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MISHNAH: The law concerning the tithe of cattle¹ is in force in Eretz Yisroel and outside Eretz Yisroel, in the days when the temple exists and when it does not exist, [it applies] to chullin only but not to consecrated animals. It applies both to large cattle and sheep (though none can be tithed for the other); to lambs and to goats (and one can be tithed for the other); to the new² breed and the old,³ (though none can be tithed for the other). Now it might be rightly argued: seeing that new and old animals which are not treated as kilayim with each other are yet not tithed one for the other, lambs and goats which are treated as kilayim with each other, all the more should not be tithed one for the other. The text therefore states: and of the flock, intimating that all kinds of flock are considered one [for purposes of tithing].

GEMARA: May we say that our Mishnah⁴ is not in accordance with Rabbi Akiva? For it was taught: Rabbi Akiva says: You might think that a man may take up an animal set aside as tithe from outside Eretz Yisroel and

offer it? [To guard against this inference] the text states: And you shall bring there your burnt-offerings and your sacrifices and your tithes. Scripture speaks of two kinds of tithes, one the tithing of animals, and the other the tithe of grain. [And I draw an analogy thus]: from the place from which you can bring up the tithe of grain⁵ you can bring up an animal set aside as tithe, but from a place from which you cannot bring up the tithe of grain, you cannot bring up an animal set aside as tithe [to be sacrificed]! — [No]. You can even say [that the Mishnah is] in accordance with Rabbi Akiva. The one statement refers to offering [the animal up],⁶ the other to its consecration.⁷ This is also indicated by the fact that he [Rabbi Akiva] derives his teaching from the text: ‘And you shall bring there’, [thus referring distinctly to offering up]. This proves it. The Gemara asks: But since [the animal] is not offered up, for what purpose is it consecrated?⁸ — To be eaten by the owners when it becomes blemished.⁹

¹ The fat and blood of an animal set aside as tithe are offered up and their flesh is eaten by its ritually clean owners in Jerusalem. Also, if blemished, it may be eaten in a state of tumah in all places.

² Those born after Elul, the first of this month being considered a New Year for the tithing of animals.

³ Those born before Elul.

⁴ Which says that the law concerning tithe of cattle is in force outside Eretz Yisroel.

⁵ The tithing of grain is only practiced in Eretz Yisroel as it is a mitzvah connected with the soil.

⁶ Rabbi Akiva does not permit the tithe animal brought from outside Eretz Yisroel to be offered up.

⁷ The Mishnah refers only to the animal's consecration, stating that the law of tithe regarding an animal applies in that respect even outside Eretz Yisroel.

⁸ Unless it be that it might be offered up as a sacrifice.

⁹ Waiting for a blemish to befall the animal, for an animal set aside as tithe may be eaten by the owner whether it is blemished or unblemished, Scripture not enjoining that it must be given to a Kohen.

The Mishnah had stated: In the days when the temple exists and when it does not exist. If this be the case, [then the law of tithe as regards animals] should apply even nowadays?¹⁰ — It is as Rav Huna says [elsewhere], for Rav Huna said: [It is prohibited] as a prevention against an animal whose mother died [during or soon after childbirth being brought into the shed].¹¹ The Gemara asks: If this be the case, the same prohibition should have applied originally [when the Temple was standing]?¹² [What you must] therefore [reply is that] it is possible for an announcement to be made [by the Beis din].¹³ [This being so], here too¹⁴ it is possible to have all announcement made [by the Beis din]? — Rather said Rabbah: The reason is that one might be led to commit a transgression.¹⁵ And from where will you prove that we take into account the possibility of one committing a transgression? — For it was taught: We are not permitted to consecrate an animal, nor to make valuation, nor to set aside as devoted nowadays.¹⁶ But if one did consecrate an animal, or make a valuation or set aside as devoted, the animal is to be destroyed; fruits, garments and vessels shall be allowed to rot and

as for money and metal vessels, let him cast them into the Dead Sea. And what is meant by destroying? He locks the door on [the animal] and it dies of itself [from hunger]. If this be the case,¹⁷ then a bechor [of an animal] should also not become holy nowadays? [The Gemara is bewildered by the question:] Is then the sanctity of a bechor dependent on us? Is it not holy from the time it leaves the womb? — This is what is meant [by the question]: Let him sell to an idolater the ears of the [mothers of the prospective offspring] so that they shall not be sanctified from the beginning?¹⁸ — It is possible to adopt the remedy of Rav Yehudah. For Rav Yehudah said: One may maim a bechor before it is born.¹⁹ But²⁰ here also it is possible to cause a blemish from the beginning?²¹ — Who knows which animal will come out [the tenth]?²² And should you say that he brings it out as tenth, [Scripture says]: He shall not search whether it be good or bad.²³ And should you say that it is possible to cause a blemish in the whole herd [of animals],²⁴ — the Temple may be speedily rebuilt and we shall require an animal for a sacrifice and there will be none. But doesn't this also apply to a bechor,²⁵

¹⁰ When there is no Temple in existence.

¹¹ An orphaned animal not being subject to the law of tithe.

¹² That even when there was a Temple there should be no tithing of animals, in case an orphaned animal enters the shed for tithing.

¹³ That one should not bring an orphaned animal to the shed.

¹⁴ With reference to the tithing of animals in these days.

¹⁵ For since we have no altar nowadays, we have to keep the animal until it becomes blemished. There is thus a possibility that a transgression might be committed, that the animal might be worked and shorn or slaughtered before it is blemished.

¹⁶ Because we cannot hide them until the Temple is rebuilt and therefore we apprehend that a transgression might be committed with them.

¹⁷ That an animal set aside as tithe nowadays is not holy for fear of the law being transgressed.

¹⁸ The law being that if an idolater has a share in the first-born it is not subject to redemption. If you therefore fear a transgression, why not adopt this remedy?

¹⁹ This remedy being even a better one than that of an idolater sharing a part of the animal. Therefore a first-born is holy because we do not entertain a fear lest one might be led to commit a transgression, seeing that he could, if he wished, eliminate all sanctity from the animal at the outset.

²⁰ In the case of an animal set aside as tithe.

²¹ There is therefore a remedy, and so there is no need to keep the animal, because it can be maimed from the outset. Why therefore shouldn't the law of tithing animals apply even nowadays?

²² So as to maim it at the beginning.

²³ Implying that he must not bring out the animal but that it must go out by itself.

²⁴ Before the tithing when it is still in a state of chullin (unconsecrated) as the law of tithing takes effect even with animals blemished.

²⁵ Where you say that he causes it a blemish.

that the Temple may speedily be rebuilt and we shall require an animal for sacrifice and there will be none? — It is possible [in the latter case] to use plain [non bechor] animals. There too [in the case of the tithing of animals] it is possible to sacrifice animals bought?²⁶ — Since he causes a blemish in the entire herd [of animals],²⁷ and blemishes which disqualify consecrated animals are frequent, for even a cataract disqualifies, animals for sacrifice are not easy to obtain.²⁸

The Mishnah had stated: It applies to chullin only but not to consecrated animals. But is it not obvious that the law of tithing animals does not apply to consecrated animals, seeing that they are not his?²⁹ — This statement refers to kodashim kalim and is in accordance with the opinion of Rabbi Yosi haGellili who said: Kodashim kalim are considered the property of the owners. For it has been taught: And commit a treachery against Hashem, this includes kodashim kalim, which are considered the owner's property.³⁰ These are the words of Rabbi Yosi haGellili. You might therefore think that they should be tithed. [The Mishnah] consequently informs us [that it is not so].³¹ And why not say that this is so? — The Merciful One says: [The tenth] shall be holy, implying but not what is already holy.

²⁶ Animals bought or presented as gifts are not subject to the law of tithing. There is consequently no need to maim them.

²⁷ Those therefore which are born to him are thus disqualified, and therefore those animals bought are in a minority.

²⁸ Even by purchase and for this reason we do not set aside an animal nowadays as tithe.

²⁹ Having been dedicated they belong to the Temple.

³⁰ So that if a man deposited for safe keeping with his fellow a shelamim which the latter at first denies on oath but which he afterwards admits to be in his possession, he pays the principal and the fine of one-fifth, for he has committed a treachery not only 'against Hashem' but also 'against his neighbor', since the owners partake of the offering.

Now the reason of this is because the Merciful One says: 'Shall be holy', but otherwise the holiness of an animal set aside for tithe would have applied to consecrated animals. But if a greater sanctity is not superimposed on a minor grade is there any question of a minor grade being superimposed on a minor grade? (What is this referred to?) — As we have learned: Neither objects dedicated for sacrifices nor offerings for Temple repair may be changed from one holiness to the other.³² But it is permitted to dedicate [for Temple repair] the value [one receives for obliging somebody] in connection with dedicated sacrifices, or we may declare [the benefit received for obliging somebody] as devoted [for the altar]! — You might have said that there [the reason is that] every animal is not designated for an olah offering,³³ but here, since every animal must be tithed, therefore although he dedicated it for a shelamim, he does not exempt it from the prohibition applying to an animal tithed. And what would be the practical difference?³⁴ That he is liable of transgressing on their account [the negative precepts of]: 'It shall not be sold', and 'It shall not be redeemed'. [The text therefore: 'Shall be holy'] intimates that this is not so.

The Mishnah had stated: It also applies both to large cattle and sheep but they cannot be tithed one for the

³¹ That the law of tithing animals does not apply even in such instances.

³² Dedication for the altar taking no effect on objects dedicated for Temple repair, although the former holiness is of higher grade than the latter. The same applies to objects dedicated for Temple repair, which cannot be changed into objects dedicated for the altar.

³³ For the majority of animals are eaten. Consequently when he dedicates an animal for Temple repair, it is a genuine dedication and cannot be altered for offering up on the altar.

³⁴ Whether the sanctity of an animal tithed is superimposed upon that of a shelamim or not?

other; to lambs and goats, etc. And why shouldn't [we derive a rule that] the new animals [born after Elul] and the old born [before Elul] be tithed one for the other thru a kal vachomer [thus]: If lambs and goats which are treated as kilayim with each other are tithed one for the other, does it not stand to reason that new and old animals which are not treated as kilayim with each other should be tithed one for the other? Scripture however, states: You shall truly tithe. Scripture speaks of two kinds of tithes, one the tithing of animals and the other the tithing of grain, and it compares the case of an animal tithed with that of the tithing of grain; just as in the case of the tithing of grain it is forbidden to tithe the new for the old, so in the case of the tithing of animals it is also forbidden to tithe the new for the old. If this be the fact, the same should apply to the case of lambs and goats? Why not say that we compare the tithing of animals to the tithing of grain so that, just as in the case of the tithing of grain you must not tithe one kind of grain for the other, so in the case of the tithing of animals you must not tithe one kind [of animal] for the other? — The Merciful One includes [all by stating] flock'. If this be so, then [include] also new and old [animals]? — Scripture says: 'You shall truly tithe'? And why do you see fit?³⁵ — Said Rav: Scripture says: 'year by year', [intimating], I [Scripture] have compared the tithing of animals with the tithing of grain in respect of the year, but not with reference to any other matter [e.g., one kind of animal for another].

We have learned elsewhere: We must not separate [terumah from] one kind of grain for another, and if one does so separate, his terumah is no terumah. From where is this proved? Rabbi Ammi reported in the name

of Rabbi Yannai, (another version is: Rabbi Ammi reported in the name of Rabbi Shimon ben Lakish): [Scripture says]: All the best of the oil and all the best of the wine and of the wheat. The Torah thus said: Give the best for this and the best for that. We have found that wine and oil [cannot be tithed for each other]. From where do we derive that this applies to wine and grain or grain and grain? We deduce this thru a kal vachomer [as follows]: If in the case of wine and oil which are not counted as kilayim with each other, you must not tithe one for the other, all the more must wine and grain or grain and grain, which are counted as kilayim with each other, not be tithed one for the other.

But according to the opinion of Rabbi Yoshiyah who said: [The law of kilayim does not apply] until one has sowed a wheat-seed, a barley-seed and a grape kernel with one and the same throw, how can you adduce this [argument]? He adduces it as follows: If in the case of wine and oil which are not counted as kilayim with each other, even though the sowing of another seed, you must not tithe one for the other, all the more must wine and grain or grain and grain, which are counted as kilayim with each other through the sowing of another seed, not be tithed one for the other.

³⁵ To compare the tithing of new and old animals with tithing of grain. Why not compare the tithing of lambs and goats with the

tithing of grain, thus forbidding the tithing of one for the other in small cattle?