Shechitah* 12:10) rules: "It is permitted to slaughter a pregnant animal as the fetus is a limb of its mother."

Why did the Rambam see fit to rule on a *halacha* never mentioned in the *Mishnah* or *Gemara*? After all, there is no discussion on whether we are allowed to slaughter a pregnant animal.

A few *poskim* found a fascinating solution to this question. The writings of the *Geonim* and *Rishonim* indicate that a serious argument took place between the *chachamim* and the Karaites about slaughtering a pregnant animal. The Karaites contended that a fetus is considered "offspring" (*beno*) and even proved this from that stated about Rivkah: "and the sons (*habanim*) agitated inside her" (*Bereishis* 25:22). They therefore claimed that it is forbidden to slaughter a pregnant animal because of the prohibition of "it and its offspring." On the other hand, the *chachamim*, led by Rabbi Meshulam bar Rabbi Klonimus (cited in *HaEshkol* 3, p. 70, and in the Albeck edition, II, p. 120, and *ibid.* in remark 3), rejected their opinion. According to them, the Torah only refers to the fetuses in Rivkah as "sons" because of their future state.

The Rambam considered this argument when he wrote, "It is permitted to slaughter a pregnant animal; a fetus is a limb of its mother." The Rambam did not intend to comment on the difference of opinions as to whether a fetus is a limb of its mother; rather, he meant to say that no one maintains that the fetus of a slaughtered mother is considered "offspring" for it never separated from its mother. For this purpose, the Rambam used the phrase borrowed from the well-known difference of opinions - "a fetus is a limb of its mother" (see *Beis Yitzchak*, *ibid*; *Or Sameiach* on the Rambam, *Hilchos Shechitah*, *ibid.*; *Magiah* on the *Itur*, *sha'ar* 2, *Hilchos Shechitah*, 28; and *Torah Sheleimah*, *Bereishis*, chap. 25, os 85).

Indeed, it is interesting to discover that in the original manuscripts of the *Yad Hachazakah*, the Rambam's phrasing is "It is permitted to slaughter a pregnant animal; a fetus is an *eiver* (limb) of its mother." The well-known debate is always phrased as the question of whether "a fetus is a *yerech* (lit. the thigh) of its mother." By using the word *eiver* rather than *yerech*, the Rambam is indicating that he only wishes to refute the Karaites' opinion that a fetus is considered "offspring" before its birth.