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Mishna

It happened that (*after the destruction of the Temple*) a Roman official saw an old ram (*which was a bechor*) with its long wool hanging down (*for it was forbidden to be shorn*) and asked: What is the meaning of this? They replied: It is a *bechor* and is not to be slaughtered until it develops a blemish (*for since there was no altar, it could not be offered*). The Roman took a spear and slit its ear. The matter came before the Sages and they permitted it (*for the blemish was inflicted without an intent to permit it, for he figured that only a blemish that developed by itself would be permitted*). After they had permitted it, he went and slit the ears of other *bechoros*. The Sages, however, forbade them (*for those were done with specific intention to permit them to be slaughtered*).

Children were once playing in a field. They tied the tails of lambs one to the other, and one tail, which was found to be a *bechor*, was severed. The matter came before the Sages and they permitted it (*to be slaughtered*). When the children saw that they had permitted it, they proceeded to tie the tails of other *bechoros*. The Sages forbade the other *bechoros*.

This is the rule: Whenever the blemish is caused with intent (*to permit it*), it is forbidden, but if it is not done with intent, it is permitted. (35a)

Idolater’s Blemish

The *Gemora* explains why it was necessary for the *Mishna* to state both these cases, for if it had informed us only of the case of the idolater, I might have thought that the reason (*the Sages permitted it*) was because there is no concern that if we permit it, he will acquire the habit of inflicting blemishes, but in the

case of the children, where they might acquire the habit of inflicting blemishes, I might have said that it was forbidden. And if it had informed us only of the case of the children, I might have thought that the reason was because one would not confuse a minor for an adult, but in the case of the idolater, where one might confuse him with an adult Jew, I might have said that it was forbidden. Both cases are therefore necessary to state.

Rav Chisda said in the name of Rav Katina: This (*that the bechor is permitted*) was taught only when they said to him, “Until it has a blemish,” but if they reply to him using the words, “Until a blemish is made in it,” it is as if they had told him, “Go and make a blemish.”

Rava said: Now isn’t the blemish coming naturally anyway (*for the idolater does not know that an intentional blemish permits it*)? What difference then is it whether they replied to him using the words, “Until it has a blemish,” or if they used the words, “Until a blemish is made in it”? Rather, even if they replied to him using the words, “Until a blemish is made in it,” the permission comes naturally, and there is no difference.

The *Mishna* had stated: This is the rule: Whenever the blemish is caused with intent (*to permit it*), it is forbidden.

The *Gemora* notes that this comes to include the case where the blemish was caused indirectly (*such as a case where he placed dough or pressed figs on its ear and a dog came and bit it*).

The *Mishna* had stated: but if it is not done with intent, it is permitted.

The *Gemora* notes that this comes to include the case where they (*initiated the conversation, and*) casually mentioned the fact (*that the animal needs a blemish for it to be permitted; even in this case, it is permitted*). (35a)

Mishna

If a *bechor* was running after him and he (*even the owner, a Kohen*) kicked it (*in order to save himself*) and thereby blemished it, he may slaughter it on account of this. (35a)

Kicking the Chasing Bechor

Rav Pappa said: This (*that it's permitted*) was taught only when he kicked it while it was chasing him, but if he kicked it after it had stopped running, it is not so.

The *Gemora* explains why this is not so obvious, for I might have thought that the reason why he kicked it was because he recalled his distress (*and therefore it should still be permitted*); he therefore teaches us that this is not so (*and in such a case, it would be forbidden*).

There were those who reported it as follows: Rav Pappa said: Do not say that this applies only while it was running, but not after it had stopped chasing him, for even after it had stopped chasing him, the same law applies. This is because he recalled his distress (*and that is why he kicked it*).

Rav Yehudah said that one is permitted to make a blemish in a firstborn before it enters the world (*even though the sanctity will be removed*).

Rava said: A kid in its ears (*is where the blemish may be inflicted*), and a lamb in its lips. [*The ears of the ears are long, and they emerge before the entire head leaves the womb; therefore it is allowed to be blemished then. The lips of a lamb appear before its head, whereas the ears - being small - do not appear until after the head has emerged, when, at that time, the animal is already sanctified.*]

There were those who reported it as follows: A lamb even in its ears (*is where the blemish may be inflicted*), for one can say that the animal emerged (*from the womb*) with its temples first (*and sideways; this way, the ear appears first*).

Rava said: If when the animal eats, the blemish is not visible, but when it cries out (*with its mouth opened wide*), the blemish is visible, it is considered a blemish.

The *Gemora* asks: What does he wish to teach us? We have already learned this in a *Mishna*: If the front gums were broken off or cut, or if the molars were completely torn out, it is considered a blemish. Now, isn't the reason in the latter case because when the animal cries out, the blemish is visible?

Rav Pappa said: Rava is merely explaining the reasoning of the *Mishna*, as follows: Why is it that if they were torn out they are considered a blemish? It is because when the animal cries out, the blemish is visible. (35a)

Mishna

With respect of all blemishes which might have come through the hands of a man, shepherds of *Yisroelim* are trustworthy (*that they were not intentionally inflicted*), whereas shepherds of *Kohanim* are not trustworthy. Rabban Shimon ben Gamliel says: He is trustworthy regarding somebody else's *bechor*, but he is not trustworthy regarding his own. Rabbi Meir says: One who is suspected of something cannot pronounce judgment on it nor give testimony concerning it. (35a)

Shepherds – Yisroelim and Kohanim

Rabbi Yochanan and Rabbi Elozar (*differ as to the interpretation of the Mishna*): One explains it as follows: *Yisroel* shepherds employed by *Kohanim* are trustworthy, for we are not concerned that their testimony may be influenced by the meat of the *bechor*. [*They will not lie based upon the expectation that the Kohen will invite them to eat from its meat; it is too insignificant of a gain.*] *Kohanim* shepherds employed by *Yisroelim* are not trustworthy, since the shepherd might say,

“Since I have worked with it, he will not pass over me and give it to another.” And the same ruling (*that the testimony of the Kohen is untrustworthy*) applies to (*a shepherd who was*) a *Kohen* with reference to (*the bechor of*) another *Kohen*, for we suspect them of exchanging favors. And Rabban Shimon ben Gamliel comes and says: He is trustworthy regarding somebody else’s *bechor*, but he is not trustworthy regarding his own. And Rabbi Meir comes and says: One who is suspected of something cannot pronounce judgment on it nor give testimony concerning it.

And the other explains it as follows: Shepherds employed by *Yisroelim* – even if they are *Kohanim* - are trustworthy, for the shepherd will say, “My employer will not pass over a *Kohen* who is a Rabbinical scholar to give it to me.” *Yisroel* shepherds employed by *Kohanim* are not trustworthy, for we are concerned that their testimony may be influenced by the meat of the *bechor*. And how much more so will this ruling (*that the testimony of the Kohen is untrustworthy*) apply to (*a shepherd who was*) a *Kohen* with reference to (*the bechor of*) another *Kohen*, for we suspect them of exchanging favors. And Rabban Shimon ben Gamliel comes and says: He is trustworthy regarding somebody else’s *bechor*, but he is not trustworthy regarding his own. And Rabbi Meir comes and says: One who is suspected of something cannot pronounce judgment on it nor give testimony concerning it.

The *Gemora* asks: Now it is understandable according to the one who says that the *Mishna* means that shepherds employed by *Yisroelim* – even if they are *Kohanim* - are trustworthy, for then, Rabbi Meir disagreed and said: One who is suspected of something cannot pronounce judgment on it nor give testimony concerning it. But according to the one who holds that the *Mishna* stated that *Kohanim* shepherds employed by *Yisroelim* are not trustworthy, what is Rabbi Meir coming to teach us? Isn’t his view identical with that of the *Tanna Kamma*?

The *Gemora* answers: The difference between them is the ruling of Rabbi Yehoshua the son of Kaposai, for it has been taught in a *braisa*: Rabbi Yehoshua the son of Kaposai says: Two witnesses from the market (*and not members of his household*) are

required to testify regarding a *bechor* (*that its blemish was not intentionally inflicted*) in the possession of the *Kohen*. Rabban Shimon ben Gamliel says: Even his son or his daughter may testify. Rabbi Yosi says: Even the testimony of ten people is not accepted, if they are members of his household (*but only one witness is required*).

The *Gemora* asks: Whose opinion is reflected in the ruling which Rav Chisda said in the name of Rav Ketina, who said: A doubtful *bechor* (*e.g., a ewe gave birth to two males; we ruled above that one belongs to the Kohen and the other remains in the possession of the Yisroel as a doubtful bechor which is left to pasture until it is blemished and is then eaten*) born in the possession of an Israelite (*which now has a blemish*) requires two witnesses from the market to give testimony. Who is this going according to?! It is, of course, according to that of Rabbi Yehoshua the son of Kaposai.

Rav Nachman said: The owners are permitted to testify about it (*in respect to the blemish of an uncertain bechor*), for if you will not say so (*and you will maintain that an Israelite, the owner, is suspected*), how according to the view of Rabbi Meir can he give testimony with reference to the blemish of a *ma’aser* animal (*for ma’aser applies equally to a Yisroel and a Kohen*)?

The *Gemora* disagrees with the proof, for with regard to a *ma’aser* animal; even the owner is trustworthy, since if he wished, he could have inflicted blemishes in the entire flock before tithing!

The *Gemora* cites a different proof: In a case of a doubtful *bechor*, who can testify about it, according to the view of Rabbi Meir? And if you will say that indeed it is so - that there is no remedy in these cases, have we not learned in a *Mishna*: Rabbi Yosi used to say: Whenever there is another animal in its stead in the hands of the *Kohen*, the Israelite is exempt from the *Kohanic* gifts, whereas Rabbi Meir rules that he is liable (*which obviously means that it is permitted for consumption*)?

Therefore, the *Gemora* concludes that the owners are permitted to give testimony (*with reference to a doubtful*



bechor), for it is *Kohanim* alone who are suspected regarding blemishes, whereas Israelites are not suspected regarding blemishes. (35a – 35b)

Rulings regarding Trustworthiness

It was stated: Rav Nachman says: The *halachah* is like Rabban Shimon ben Gamliel (*who accepts the testimony of the son and daughter of a Kohen*). Rava, however, says: The *halachah* is like Rabbi Yosi (*who does not accept such testimony*).

The *Gemora* asks: But did Rava actually state this? Didn't Rava say that if the owner (*of a bechor*) was with us outside the house, and the animal entered whole and emerged injured, they (*those that remained in the house*) can testify concerning it (*that the blemish was not intentionally inflicted*)?

The *Gemora* answers: Rava was saying that all its owners were with us, and we have no concern (*that the shepherd, who remained inside, is not saying the truth*).

The *Gemora* asks: If so, what is the novelty in this ruling?

The *Gemora* answers: You might have thought that we entertain a suspicion (*regarding the shepherd himself*); he therefore teaches us that it is not so.

The *Gemora* rules that the *halachah* follows Rabban Shimon ben Gamliel; but only in the case of his son and his daughter - is the testimony believed, but not in the case of his wife. This is because his wife is considered like himself.

Rav Pappa said to Abaye: According to the view of Rabbi Meir, who holds that one who is suspected of something cannot pronounce judgment on it nor give testimony concerning it, and who also maintains that one who is suspected of disregarding one law is suspected of disregarding the entire Torah, then a *Kohen* (*who is suspect regarding a bechor*) should not be able to act as a judge? But is it not written: *And by their word shall every dispute and every affliction be decided*?

The *Gemora* answers: Rabbi Meir meant that we are concerned (*that they might intentionally inflict a blemish*), but he did not say that this fact has been established! (35b – 36a)

INSIGHTS TO THE DAF

Four different questions, each one answered from our sugya

By: Meoros HaDaf HaYomi

Four different halachic questions were brought before HaGaon Rabbi Yosef Chayim of Baghdad and he found proof or support for all of them in our *sugya*.

One mustn't go ahead and make *bateil* a forbidden article: It is a rabbinical decree (according to most Rishonim) not to mix a forbidden article with something permitted to make it insignificant (Rashba in *Toras HaBayis Haaroach*, bayis 4, end of *sha'ar 4*). He who does so is punished that one is not allowed to eat the food that he wanted to render permitted (Terumos 5:9 and see Rambam's commentary, *ibid*).

Washing the floor with water mixed with blood: A pot of water was once put on the fire and a large amount of blood fell into it such that the blood did not become insignificant in 60 parts. When the owner realized that the water was forbidden to drink, he decided to use it to rinse the floor of his house and therefore he added more water... till the blood became insignificant in 60 parts of water. In this case the forbidden article became insignificant by means of a purposeful act but with no intention to permit it. The obvious question is if such a case is included in Chazal's regulation not to eat an *issur* wilfully rendered insignificant (see *Taz*, Y.D. 99, S.K. 9).

The author of *Torah Lishmah* (302) finds proof from our *sugya*. We have learnt that if a firstborn pure animal, sanctified to be a sacrifice, contracts a defect, it is no longer fit for a *korban* and it

may be slaughtered and eaten. However, it is forbidden to afflict it with a defect on purpose and he who does so is punished by Chazal that the *bechor* must not be slaughtered until it contracts another defect by itself. Our mishnah recounts that once a Roman evildoer passed by a firstborn animal, stuck it with his spear and caused it to have a defect. When the question was brought before the sages, they allowed the animal to be slaughtered. We see that since the gentile did not intend to permit the firstborn, his wilful act was not included in Chazal's regulation.

He who wants to donate a *sefer Torah* but cannot: A Baghdad Jew was helpless in the face of the representatives of a village who were frantically looking for a *sefer Torah*. He was prepared to sell them the *sefer Torah* he owned but was prevented because "it is a positive mitzvah for everyone to write a *sefer Torah*...and he is not allowed to sell it" (*Shulchan 'Aruch, Y.D. 270:1*). The author of *Torah Lishmah* (33) advised him to sell them the ornamented case of the *sefer Torah* and to "include" (*mavlia'*) the *sefer's* price in that of the case. He found support for such in several places, including our *sugya*, in which it is forbidden to sell a firstborn's meat but by "including" it with its bones, skin and horns, it is permitted. (We point out that the opinion of *Torah Lishmah* is not agreed upon by all; *'Aroch HaShulchan, Y.D. 370:16*, writes that it is forbidden to give away a *sefer Torah* even as a gift).

Collecting funds for each oath in a *beis din*: Rabbi Yosef Chayim also found an answer in our Gemara for a *dayan* who wasn't sure if he could accept payment from one of his litigants. *Dayanim* may accept *sechar batalah* (payment for loss of work that they could do instead of judging) from litigants. A *dayan* once required two partners to swear because of a claim against them but they didn't swear at the same time because one of them was absent. Afterwards the question arose as to if the *dayan* may accept payment for sitting at each oath or, since both oaths concern the same issue, he shouldn't accept more payment than what he already received.

The *Torah Lishmah* ruled (335) that he mustn't be paid more. Chazal regulated that the *chacham* who examines the firstborn

for defects should not accept payment for each examination so that he not be suspected that he saw a defect in the first examination but didn't declare it, in order to be invited for another examination. We must learn therefrom that a *dayan* should also take care not to bring suspicion upon himself and since people may suspect him that he obligated the other partner also to take an oath to earn more payment, he should avoid taking payment.

The deceptive leather merchant: We conclude with a leather merchant, caught many times lying that the hides he sold were fit for writing *sifrei Torah*, *tefillin* and *mezuzos* as he claimed that they had been prepared by Jews, as required, while they had really been prepared by gentiles. Once the merchant supplied hides to a *sofer* and ordered a *sefer Torah*. When it was ready, the merchant wanted to sell it but everyone avoided him for fear that the hides had not been prepared *lishmah*, for the sake of the mitzvah.

A person doesn't invest his funds for nothing: Rabbi Yosef Chayim ordered (ibid, 303) those who were in doubt to open the Gemara. The Gemara says that one must not buy hides from a suspected *kohen* lest they be from a firstborn animal. However, it is permitted to buy spun wool thread or woven woolen garments from him and we need not suspect that they were woven from a firstborn's wool because a person doesn't invest his funds for nothing and the *kohen* knows that he could be caught, and his efforts spinning and weaving would be wasted.

Rabbi Yosef Chayim concluded that also our merchant is prepared to buy hides from gentiles and, at most, if he's caught, he'll sell them back. But what would he do with this *sefer Torah*, in which he invested so much, if it becomes revealed that it's not kosher?

The experienced mohel or the young brother: Who comes first?

In this article those learning our Gemara have a special opportunity to see how the *poskim* decided different halachos

by learning Talmudic *sugyos* that apparently have no connection with the topics brought before them.

The Chacham Tzvi had a great difficulty in our Gemara and because of it he reached a conclusion with far-reaching implications.

Our *sugya* concerns defects in a firstborn pure animal and the different possibilities to suspect that someone who could profit thereby inflicted the defect on purpose. One of the cases discussed is if an unlearned *kohen* serves as a shepherd for the animal that revealed a defect. The Gemara says that we needn't suspect that he caused the defect as he doesn't hope to get the animal since he knows that the owner will prefer to give it to a learned *kohen*. (If he hopes to get it, the suspicion arises that he caused the defect so that when he gets it, he could slaughter it anywhere and won't have to trouble himself to the Temple).

A well-known rule concerning gifts to the *kohanim* says that if someone "adopted" a *kohen* to give him his gifts, that *kohen* becomes a *makirei kehunah* and the owner must not give his gifts to another *kohen* (see Bava Basra 123b). Therefore if the shepherd *kohen* is the owner's *makirei kehunah*, he surely hopes to get the firstborn and he should be suspected that he caused the defect. Why, then, doesn't the Gemara add a condition to remove the suspicion from the shepherd *kohen* in that he isn't a *makirei kehunah*? It must be, concludes the Chacham Tzvi (Responsa, 70), that it is allowed to neglect *makirei kehunah* for someone who is a *talmid chacham* and therefore the shepherd is not at all sure that the firstborn will be given to him, though he received previous firstborn animals (see *ibid* concerning Tosfos s.v. *meimar*).

We now proceed to the case brought before the Chacham Tzvi. A certain person was accustomed to have all his sons circumcised by a certain *mohel*. He then died and his wife later gave birth to a boy. As the *bris* approached, the usual *mohel* wanted to circumcise the orphan but the latter's big brother declared that he wanted to circumcise him himself. The *mohel* claimed that as the father gave him to circumcise all his sons, he should not be divested of the mitzvah, similar to *makirei*

kehunah, that as people were used to giving a certain *kohen* his gifts, they should continue to do so. However, the son contended that that was his father's personal obligation and in his absence it has no validity. The Chacham Tzvi agreed with the son while he offered a fine halachic explanation: the halachah of *makirei kehunah* is based on the verse "The remnant of Israel will not do iniquity and will not speak a lie" (Tzefanyah 3:13). A person must not change his statements and as he is wont to give to a certain *kohen*, that is like a promise which must not be reneged (see Tosfos, Bava Basra, *ibid*, according to the Gemara in Bava Metzi'a 49a). Therefore, the father who promised is the one who must fulfill his statements but not others who never promised so.

The Chacham Tzvi adds that there's another idea to support the brother. A person with money for charity and who is faced with two poor people, one his relative and the other a *talmid chacham*, should prefer which? Rambam asserts (*Hilchos Matnos Aniym* 7:13): "A poor person who is his relative takes precedence over **anyone else**." The Chacham Tzvi contends that Rambam meant that a relative also takes precedence over a *talmid chacham*. Let us link up the facts. If, as we learnt, it is allowed to neglect *makirei kehunah* to favor a *talmid chacham*, the same surely applies to favor a relative, who takes precedence over a *talmid chacham*. If concerning charity, concludes the Chacham Tzvi, a relative takes precedence over everyone, so much more so does this pertain to mitzvos, as there is no greater charity than granting a mitzvah and here also one should prefer relatives... It thus turns out that even were the father alive, he would be allowed to appoint his son as the *mohel* and he would not be regarded as someone who speaks a lie and does iniquity (see *Shulchan Aruch*, Y.D. 264:1, and the *Taz*, S.K. 5).