

25 Kislev 5776  
Dec. 25, 2016



Bava Metzia Daf 90

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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

### **Muzzling by Terumah and Ma’aser**

The *Gemora* cites a *braisa*: If one muzzled a cow that was trampling grain (*barley that was soaked in water and dried in an oven; it was trampled in order to remove its shell*), or it was threshing *terumah* or *ma’aser* (*when it was separated prematurely before the threshing*), he has not transgressed the prohibition of: *You shall not muzzle* (*because in the first case, it is already subject to the ma’aser obligation, since it was threshed already; in the second case, he is exempt, for the prohibition does not apply to produce that is already terumah or ma’aser*), but for the sake of appearances (*mar’is ayin*), he must bring a fistful of that species and hang it on the feedbag at its mouth. Rabbi Shimon ben Yochai said: He must bring vetch and hang them up for it, because these is nothing better for it than vetch.

The *Gemora* asks: The following *braisa* contradicts it: If one muzzled a cow that was trampling grain, he has not transgressed the prohibition of: *You shall not muzzle*, but if it was threshing *terumah* or *ma’aser*, he has transgressed the prohibition of: *You shall not muzzle*. When a gentile threshes with a Jew’s cow, that prohibition is not transgressed (*even if the Jew instructed him to muzzle it*), but if a Jew threshes with a gentile’s animal, he does.

Thus the rulings on *terumah* and *ma’aser* are contradictory!?

Now, as for the rulings on *terumah*, there is no difficulty, for we can answer that the first *braisa* refers to *terumah* itself (*where there is no “muzzling” prohibition*), and the second *braisa* refers to that which grew from *terumah* (*if one plants terumah, the crop produced is Rabbinically regarded as terumah*), but as for the rulings regarding *ma’aser*, these are certainly difficult!?

And if you will answer that there is no contradiction in the rulings on *ma’aser* either, because the first *braisa* is referring to *ma’aser* and the second one is referring to that which grew from *ma’aser*, we can object for the following reason: As for that which grew from *terumah*, the answer is fitting, since it is *terumah* (*at least on a Rabbinical level*), but that which grew from *ma’aser* is *chulin*, for we learned in a *Mishna*: The produce of *tevel* and the produce of *ma’aser sheini* are *chulin*!?

The *Gemora* answers: There is no difficulty, for the second *braisa* refers to *ma’aser rishon* (*which is given to the Levi, but has no sanctity*), and the first *braisa* refers to *ma’aser sheini* (*which has sanctity, and therefore there is no “muzzling” prohibition*).

Alternatively, both refer to *ma’aser sheini*, yet there is no difficulty, for the first *braisa* is in accordance with Rabbi Meir, and the second *braisa* is following the opinion of Rabbi Yehudah. One agrees with Rabbi Meir, who holds that *ma’aser sheini* is *Divine property*, and the other follows Rabbi Yehudah, who maintains that it is personal property.



The *Gemora* asks: Even according to Rabbi Yehudah, does it (*the ma'aser*) not require the wall of Yerushalayim (so how can he allow the animal to eat from it)?

The *Gemora* answers: He threshed it within the walls of *Beis Pagi* (an annex of Yerushalayim).

Alternatively, the *Gemora* answers the contradiction that there is no difficulty, for the first *braisa* refers to certain *ma'aser*, and the second *braisa* refers to *ma'aser* of *demai* (produce purchased from an *am ha'aretz*; it is only regarded as Rabbinical *ma'aser*, and therefore, the "muzzling" prohibition would still apply).

The *Gemora* notes that we can provide the same answer regarding *terumah* as well.

The *Gemora* asks: Is there such a thing by *terumah*? But we learned in a *braisa*: *Yochanan Kohen Gadol* also abolished the declaration regarding *ma'aser* (*viduy ma'asros*, confession of the tithes (before *Pesach* on the fourth and seventh years of the *shemita* cycle, he must make sure that all tithes from the previous years were given to their proper destination; since *Ezra* penalized the *Levi'im*, and the *ma'aser* went now to the *Kohanim*, they could not make such a declaration) and enacted the law of *demai*. This was because he sent messengers throughout the territory of Israel, and saw that they were only separating *terumah* (but not *ma'aser*)!?

The *Gemora* answers: There is no difficulty, for the first *braisa* refers to *terumas ma'aser* of the certain produce (*the terumah that the Levi is required to give to the Kohen*), and the second *braisa* refers to *terumas ma'aser* of *demai*. (89b – 90a)

### **Suffering from Diarrhea**

They inquired of Rav Sheishes: What if the animal ate and excreted (*due to diarrhea*)? Is the "muzzling" prohibition

because the produce benefits the animal, whereas here, it does not; or is it because the animal sees food and is distressed because she cannot eat, and here too it would be distressed?

Rav Sheishes replied: We have learned in our *Mishna*: Rabbi Shimon ben Yochai said: He must bring vetch and hang them up for it, because these is nothing better for it than vetch. This proves that the reason for the prohibition is because the produce benefits her. This indeed proves it. (90a)

They inquired: Is it permitted for a Jew to instruct a gentile to muzzle his animal and thresh with it? Do we say that it is prohibited only according to Rabbinic law to tell a non-Jew to do work for you on *Shabbos*, where there is a punishment of stoning; however, with regards to muzzling, which is merely a negative transgression, this prohibition would not apply? Or perhaps, it applies in all cases!?

The *Gemora* attempts to prove this from the *braisa* cited above: When a gentile threshes with a Jew's cow, that prohibition is not transgressed (*even if the Jew instructed him to muzzle it*). The *Gemora* infers from there that there is no prohibition, but it still would be forbidden!

The *Gemora* deflects this proof by saying that the *Tanna* used that terminology just to be consistent with the latter part of the *braisa*.

The *Gemora* attempts to resolve this from another *braisa*: The people from *Eretz Yisroel* sent the following inquiry to Shmuel's father (*in Bavel*): Those oxen which the non-Jews "steal" and castrate (*a castrated bull works much better; the Jews would allow their non-Jewish neighbors to "steal" their animals and castrate them; they would then return them to the Jews*), what is the *halachah*? He replied: Since a ploy was committed with them, turn the ruse upon them, and the animals must be sold (*so the*



*Jews should not benefit from the castration; evidently, there is a Rabbinic prohibition to instruct a gentile to do something that is forbidden for the Jew to do, even though there is no stoning punishment)!*

Rav Pappa replied: Perhaps the scholars in *Eretz Yisroel* agree with Rabbi Chidka, who maintains that the descendants of Noach are also forbidden to castrate an animal, and therefore the Jew, in instructing the gentile to do it, violates the prohibition of: *You shall not put a stumbling block before the blind.*

Now, Rava thought that they must be sold for slaughter (and not for plowing, for otherwise, he would still be benefitting from the extra value caused by the castration). Thereupon Abaye said to him: It is enough that you have penalized them to sell.

The *Gemora* rules: It is permitted for him to sell it to his adult son. Rav Achai ruled that he cannot sell it to his minor son, but Rav Ashi said that even that is permitted.

Rami bar Chama inquired: What if one put a thorn in the animal's mouth (since the animal cannot eat, has he violated the "muzzling" prohibition)?

The *Gemora* responds: Surely that is actually muzzling!

Rather, the inquiry is: What if a thorn became stuck in its mouth (must he remove it before threshing)?

He inquired further: What if one placed a lion to lie down outside the field in which the ox was threshing (so that the animal would be too scared to eat)?

The *Gemora* responds: Surely that is actually muzzling!

Rather, the inquiry is: What if a lion lay down outside (must he remove it before threshing)?

What if one placed its calf outside the field? What if it was thirsty for water (and its thirst prevents her from eating)? What if he spread a boiled hide over the grain to be threshed?

The *Gemora* attempts to solve one of these inquiries from the following *braisa*: The owner of the cow (who is renting it to someone else to thresh with) may let it go hungry in order that it should eat a lot of the grain it threshes; while on the other hand, the owner of the house may untie a bundle of hay before the cow in order that it should not eat a lot of the grain it threshes. [We can seemingly prove from here that he would be permitted to cover the grain with the boiled hide.]

The *Gemora* objects to the proof, for it is different there, because it nevertheless does eat (since the hay is not completely covering it).

Alternatively, the *braisa* means that the owner of the house may untie a bundle of hay in front of the cow before the animal begins to thresh (so the animal should eat the hay) in order that it should not eat much of the grain that is threshed.

Rabbi Yonasan asked Rabbi Simai: What is the law if he muzzled it outside (and then threshed with it)? Does Scripture mean: You shall not muzzle an ox when [i.e., at the time that] it threshes, while this (the muzzling) is not [done] when it threshes? Or perhaps Scripture meant: You shalt not thresh with a muzzled ox?

He replied: You may learn from your father's house. [The Torah commands Aaron HaKohen:] Do not drink wine or strong drink, you, nor your sons with you, when you enter [into the tabernacle etc.]. Now, is it forbidden only when you enter, yet one may drink before and then enter? But Scripture said: And that you may put difference between holy and unholy! Hence, just as there, when the Kohen



has entered there must be no drunkenness, so here too: when threshing, the ox must not be in a muzzled state.

The Gemora cites a braisa: He who muzzles an ox or harnesses together [two] heterogeneous animals is exempt [from punishment], and only he who threshes or drives them incurs lashes.

It has been stated: If one frightened it off with his voice, or drove them [sc. the yoke of heterogeneous animals] with his voice: Rabbi Yochanan held him liable to punishment, the movement of the lips being an action. Rish Lakish ruled that he is not, because [the use of] the voice is not an action.

Rabbi Yochanan raised an objection to Rish Lakish: [There is a prohibition in the torah to make a *temurah* (the owner illegally attempts to exchange a different animal with the original korban; the halachah is that the *temurah* animal gets the same sanctity as the original one, and both animals must be brought as a korban).] Not that one is permitted to make an exchange, but that if he did, the exchange is valid, and he receives forty [lashes]!

He replied: That accords with Rabbi Yehudah, who maintained that one incurs lashes for [violating] a negative precept which involves no action.

The Gemora asks: But can you make this agree with Rabbi Yehudah? Doesn't the first clause state: All have power to exchange, both men and women. Now, we pondered regarding that: what is 'all' intended to add? [And we answered:] This includes an inheritor. And this does not agree with Rabbi Yehudah, for if it did, surely he maintained that an inheritor can neither exchange nor lean (on the korban for the mitzvah of semichah)!

The Gemora answers: This Tanna agrees with Rabbi Yehudah in one ruling, and disagrees in another. (91a)

## INSIGHTS TO THE DAF

### Supplying animals for bullfights

Chazal forbade us to command non-Jews to do melachah for us on Shabos. (The Torah, itself, though, forbids us to command a ger toshav, a gentile accepting the seven Noachide commandments, to do melachah; see Rashi Shemos 23:12 s.v. vehager). Rambam (Hilchos Shabos 6:1) explains that the injunction is meant to prevent us from adopting a lenient attitude toward Shabos, which may tempt us to do melachah ourselves. Our gemara asks if Chazal also decreed this prohibition regarding all negative commandments, such as asking a non-Jew to thresh with a Jew's animal whose mouth is bound to prevent it from eating. The Rishonim disagreed as to the halachah (see Rosh on our sugya, who cites Raavad's lenient opinion, and Rambam in Hilchos Kilayim 1:3 who forbids instructing a non-Jew regarding all negative commandments); Shulchan 'Aruch (C.M. 338:6) finally ruled according to Rambam.

A Jew who rented out horses referred an intriguing question to Rav Yehudah 'Ayash zt"l, author of Beis Yehudah (Responsa, Y.D. 55). Instead of charging a regular fee, he would demand a percentage of the profits earned by a renter from his use of the horse. A gentile neighbor asked to rent a horse but the Jew knew he had an ox fit for plowing. The non-Jew would surely harness the ox and the horse together to pull a plow, an act forbidden to Jews by the prohibition on plowing with two species (kilayim). The Jew asked if he could rent his horse to his neighbor. Apparently, the gentile's use of the horse should not concern him and there should be no reason to forbid the rental. Rav 'Ayash replied, though, that he may only rent out the horse for a fee agreed in advance as he then has no commercial interest in the horse's work and gets paid even if the horse does no work. If, however, he collects a percentage of the profits from the horse's work,



he has a commercial interest therein and is regarded as encouraging the gentile to plow by kilayim. As our sugya explains, Chazal prohibited us to command non-Jews to do anything forbidden by the Torah.

### DAILY MASHAL

#### Fights between animals

Rav Yaakov Breisch zt"l expressed a brilliant idea relating to this topic. Many poskim discuss the parameters of the prohibition on cruelty to animals and conditions allowing animal experiments. All agree, though, that arranging bullfights or the like is forbidden as such acts are purely sadistic. However, there is apparently no reason to prohibit a Jew to rent out a bull to a gentile who holds bullfights since he gets paid even if the bull is not used. Moreover, the owner does not himself subject his animal to cruelty and should be allowed to rent it out, just as the aforementioned Jew was permitted to rent a horse to a gentile to plow by kilayim for a fee agreed in advance. Still, Rav Breisch (Responsa, C.M. 35, in the comment) asserts that the prohibition means not only not to pain animals but to care for them and prevent their pain. The Torah teaches us this precept with the mitzvah to relieve an animal of its unbearable burden even though we did not put it there. Someone, then, who rents or sells an animal to a gentile, knowing he wants to pain it, transgresses the prohibition on cruelty to animals even without telling the gentile to commit such an act. (This is the opinion of those who hold that cruelty to animals is forbidden by the Torah; the issued is disputed by the Talmud and poskim but all agree that certain acts of unnecessary cruelty are prohibited at least derabanan).

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

to refresh your memory

Q: When will produce be Biblically obligated in *ma'aser*?

A: R' Yannai – once it enters the house; R' Yochanan – once it enters the courtyard. [*According to one opinion in the Gemora, this dispute applies only to olives and grapes.*]

Q: Why were the stores of Beis Hino destroyed three years before the destruction of Yerushalayim?

A: It was because they based their actions upon the words of the Torah (*and transgressed the Rabbinic prohibitions*).

Q: Is there a prohibition to muzzle a worker?

A: No.