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Bava Metzia Daf 88

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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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

### ***Courtyard and House for Ma’aser***

Rabbi Yannai said: Untithed produce is not obligated in *ma’aser* unless it is brought in the front of the house. This is as alluded to in the verse: *I have removed the holy (tithes) from my house*. Rabbi Yochanan says: Even a courtyard can establish an obligation of *ma’asros*, as the verse states: *And they will eat in their gateways and be satisfied*.

The *Gemora* asks: But according to Rabbi Yochanan, it also says: *from my house*?

The *Gemora* answers: He derives from there that the courtyard must be guarded in order for there to be an obligation of *ma’aser*.

The *Gemora* asks: But according to Rabbi Yannai, it also says: *in their gateways*?

The *Gemora* answers: This teaches us that the produce must enter the house through the gateways. This excludes produce that entered the house through the rooftops or backyards (*such produce will not be subject to the ma’aser obligation*).

Rav Chanina Chozaah asks from the *braisa* cited above: A worker may eat the produce like the owner; i.e. when he eats it as a snack, he is not required to separate *ma’aser* from it. We can infer from here that if someone (*other than the worker*) would buy this produce, he would be required to separate *ma’aser*! Now, are we not dealing with a case where the untithed produce is still in the

field!? [*This would contradict both opinions mentioned above!?*]

Rav Pappa answers: The *braisa* refers to a fig tree growing in a garden, but with its branches reaching to the courtyard, or, to the house, according to the opinion that it must reach into the house. [*It emerges that as soon as the figs are picked, they are subject to the ma’aser obligation.*]

The *Gemora* asks: If so, even the original owner should be liable!?

The *Gemora* answers: The owner’s eyes are upon the entire fig tree (*not just the branches; the process is not regarded as completed until all the figs are harvested or brought inside*), whereas the buyer has his eyes only for his purchase (*and if the figs from that branch reach the house, they would be subject to the obligation of ma’aser*).

The *Gemora* asks: But is a purchaser Biblically liable to separate *ma’aser* (*that we need a verse to exclude a worker from this obligation*)? Has it not been taught in a *braisa*: Why were the stores of Beis Hino destroyed three years before the destruction of Yerushalayim? It was because they based their actions upon the words of the Torah (*and transgressed the Rabbinic prohibitions*). They used to say: *You shall surely tithe ... and you shall eat*. This implies that you shall separate *ma’aser* if you intend to eat it, but not if you plan to sell it. *The produce of your seed* implies that you do not have to separate *ma’aser* if



the produce was purchased! [*Evidently, one is not Biblically liable to separate ma'aser from produce which he purchased!?*]

The *Gemora* answers: The liability of a purchaser to separate *ma'aser* is only by Rabbinic law, and the verse (*cited above to exclude a worker*) is a mere support (*to the Rabbinic law*).

The *Gemora* notes that the verse comes to teach us that just as if a person would muzzle his own mouth (*while working*), he would be guiltless, so also, if he would muzzle the mouth of his worker (*either by force or by paying him extra*), he would be free from punishment.

Mar Zutra challenges Rabbi Yannai and Rabbi Yochanan from the following *Mishna*: What is the time when produce becomes subject to the *halachos* of *ma'aser* (*that one cannot even snack before separating ma'aser*)? With respect to cucumbers and gourds, it is *mi'she'yipakesu*. Rav Assi explained this to mean that their blossoms are removed. Now, does that not mean, as soon as their blossoms are removed even while still in the field?

The *Gemora* answers: No! It is subject to *ma'aser* only after it enters the house.

The *Gemora* notes that the produce is subject to *ma'aser* as soon as the removing of the blossom commences (*and not after all the produce lose their blossoms*).

Mar Zutra the son of Rav Nachman challenges Rabbi Yannai and Rabbi Yochanan from the following *braisa*: The time when produce becomes subject to the *halachos* of *ma'aser* in that the prohibition of *tevel* is transgressed, is when its work is finished. And at what stage is the finishing of its work? It is at the time of "*hachnasah*." Now, "*hachnasah*" surely means when it was gathered into a pile, even while still in the field?

The *Gemora* answers: No! It means when it was brought into the house - that is the completion of its work.

Alternatively, we can answer that Rabbi Yannai was referring only to olives and grapes, which are not gathered into a threshing floor (*for he intends to eat them as is; they are completed when they enter the house*), but in the case of wheat and barley, the threshing floor is distinctly stated (*and therefore they are subject to the ma'aser obligation as soon as they are gathered into a pile, even before they enter the house*). (87b – 88b)

### ***Eating while Working***

The *Gemora* goes back to its initial discussion and asks: We know that a worker may eat when employed upon that which is attached to the ground, and we know that an ox can eat when working on that which is detached from the ground; but how do we know that man may eat when working on that which is detached from the ground?

The *Gemora* answers: It may be derived through the following *kal vachomer* (*literally translated as light and heavy, or lenient and stringent; an a fortiori argument; it is one of the thirteen principles of biblical hermeneutics; it employs the following reasoning: if a specific stringency applies in a usually lenient case, it must certainly apply in a more serious case*) from an ox: If an ox, which (*the Torah does not state*) that it can eat from that which is attached, may nevertheless eat from that which is detached; then a man, who may eat of what is attached, may surely eat from that which is detached!

The *Gemora* asks: As for an ox, we can say that it has the privilege of eating because one is forbidden to muzzle him; can you assume the same of man, whom you are not forbidden to muzzle?



The *Gemora* defends the *kal vachomer*: But then let us derive that one is commanded not to muzzle a man through a *kal vachomer* from an ox: If one must not muzzle an ox, whose life you are not commanded to preserve, then man, whose life one is obligated to preserve, one must certainly not muzzle him!

The *Gemora* answers: The Torah teaches us that just as if a person would muzzle his own mouth (*while working*), he would be guiltless, so also, if he would muzzle the mouth of his worker (*either by force or by paying him extra*), he would be free from punishment.

Then the question remains, how do we know that man may eat when he is working on that which is attached?

The *Gemora* answers: The Torah writes *standing grain* twice: Since it is not needed to teach us that man may eat from that which is attached, let us apply it to man in respect of that which is detached.

Rabbi Ami said: That man may eat from that which is detached, a verse is not necessary. For it is written: *When you come into your fellow's vineyard*. Does this not apply to a case where he was hired to carry the grapes on his shoulder (*which are detached from the ground*), and yet, the Torah states that he may eat from the grapes.

The *Gemora* asks: How do we know that an ox may eat when working on that which is attached to the ground?

The *Gemora* answers: It may be derived through the following *kal vachomer* from a man: If a man, who cannot eat from that which is detached (*although he could eat, the Torah does not state so explicitly*), may nevertheless eat from that which is attached; then an ox, who may eat of what is detached, may certainly eat from that which is attached!

The *Gemora* asks: As for a man, we can say that he has the privilege of eating because one is obligated to preserve his life; can you assume the same of an ox, whose life you are not commanded to preserve?

The *Gemora* defends the *kal vachomer*: But then let us derive that one is commanded to preserve the life of an ox through a *kal vachomer* from man: If one is not prohibited from muzzling a man, yet his life, you are commanded to preserve, then an ox, where one is commanded not to muzzle, one should certainly be obligated to preserve its life!

The *Gemora* answers: The Torah teaches us from the verse *and your brother shall live with you* that one is obligated to preserve the life of his brother, not the life of an ox.

Then the question remains, how do we know that an ox may eat when it is working on that which is attached?

The *Gemora* answers: The Torah writes *your fellow* twice: Since it is not needed to teach us that man may eat from that which is attached, let us apply it to an ox in respect of eating that which is attached.

Ravina said: That man may eat from that which is detached, and that an ox may eat when it is working on that which is attached, a verse is not necessary. For it is written: *You shall not muzzle an ox in its threshing*. Now, consider that all animals are included in this prohibition of muzzling, because we employ the analogy of "ox" written here and "ox" written in the case of *Shabbos*. So the Torah should have written: *You shall not thresh while muzzling*. Why does the Torah write "ox"? It is to compare the muzzler (*the man*) to the muzzled (*the animals*), and to compare the muzzled to the muzzler. Just as the muzzler may eat from that which is attached, so the muzzled may eat from that which is attached; and just as



the muzzled may eat from that which is detached, so the muzzler may eat from that which is detached. (88b – 89a)

## INSIGHTS TO THE DAF

**By: Reb Avi Lebovitz**

### ***Ma'aser on Purchased Produce***

There is a fundamental argument between Rabbeinu Tam and Rivam quoted by Tosfos regarding the exemption from *ma'aser* on produce that Reuven sold to Shimon.

Rabbeinu Tam holds that if Reuven processed the produce prior to selling and it became obligated in *ma'aser* and assumes a status of *tevel*, by selling it to Shimon, the *tevel* status is removed and it is exempt once again. But if Reuven never processed it, when Shimon does the processing, he will be Biblically obligated in *ma'aser* because it is considered his own produce.

Rivam says exactly the opposite. If Reuven processed the produce prior to selling it, since it has become obligated in *ma'aser* and assumes a status of *tevel*, this status cannot be removed. Therefore, when he sells it to Shimon, Shimon will have a Biblical obligation to separate *ma'aser*. But if Reuven sold it to Shimon prior to processing it and it was processed in the home of Shimon, then it is not subject to a *ma'aser* obligation.

When the produce was grown by an idolater (*assuming his acquisition in Eretz Yisroel will not remove the ma'aser obligation*), the *Gemora* says in Bechoros (11b) that if the idolater processed them and then sold them to a Jew, they are exempt from *ma'aser*, but if the Jew processed them, they are obligated.

Rabbeinu Tam holds that if the produce was processed by the original farmer, it makes no difference if he were a Jew or an idolater, the buyer would be exempt. But, if

they weren't processed by the original farmer, the buyer would be obligated.

The Rivam holds that when the original farmer was an idolater, the *halachah* is exactly the opposite from when the original farmer would be a Jew. An idolater farmer who processes and sells would be exempt since it was processed by the idolater and it will remain exempt even after it is sold. But if an idolater farmer didn't process it, it is not considered his at all, so that when he sells it to the Jew and the Jew processes it, it is obligated.

The greatest difficulty with Rabbeinu Tam is that produce that is *tevel* can be sold and revert back to being exempt from *ma'aser* (*and then if sold back to Reuven would revert back to being obligated in ma'aser*)! The greatest difficulty in the Rivam is that produce of an idolater is not considered to be his unless he processed it, so that if sold to a Jew, it is as if the Jew grew it himself and is obligated in *ma'aser*.

Another hybrid approach (*possible Reb Chaim's explanation in a Rambam*) is that it is not dependent on who processed it, but rather what the intent was when it was processed. If Reuven processed it for personal use and it becomes obligated, nothing can remove that status of *tevel* (*like the Rivam*). If Reuven did not process it; rather he sold it to Shimon who processed it, then it is also obligated (*like Rabbeinu Tam*). Only if Reueven processed it with the intent of selling it to Shimon, it will be exempt.

### ***Saving the Whales***

The *Gemora* suggests a *kal vachomer* that would result in their being a *mitzvah* of preserving the life of animals. Although one may have a *mitzvah* to feed his own animals, the *Gemora* concludes that there is surely no *mitzvah* to support the animal (*when it is no longer profitable*), and certainly one is not obligated to support animals that are not his.



The Tosfos HaRosh asks in the name of Rabbeinu Meir: Why would we have thought differently? There should be an obvious challenge to this *kal vachomer* from the fact that one is not allowed to slaughter people, but may slaughter animals - this obviously shows that there isn't any *mitzvah* to preserve the life of animals!?

The Tosfos HaRosh responds to this question by saying that we would have thought that this *mitzvah* would apply to animals that one is not allowed to slaughter, such as a *bechor* that is intermingled with an ox that is destined to be stoned (*shor haniskal*).

Aside from the actual question of the Tosfos HaRosh, the entire thought that one would be obligated to support animals and help them survive seems a little strange. Especially since in the end, the *mitzvah* of preserving a life only applies to a Jew and not to an idolater!?

The Biur Halachah (330:2) writes that one is obligated to help a *ger toshav* woman give birth because on a *ger toshav*, there is a *mitzvah* to preserve their life. He entertains the possibility that the Jew can even violate a Rabbinic prohibition to help the *ger toshav* give birth because when there is a *mitzvah* to preserve a life, the Rabbis did not issue their decrees. Based on this application of the *mitzvah* to preserve a life, the *mitzvah* goes beyond *tzedakah*; it compels one to actually take care of others and help them through physically challenging circumstances.

#### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What new thing happened on account of Avraham (*in connection with age*)?

A: People began to appear old.

Q: What new thing happened from the times of Yaakov?

A: People began to become ill prior to death.

Q: What new thing happened from the times of Elisha?

A: Someone was healed from a severe illness.

#### DAILY MASHAL

##### He Who Adds Only Makes Worse

The Chafetz Chayim zt"l used to say that the adage of Yosei ben Chanan Ish Yerushalayim (Avos 1:5) "Let the poor be members of your home" is meant for when a host's exaggerated care for a guest only causes his growing discomfort. A host sometimes worries that he is not honoring a guest enough and the Tanna therefore says "Let the poor be members of your home". Treat your guests lightly and naturally, like your family, and refrain from over-polite formalities that may add to his discomfort as being, at any rate, a stranger (Ahavas Chesed, Likkutim).