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Bechoros Daf 28

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Time to Give the Bechor

The *Mishna* had stated: If a blemish developed on it (*the bechor - firstborn*) during its first year, he is permitted to keep it all twelve months.

The *Gemora* inquires: What is the meaning of the *Mishna*? Does it mean that if a blemish developed on it during its first year, he is allowed to keep it twelve months and thirty days afterwards as well? Or does it mean that where a blemish developed on it during its first year, he is allowed to keep it twelve months but no longer, and where a blemish developed on it after its first year (e.g., he kept it illegally), he is only allowed to keep it for thirty days?

The *Gemora* attempts to resolve this from the following *braisa*: A *bechor* nowadays (when an unblemished *bechor* is not fit for anything, for it cannot be offered on the altar, and it cannot be eaten by a *Kohen* until it develops a blemish) as long as it is not fit to be shown to a Sage (for it has not developed a blemish yet) is allowed to be kept for two or three years. And when it (developed a blemish and) is fit to be shown to a Sage, if the blemish developed on it during its first year, he is allowed to keep it the entire twelve months, whereas if the blemish developed after its first year, he is not allowed to keep it even one day nor even one hour (but rather, he must slaughter it immediately and give the meat to a *Kohen*). However, because of the *mitzvah* of returning a lost object to the owners (for since he must slaughter it within the year, perhaps no *Kohen* will be found then and the meat will spoil), the Sages said that he is allowed to keep it for thirty days! [We, evidently, see that the thirty days of the *Mishna* refers to a blemish in its first year.]

The *Gemora* rejects the proof, for I can still raise the question concerning the *braisa* itself: Does it mean thirty days after its first year (that the blemish developed after its first year), or perhaps it means even if it developed before its first year?

The *Gemora* attempts to resolve this from the following *braisa*: If a blemish developed on it fifteen days in its first year (fifteen days before the end of its year), we complete for him fifteen days after its first year. [We give him thirty days from the time when the blemish developed on it, and if the blemish developed after the year, or a little time before the conclusion of the year, we allow him thirty days from the time of the blemish.] This indeed proves it. [And when the *Mishna* said thirty days, it is referring to a case where the blemish developed after the year, for if it developed during the year, he is not given an extra thirty days, but rather, he may complete the period of thirty days (from the time of the blemish).]

The *Gemora* notes that this supports the view of Rabbi Elozar, for Rabbi Elozar said: We give him thirty days from the time when the blemish developed on it.

There were those who taught it as follows: Rabbi Elozar said: From where do we know that if a blemish developed on a *bechor* in its first year we give him thirty days after its year? It is written: Before Hashem, your God, you shall eat it year by year. Now, what is the minimum number of days which is reckoned as a year? You must say that it is thirty days.

The *Gemora* asks from the following *braisa*: If a blemish developed on it fifteen days in its first year (fifteen days before the end of its year), we complete for him fifteen days after its first year. We deduce from here that we complete thirty days (into the second year) for him, but we do not give him thirty full

days after its first year. This is indeed a refutation of Rabbi Elozar! It is so indeed! (28a)

Mishna

If one slaughtered a *bechor* that had a blemish (*with the intention of eating its meat*) and only after slaughtering the *bechor* did he bring it to an expert to determine if the blemish was permanent, Rabbi Yehudah maintains that one can eat the animal. Rabbi Meir, however, maintains that it is prohibited to be eaten because it was slaughtered without an expert having examined it.

One who is not an expert, who examined a *bechor*, and the animal was slaughtered based upon him, it shall be buried, and he shall make restitution from his own property. (28a)

Cataracts

Rabbah bar bar Chanah said: In the case of a blemish of cataracts in the eye, all agree that it is forbidden (*if it was first shown to a sage after it was slaughtered*), for they (*the cataracts*) change. [*On account of the pain of death the eye is liable to change, and therefore, although at the moment the blemish seems to be a permanent one, it is possible that if he had examined it when the animal was still alive, the blemish might have been found to be temporary, and consequently, the bechor should not have been slaughtered.*] They only differ regarding blemishes of the body. Rabbi Meir maintains that we prohibit blemishes of the body on account of cataracts in the eye, whereas Rabbi Yehudah maintains that we do not prohibit blemishes of the body on account of cataracts in the eye. It has also been taught to the same effect: If one slaughtered a *bechor* and showed an expert its blemish (*after it was slaughtered*), Rabbi Yehudah says: If there are cataracts in the eye, it is forbidden, since they change, whereas if there are blemishes in the body, it is permitted because they do not change. But Rabbi Meir says: Both in this case as in the other it is forbidden, because they change.

The *Gemora* explains that it cannot mean that they change, for do bodily blemishes change? Rather, what Rabbi Meir means is on account of those blemishes (*the cataracts*) that change (*the Rabbis prohibited all other cases*).

Rav Nachman bar Yitzchak says: This (*interpretation*) can be proven from our *Mishna*, for it states: Rabbi Meir, however, maintains that it is prohibited to be eaten because it was slaughtered without an expert having examined it. Deduce from here that Rabbi Meir imposes a penalty on him (*and it is not because the blemish changes*). This is indeed a proof.

They inquired: That which was stated (*by R' Meir*) 'on account of those blemishes that change,' implies that all cataracts change, or is it that some change and others do not change?

The *Gemora* notes the practical difference between them would be whether we should declare the witnesses false or no (*if one slaughtered a bechor without previously consulting an expert and a permanent blemish was discovered later, and witnesses declare that the spots in the eye did not change and that they were the same when the animal was alive*). If you say that in all cases cataracts in the eye change, then these witnesses are false. But if you say that there are some that change and other do not, we rely on them.

What is the ruling? Come and hear from that which Rabbah bar Chanah reported in the name of Rabbi Yochanan: Rabbi Yoshiyah of Usha told me: Come and I will show you cataracts in the eye that change. Now, since he said to him, "Come and I will show you," this implies that there are some that change and others which do not change. (28a – 28b)

Restitution

The *Mishna* had stated: One who is not an expert, who examined a *bechor*, and the animal was slaughtered based upon him, it shall be buried, and he shall make restitution from his own property.



The *Gemora* suggests that the *Mishna* states this ruling anonymously in accordance with Rabbi Meir (for although after its slaughtering it is discovered to possess a permanent blemish, nevertheless, it is buried, which is according to the view of Rabbi Meir cited in the *Mishna*, who penalizes the Israelite in such circumstances).

The *Gemora* deflects this, for perhaps it refers to a case of cataracts in the eye, and then it will be according to the view of all the opinions (for since they are prone to change, the animal must be buried).

The *Mishna* had stated: and he shall make restitution from his own property.

It was taught in a *braisa*: When he pays (*the Kohen*), he pays a quarter (*of the loss*) for a (*bechor of*) small animal and a half for a (*bechor of*) large animal. [He does not pay the full amount because it is money of doubtful ownership, as one might say that the 'non-expert' made the *Kohen* suffer a complete loss, for had an expert seen the animal when it was alive, he might have permitted it, whereas now it has to be buried. On the other hand, perhaps there was no permanent blemish and an expert would not have permitted it, and also it may be that the *bechor* would have died without a blemish appearing on it at all.]

Rav Pappa explains this disparity in reparation? In one case (*by the large animal*) the loss is great, whereas in the other it is small.

The *Gemora* asks: If so, let him pay (*the Kohen*) in proportion to the loss? [Pay half of the larger value by the large animal, and half of the smaller value by the small one!?!]

Rav Huna bar Manoach answered in the name of Rav Acha bar Ikka: They compel him to pay only a quarter of the loss because of the trouble of raising small cattle. [The non-expert saved the *Kohen* considerable trouble of raising the small animal until a blemish developed. Furthermore, if he had shown it to another, he might not have permitted it and then the *Kohen* would have had to attend to it until it became blemished; therefore, the

reparation is only a quarter. Another explanation why he only receives a quarter of its value is because he transgressed the prohibition enacted against raising small cattle in Eretz Yisroel.] (28b)

Mishna

If a judge in giving judgment in a monetary case has declared innocent the person who was really liable or made liable a person who was really innocent, declared *tamei* a thing which was really *tahor*, or declared *tahor* a thing which was really *tamei*, his decision would stand, but he would have to make reparation out of his own property. If, however, the judge was considered an expert for the court, he is absolved from making reparation. (28b)

Judge's Damage

The *Gemora* proposes that the anonymous statement of the *Mishna* is in accordance with Rabbi Meir who rules that one is liable for damage done indirectly (*causative damage*; and here, *the judge, through his words, caused a damage*).

Rabbi l'la said in the name of Rav that the *Mishna* is referring to a case where the judge took the money with his hand and gave it to the other (*and therefore it is regarded as a 'direct' damage*).

The *Gemora* asks: How can that be accomplished in the case where the judge ruled (*erroneously*) that the one who is liable is not liable (*how can he do that with his hand*)?

Ravina answers that the *Mishna* is referring to a case where the other party was holding a security for the loan in his hand, and the judge (*erroneously*) took the security from him and gave it back to the defendant. [*He directly implemented his decision.*]

The case also where he declared *tamei* a thing which was really *tahor* can be explained where he touched *tahor* things with a *sheretz*, and the case where he declared *tahor* a thing which was really *tamei* can be explained where he mixed them with the fellow's other (*tahor*) produce. (28b)



Mishna

It once happened that Rabbi Tarfon ruled regarding a cow, whose womb had been removed, that it should be given to the dogs (*as a tereifah*). When the matter was brought before the Sages in Yavneh, they permitted the cow to be eaten, for Todos the Physician stated that no cow or sow was allowed to leave Alexandria in Egypt unless her womb had first been cut out, so as to prevent her from bearing young. [Since we know that they lived, they obviously are not regarded as tereifos!] Rabbi Tarfon (upon realizing his mistake) exclaimed: Your donkey is gone, Tarfon! [He thought that he would have to sell his donkey in order to procure funds to repay the owner for the loss which he caused.] But Rabbi Akiva said to him: You are exempt from any liability, since he who is widely recognized as an expert is free from making restitution (*for a mistaken verdict*). (28b)

Mistaken Ruling

The *Gemora* asks: And why didn't he say to him: You erred regarding a law cited in a *Mishna*, and he who errs in a law cited in the *Mishna*, may reverse his decision!?

The *Gemora* answers: He meant two things: Firstly, you have erred in a law cited in the *Mishna*, and he who errs in a law cited in the *Mishna* may reverse his decision. And secondly, even if you had erred in the weighing of conflicting opinions, you are a widely recognized expert, and accordingly, you are exempt from liability to pay compensation. (28b)

INSIGHTS TO THE DAF

Why we mustn't disagree with the Tannaim and Amoraim

If he errs in a matter mentioned in the *Mishna*, his decision is reversed.

Our *sugya* discusses the event of a *dayan* who erred and issued a mistaken verdict: "If he errs in a matter mentioned in the

Mishna, his decision is reversed." In other words, any ruling that contradicts a *Mishna* is void.

The Rishonim (*Rosh*, §6, and the *Baal Hamaor*) explain that in addition to a ruling opposing a *Mishna*, any decision that contradicts a halachah which the *dayan* mustn't dispute is also void. The Raavad (and *Rosh*, *ibid*; etc.) therefore holds that a *dayan* who rules in opposition to the Geonim is regarded as having erred in a matter mentioned in the *Mishna* as we mustn't disagree with the Geonim. In addition, the *Rosh* (*ibid*) asserts that even if a *dayan* may disagree with another *halachic* authority, he is considered as having erred in a matter mentioned in the *Mishna* if, had he known of that authority's decision, he would have reversed the ruling.

How did it become universally accepted that later *poskim* must not refute the rulings of previous generations to the point that any deviation from the ruling of a *Mishna* is regarded as an error? Also, why must an Amora never disagree with a Tanna, as we often encounter in the *Gemora* that an Amora's statement is discarded if found to disagree with a *Mishna* or a *beraisa*? Who established this hierarchy? Indeed, there are two answers to the question, involving the status of the *Mishna* and the Babylonian Talmud and that of the earlier *poskim* in contrast to the status of later *poskim*.

Our sages' acknowledgement upon the completion of the *Mishna* and Talmud: In his *Kesef Mishna* on the *Yad Hachazakah* (*Hilchos Mamrim* 2:1), Rabbi Yosef Karo comments: "we can say that at the time of the completion of the *Mishna* all agreed and accepted that later generations would not contest it. The same applies to the completion of the *Gemora*, that since its final redaction no one may disagree with it." In other words, the Jewish people accepted entirely that they would never disagree with the sages of the *Mishna* and *Gemora*. Indeed, in his preface to his *Yad Hachazakah*, the Rambam writes: "However, everyone must obey the Babylonian Talmud and we must force every community to follow the customs of the sages of the *Gemora* and institute decrees accordingly as everything mentioned in the *Gemora* has been accepted by all Israel. Moreover, those sages who decreed, ruled or judged that the

halachah should be such comprised all the sages of Israel or most of them; they received the oral tradition concerning the principles of the entire Torah, generation after generation from Moshe.”

The gap between former and later generations: What is the nature of this agreement whereby our sages and the entire Jewish people accepted the *Mishna* and the Babylonian Talmud? The Chazon Ish explains that “they did not do their predecessors a favor but were rather obligated by the truth” (*Kovetz Inyanim, He’aros HaChazon Ish*, 2). In other words, after the completion of the *Mishna* and Talmud our sages realized that there was a great gap between them and previous generations and they could never disagree.

HaGaon Rav Elchanan Wasserman (ibid, in reply to the above remarks) asserts that this explanation is inadequate as sometimes a great *halachic* authority appears in a later generation who is considered equal to previous sages. HaGaon Rav Chayim of Volozhin, for example, mentions that the Vilna Gaon could have been on the same level as the Rashba or even the latter’s mentor, Ramban. Rav Hai Gaon was also known to have been greater than all previous Geonim, though he was the last. Could such a person disagree with previous authorities? The *Gemora* hardly mentions any exceptions and we must therefore seek another reason.

Rav Elchanan asserts that we should explain the issue on the strength of the assumption that the agreement on the part of **all** our sages has the validity of the supreme authority of the Sanhedrin. Though the Sanhedrin had to number 70 *dayanim* and convene in the Temple, the agreement of all later sages was not thus limited and their decision was valid anywhere, just like the *Sanhedrin*’s. At the completion of the *Mishna* and the Talmud, all or most of our sages convened and no one may therefore disagree with the halachos ruled in the *Mishna* and *Gemora* (*Kovetz Shi’urim*, II, *Kuntres Divrei Soferim*, 2, expanded in *Kovetz Inyanim*, pp. 198-201, based on – among other sources – Rambam in *Hilchos Sanhedrin*, 2; Rambam asserts that a meeting of all Torah scholars may renew the original rabbinical ordination [*semichah*], providing they received the tradition

according to the principles of the Torah generation after generation going back to Moshe; see *Beis Yishai* by HaGaon Rav S. Fisher and *Kovetz Shi’urim* on Bava Basra, #633, who cites the opinion of HaGaon Rav Chayim of Brisk that an Amora **may** disagree with a Tana but the *Gemora* asks on an Amora contradicting a Tana because if the Amora had known of the *Tanna*’s statement, he would not have disagreed; see *Yad Melech* by Rav D. Man on *Hilchos Mamrim*).

Till now we have addressed the general agreement of all our sages regarding the uncontested status of the *Mishna* and Babylonian Talmud. Let us now examine the status of the *halachic* authorities after the completion of the Talmud.

Indeed, some believe that the rulings of the Geonim should not be considered as definite halachah (*Ba’al HaMaor*; see Rambam’s commentary on the *Mishna*, Bechoros 4:4). On the other hand, there are opinions that no authority, even a Rishon, may disagree with a decision of a previous *posek* and, as the *Rosh* asserts: “Even the sages after the Geonim were not insignificant” (cited by the *Tur*, C.M. 25). Still, if a *posek* has a strong question disturbing the basis of a previous ruling, he may disagree as “he may take issue with the decisions of the Geonim not elucidated in the Talmud edited by Ravina and Rav Ashi” (*Rosh*, ibid).

We should emphasize that all the above applies to an ordained rabbi who definitely understands the statements of previous authorities before he decides to disagree. However, if the gap between the generations and the difference in intellectual capacity prove that we fail to completely understand previous authorities, we must, of course, never disagree with them as to disagree with anything, we must first understand it (*Kovetz Inyanim*, ibid). As for the halachah, *Shulchan Aruch* (C.M. 25:1) rules that no *dayan* may disagree with a decision explicitly determined by a previous authority (see *Remo*, ibid, who cites the above opinion of the *Rosh*, and see *Pischei Teshuvah*).