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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

Mishna

Rabban Shimon ben Gamliel says: If one buys a nursing animal from an idolater, he does not need to be concerned that perhaps the offspring belongs to another animal. [*We do not consider the offspring which follows as a doubtful firstborn, as perhaps the animal had never given birth; and as for its giving milk, there exists a minority of animals which give milk without having given birth previously. Rather, we consider the offspring as definitely belonging to the animal, and the animal is thus exempted from the law of the firstborn.*]

If he went among his flock and saw animals which had given birth for the first time nursing, and animals which had not given birth for the first time nursing, we do not need to be concerned that perhaps the offspring of this one came to the other or perhaps the offspring of the other came to this one. [*Rather, we presume that the offspring nursing from this animal belongs to it, and that there has been no mingling. As long as it is known which animal gave birth for the first time, we can assume that the young nursing from those mothers are definite bechoros.*] (23b)

The Law is

Rav Nachman said in the name of Rav: The law is in accordance with the opinion cited in the *Mishna* in the entire chapter, except in the case where a difference of opinion is recorded.

Rav Sheishes said: I say that Rav declared this tradition when he was dozing [*for otherwise, he would not have said it*].

[*Rav Sheishes explains:*] Which *Mishna* is Rav referring to (*when he said that the halachah follows that Mishna*)? He cannot be referring to the first *Mishna* in the chapter (*dealing with one who*

purchased an animal from an idolater, and he does not know if it gave birth yet), for the differing opinions of Rabbi Yishmael and Rabbi Akiva are recorded there. He cannot be referring to the teaching of Rabbi Eliezer ben Yaakov (*in the preceding Mishna, regarding a large animal that discharged a clot of blood*), for there would be no novelty for his saying, for it is said that the *Mishna* of Rabbi Eliezer ben Yaakov is little in quantity (*for his opinion is very rarely cited in a Mishna*) but pure (*and in any case, the law is in accordance with his views*). He cannot be referring to the rulings of Rabban Shimon ben Gamliel in our *Mishna*, for there are differing opinions mentioned in a *braisa*. He cannot be referring to the rulings of Rabbi Yosi ben ha-Meshullam (*in a subsequent Mishna*), for Rav has informed us of this once, for Rav said: The law is in accordance with Rabbi Yosi ben ha-Meshullam. He cannot be referring to the ruling (*in a subsequent Mishna*) in connection with the hair of a blemished firstborn, for the opinions of Akavya ben Mahalalel and the Rabbis are mentioned there!?! [*There is nothing left for him to have been referring to!*]

The *Gemora* answers: Indeed Rav is referring to the rulings of Rabban Shimon ben Gamliel in our *Mishna*, and he is teaching us that a difference of opinion cited in a *braisa* is not regarded as a difference of opinion (*to be taken into account; and therefore, Rav is teaching us that the halachah follows Rabban Shimon ben Gamliel*).

The *Gemora* asks: But since Rav said that the law is in accordance with the opinion cited in the *Mishna* in the entire chapter, except in the case where a difference of opinion is recorded, what need is there for the ruling that the law is in accordance with Rabbi Yosi ben ha-Meshullam?

The *Gemora* answers: If he had said that the law was according to the opinion cited in the *Mishna* in the entire chapter, and he did not subsequently state that the law was in accordance with Rabbi

Yosi ben ha-Meshullam, I might have thought that he was referring to Rabbi Yosi ben ha-Meshullam, and when Rav said ‘the entire chapter,’ he meant that the *halachah* follows Rabbi Yosi ben ha-Meshullam in all of his rulings, for he ruled regarding two things (*in the subsequent Mishna*); and, accordingly, I would have said that a difference of opinion cited in a *braisa* is regarded as a genuine difference of opinion. This is why Rav informs us that the law is in accordance with Rabbi Yosi - to intimate to us that (*in the other statement, when he said that the law is in accordance with the opinion cited in the Mishna in the entire chapter, except in the case where a difference of opinion is recorded*) he was referring to Rabban Shimon ben Gamliel, and that a difference of opinion cited in a *braisa* is not regarded as a difference of opinion (*of any significance*). (23b – 24a)

Compassionate Animal

The *Gemora* asks: What is the *braisa* referred to above?

The *Gemora* answers: It was taught in a *braisa*: If one buys a nursing animal from an idolater, the offspring which follows it, is a doubtful firstborn, because it can be compassionate (*and nurse*) even to one to which it had not given birth. Rabban Shimon ben Gamliel, however, says: We follow its natural presumption (*that it has given birth*). And similarly, Rabban Shimon ben Gamliel used to say: If one goes among his flock at night and sees about ten or fifteen animals, both those which had not borne previously and those which had previously given birth, and the next day, he arises and finds the males clinging to (*and nursing from*) the animals that had given birth previously and the females clinging to (*and nursing from*) those which were now giving birth for the first time (*which would seemingly indicate that there are no bechoros*), he does not need to be concerned that perhaps the offspring of one came to the other.

The *Gemora* inquires: Was the reason of Rabban Shimon ben Gamliel’s statement that we follow the natural presumption that no animal will act compassionately (*nursing another animal’s young*) unless it has had an offspring of its own, but where it had given birth before, we are concerned that it will act compassionately (*and nurse another animal’s offspring*)? Or perhaps that it will act compassionately to its own but it will not act compassionately to one that is not its own?

The *Gemora* notes the practical difference between them: It is to punish with lashes on its account for transgressing the prohibition of slaughtering the mother (*the nurser*) and its offspring (*the nursling*) on the same day. If you say that it will act compassionately to its own but it will not act compassionately to one that is not its own, then there will be here a liability of lashes, whereas if you say that it will act compassionately (*and nurse another animal’s offspring*), then there is no liability of lashes.

The *Gemora* attempts to resolve this from our *Mishna*: Rabban Shimon ben Gamliel says: If one buys a nursing animal from an idolater, he does not need to be concerned that perhaps the offspring belongs to another animal. [*It is presumed that the offspring belongs to the animal. Evidently, his opinion is that it does not act compassionately, except to its own offspring.*]

The *Gemora* deflects the proof: Does Rabban Shimon say that he does not need to be concerned that perhaps it is the offspring of another animal? He said that he does not need to be concerned that perhaps it was the offspring of another animal. [*What is the meaning of such an expression?*] This is what he is saying: He does not need to be concerned that perhaps it is the offspring of another animal, except if there was an offspring born to her previously.

The *Gemora* attempts to resolve this from the latter part of our *Mishna*: If he went among his flock and saw animals which had given birth for the first time nursing, and animals which had not given birth for the first time nursing, we do not need to be concerned that perhaps the offspring of this one came to the other or perhaps the offspring of the other came to this one. Why is this so? Why not be concerned that it will act compassionately (*and nurse another animal’s offspring*)? [*Evidently, it will not nurse another animal’s offspring – even if it has previously given birth!*]

The *Gemora* deflects the proof by saying that where it has its own offspring, it will not leave its own and nurse one that is not her own.

The *Gemora* attempts to resolve this from the latter part of the *braisa* mentioned above: Rabban Shimon ben Gamliel, however, says: We follow its natural presumption (*that it has given birth*). And similarly [*Rabban Shimon ben Gamliel used to say: If one goes among his flock at night and sees about ten or fifteen animals, both those which had not borne previously and those which had*

previously given birth, and the next day, he arises and finds the males clinging to (and nursing from) the animals that had given birth previously and the females clinging to (and nursing from) those which were now giving birth for the first time (which would seemingly indicate that there are no bechoros), he does not need to be concerned that perhaps the offspring of one came to the other.] Now (since the braisa used the expression 'and similarly'), doesn't the first part of the braisa above resemble the second part, so that just as the second part refers to a case where (R' Shimon ben Gamliel rules that) the offspring is definitely its own, so too, the first part (where he bought a nursing animal from an idolater) also refers to a case where (the offspring) is definitely its own?

The Gemora answers: Is this a proof? The first part deals with its own case and the second part deals with its own case. And when the braisa says 'and similarly,' it refers to the exemption from the law of the firstborn (although they are two different reasons). [The inquiry remains unresolved.] (24a)

Pig Clinging to a Ewe

Rabbah bar bar Chanah said in the name of Rabbi Yochanan: If one saw a pig clinging to (and nursing from) a ewe, it (the next offspring from this ewe) is exempted from the law of the firstborn, and it is forbidden to be eaten until Eliyahu comes and teaches righteousness for you.

The Gemora asks: Whose view is followed when he said that it is exempted from the law of the firstborn? It is the view of Rabban Shimon ben Gamliel (who maintains that the animal only nurses its own offspring, and the pig itself is not sanctified, as it is a mutant). Whose view is followed when he said that it is forbidden to be eaten? It is the view of the Rabbis (who are concerned that the animal nurses another's offspring; for if it were in accordance with the view of R' Shimon, it should be permitted to be eaten, as in the case of a non-kosher animal which comes from a kosher animal)!? [The two laws contradict each other!]

And, furthermore, if it is according to the Rabbis, why did he say that it is forbidden to be eaten 'until Eliyahu comes and teaches righteousness for you'? 'Until the truth becomes known to you' is what he should have said (for it is simply a matter of clarification if the pig came from the ewe or not)!?

And should you say that Rabbi Yochanan is in doubt whether the law is in accordance with Rabban Shimon ben Gamliel or the Rabbis, then why is it exempt from the law of the firstborn (for perhaps the law follows that of the Rabbis, and we need to be concerned that the pig was not born from the ewe, and the ewe's next offspring is indeed a firstborn)?

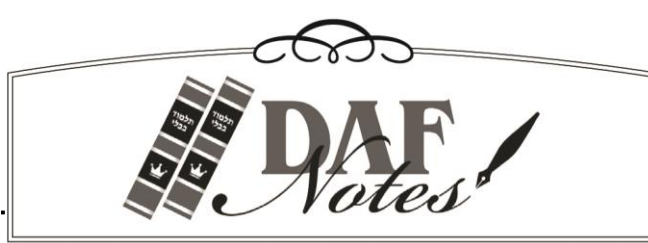
And furthermore, is there really a doubt? But Rabbah bar bar Chanah reported in the name of Rabbi Yochanan: Whenever Rabban Shimon ben Gamliel appears in the Mishna, the law follows his opinion. This is with the exception of three cases: the guarantor (Bava Basra 173b), Tzidon (see Gitin 74a), and the final (case regarding an) evidence (in Sanhedrin 31a).

The Gemora answers: One may still say that there is no doubt that Rabbi Yochanan holds that the law is in accordance with Rabban Shimon ben Gamliel. He is in doubt, however, whether Rabban Shimon ben Gamliel holds that an animal which has given birth previously, acts compassionately (even to another's offspring), or whether it does not act compassionately (to another).

The Gemora asks: If so, instead of teaching this ruling in connection with the case of a pig, why not state it in connection with the case of a lamb (nursing from a ewe), and it should be with respect of the punishment of lashes for violating the prohibition of slaughtering the mother and its offspring on the same day?

The Gemora answers: There was a novelty taught with the case of a pig, for if he had ruled in connection with the case of a lamb, I might have thought that even if you assumed that Rabban Shimon holds that an animal which gives birth, acts compassionately (and nurses even another's offspring), this only applies to an offspring belonging to its own species, but not to one (like a pig) not belonging to its own species. Consequently, Rabbi Yochanan states the case of a pig - to inform us that this ruling applies although it does not belong to the ewe's species, for even here one can say that perhaps it acts compassionately (and nurses even another's offspring).

The Gemora notes that this would be consistent with that which Rabbi Yochanan said: Achai Beribi inquired: What is the law if one saw a pig clinging to (and nursing from) a ewe?



The *Gemora* explains the inquiry: If it has reference to the law of the firstborn and the query is whether the law is in accordance with the view of Rabban Shimon ben Gamliel or according to the Rabbis, why not inquire with reference to the case of a lamb? Rather, the query refers to the law of the firstborn and it is according to the Rabbis, and to the rule regarding the permission to eat it according to Rabban Shimon ben Gamliel.

The *Gemora* further explains: Regarding the law of the firstborn, as follows: Do we say that even in accordance with the Rabbis, who maintain that it acts compassionately (*and nurses even another's offspring*), this only applies to an offspring belonging to its own species, but not to one (*like a pig*) not belonging to its own species; or perhaps, they maintain that even to an offspring that does not belong to its own species, the animal also acts compassionately? And also in connection with eating, the inquiry is as follows: Do we say that even according to Rabban Shimon ben Gamliel, if you will say that he holds that an animal which has previously given birth acts compassionately (*and nurses even to an offspring of another*), this is the case only when the offspring belongs to the same species as it, but where it does not belong to the same species, it does not; or perhaps, even if the offspring does not belong to the same species, do we say that it also acts compassionately (*to it*)?

The *Gemora* leaves these questions unresolved. (24a – 24b)

Mishna

Rabbi Yosi ben Ha-Meshullam says: One who slaughters the firstborn, makes a mark with the butcher's cleaver on both sides (*of where he will slaughter*) and plucks the hair (*on both sides; this is done in order to avoid chaladah – the covering of the knife during the slaughtering – an act which will disqualify the shechitah; we are not concerned that this would be regarded as 'shearing' its wool, an act which is forbidden*); provided, however, that he does not remove the wool from its place (*but rather, he leaves it there, so it shouldn't appear as if he is shearing*). And similarly, one may pluck the hair to show the place of the blemish (*to a Sage*). (24b)

Plucking on Yom Tov

Rav said: The *halachah* is in accordance with Rabbi Yosi ben Ha-Meshullam.

They inquired of Rav Huna: What is the rule about acting similarly (*making the mark prior to slaughtering*) on a festival day? Is the reason of Rabbi Yosi ben Ha-Meshullam because he maintains that plucking is not regarded as shearing, and yet, on a festival day it is forbidden, for it would be detaching something from the place of its growth; or perhaps, does Rabbi Yosi ben Ha-Meshullam as a rule maintain that plucking is regarded as the same as shearing, but the reason why he permits (*in the Mishna*) is because it is a forbidden act which was produced without intention, and a forbidden act which was produced without intention is permissible on a festival day?

Rav Huna replied to them: Go and ask Rabbi Chananel. If he tells you that the *halachah* is in accordance with Rabbi Yosi ben Ha-Meshullam, then I shall resolve it for you.

They went and asked him. He replied to them: Rav said that the *halachah* is in accordance with Rabbi Yosi ben Ha-Meshullam.

Then they came before Rav Huna. He said to them: It is permitted to act in a corresponding manner on a festival day. It was also stated: Rav Chananya bar Shelamya said in the name of Rav: It is permitted to act in a corresponding manner on a festival day. (24b)

INSIGHTS TO THE DAF

Tishbi will solve questions and problems

All those who learn Gemara are familiar with the word *teiku*, which means "it shall stand". The sages of the Talmud used this expression when they came across a question without an answer and this means that the topic did not reach a decision but stands: we don't know how to decide it (the *Magiah* on the '*Aruch*'). The Maharshal asserts (Bava Kama, Ch. 1, §5) that when the Gemara concludes a discussion with *teiku*, this means that no one has the authority to decide it till the Sanhedrin will be reconstituted. Some interpreted that the initials of *teyku* spell *Tishbi yetaretz kushyos*

uve'ayos – Tishbi (Eliyahu HaNavi) will solve questions and queries. The origin of this hint is in *Sefer HaKaneh* and other ancient works (see *Tosfos Yom Tov*, end of *Eduyos*; *Igeres HaTiyul* by the Maharal's brother, *Chelek HaDerush, os tav*; *Maris Ha'AYin* by the Chida, *Yevamos 96a*).

Till he comes and teaches, Tzedek, to you: There's an explicit source in our *sugya* for Tishbi's capacity to solve questions. Our Gemara determines that a ewe, with a little pig tailing it to suck from it, is exempt in the future from the obligations of the *bechorah* (giving birth for the first time) as we rely that she gave birth to this animal which looks like a pig. However, the pig is forbidden for eating although the offspring of a kosher animal may be eaten notwithstanding its form, as the link of the mother with the suckling does not suffice to determine for sure that the pig is the animal's offspring. In other words, the fact that the mother suckles a small animal testifies that it recently gave birth but we suspect that perhaps it gave birth to a lamb and after it was lost, it adopted the pig. The Gemara therefore says: "If he saw a pig tailing a ewe, it is exempt from the *bechorah* and the pig must not be eaten 'till he comes and teaches, Tzedek (righteousness), to you." Rashi comments (s.v. 'Ad): "Till Eliyahu comes and rules if it is permitted or allowed."

The trouble is that elsewhere (Shabbos 108a, s.v. *Mai im*) Rashi comments about Eliyahu that "permission and prohibition do not depend on him as it (Torah) is not in Heaven"! Are we facing an explicit contradiction in Rashi? Many Torah leaders discussed Eliyahu's ability to solve doubts.

A decision resulting from wisdom is accepted but not from prophecy: The Chida explains (*Birkei Yosef*, 32) that the prophet of G-d, herald of the Redemption, who "will soon come to us with Mashiach, the son of David" cannot decide halachic questions as "it is not in Heaven". However, Eliyahu, aside from being a prophet, was a sage of the *chachmei Yisrael* and a link in the chain of those who passed on the Torah from Moshe (Rambam in his preface to *Yad Hachazakah*, that he received from his mentor, Achiyah HaShiloni). When he comes and solves a doubt due to his wisdom, we can certainly rely on him. Therefore, when he rules halachah with the power of his prophecy and his knowledge of the angels, we cannot decide according to him but if he rules halachah with the strength of his Torah, we can decide accordingly.

Eliyahu in two forms: The Chasam Sofer zt"l also relates to the issue, not before asking that the Gemara testifies (Eiruvin 43b) that Eliyahu will not come to announce the Redemption on Shabbos as he cannot move from town to town out of the *techum*, as that is forbidden on Shabbos but, nonetheless, every *mohel* announces at a circumcision "Eliyahu the prophet, stand at my right to support me", even at a *bris* held on Shabbos. Therefore he explains that we must distinguish between Eliyahu the prophet and Eliyahu the sage. Sometimes Eliyahu is revealed only in a spiritual form and sometimes he is revealed in a material form (see *ibid* as to what he explains concerning this issue). When he appears physically, he must heed halachah, including the prohibition of going out the *techum* on Shabbos, and his rulings are accepted but if he is revealed only spiritually, his rulings are not accepted.

Indeed, there are a few halachos ruled by Eliyahu, such as that gentiles do not render things impure (*Bava Metz'ia 114b*) and others, and they were accepted as halachah (according to Rambam, *Hilchos Tumah 1:13*) because when he ruled them, he was revealed in his physical form (*Responsa Chasam Sofer*, VI, 98, and *Toras Moshe* on the Torah, 3rd edition, on the verse "...and the man became a living soul").

Eliyahu HaNavi, Eliyahu HaTishbi, Eliyahu HaGil'adi: Eliyahu has three names for his three functions: **Eliyahu HaNavi:** This is his name as the announcer of the Redemption, as we are told: "Behold, I send you Eliyahu the **Prophet** before the coming of the day of Hashem, the great and the fearful" (*Malachi 3:23*); **Eliyahu HaTishbi:** This is his name as the one who makes Israel repent (*tashiv*), as we are told: "...And he will return (*veheishiv*) the heart of fathers to sons and the heart of sons to their fathers" (*Malachi 3:24*); **Eliyahu HaGil'adi:** about this name we are told: "Of the residents of Gil'ad, of those who sit in the *Lishkas HaGazis* and Gil'ad only means the Temple" (*Yalkut Shim'oni*, *Melachim I, remez 208*). Namely, the appellation "Gil'adi" does not stem from his place of residence but hints at his attendance in the *Lishkas HaGazis* in the Temple. The Sanhedrin sat in the *Lishkas HaGazis* and solved all the questions and doubts brought before them (*Hagaon Rav M.M. Shapira, Rosh Yeshivah* of Reishis Chochmah, *Kovetz Beit Aharon VeYisrael*, 102).

Our Gemara concludes a halachic discussion by saying that one should be strict till Eliyahu comes to teach us. *Zecher Chayil* asserts: Why are we accustomed to say *Teiku* - "**Tishbi** will solve questions

and queries"? After all, it would be better to say *Eiku* – "Eliyahu will solve questions and queries. But it is a hint, as "Tishbi" forms the initials of "Torah, Shas, Bavli, Yerushalmi".

DAILY MASHAL

The Conclusion – the Sweetness of Torah

Once a heartbroken widow came before R' Hirshel of Riminov to cry over her sad plight. After her husband passed away, she entered into a legal battle with her stepchildren over the inheritance. The Beis Din was presided over by one of the most prominent Rabbinic figures of the generation. He carefully listened to both sides, interrogated the witnesses, and referred to the relevant sources in Shas and Poskim. After a thorough perusal of the sugya, he ruled in favor of the children. The widow was left with almost nothing, and so she went to R' Hirshel to ask for help.

In those days it was customary for a Beis Din to write extensive responsa together with their decisions. Therein, they would explain how they based their decision on the Torah, by citing conclusive proofs from the Gemara and earlier Poskim. R' Hirshel asked to see the court's ruling. She happened to have it with her, so she gave it to him to see. He looked through the ruling carefully two or three times, examining the sources, and considering the matter. After a few moments he looked up and told her to go back to the Beis Din and tell them in his name that the ruling is mistaken. They should go back to the sources in the Gemara and Poskim, and they will see that they had misjudged.

As could be predicted, the Beis Din at first refused to hear her claims. R' Hirshel was known in those days as a holy Rebbe of Chassidim, but not necessarily as one of the eminent Talmudic geniuses of the generation. "What business is it of his to interfere with our rulings?" they asked. However, the widow was so upset, and begged them so profusely to reconsider, that they finally consented. The Beis Din was

convened again, the Rabbonim again interviewed the two claimants and their witnesses, and again they went through the sugyas of the Gemara and Poskim. This time, they noticed several crucial points to her argument that they had indeed overlooked. After a careful deliberation, they decided to annul their first ruling. They made a second responsum, in which they awarded a substantial portion of the estate to the widow, granting her enough money with which to live comfortably for many years.

For years afterward, the Av Beis Din wondered how R' Hirshel had noticed his mistake. The point on which R' Hirshel had caught them was such a fine nuance, that it would take a veritable Talmudic genius to notice it.

How did he know.....?

Finally, they happened to meet, and the Av Beis Din had the opportunity to ask him. "David HaMelech said in Tehillim that the Torah is sweeter than honey," explained R' Hirshel. "Perhaps I am not as great a Talmudic scholar as yourself, but I love learning Torah so much that whenever I learn I can taste the sweetness of Torah on my lips. When I read through your responsum, I could not taste in it the sweet honey of Torah. I then realized that it could not possibly be *Toras Emes*. I could not see what oversight might have missed your attention, so I left it up to you to reconsider the matter, trusting that you would catch your own mistake."