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Mishna

All animals enter the pen to be tithed except *kil’ayim* (hybrid), *tereifah* (an animal with a physical defect; one that it will die from within the year), one born by means of Caesarean section, a premature animal (too young for sacrifice, such as prior to eight days old), and an orphan. And what is an orphan? An orphan is one whose mother has died during its birth or was slaughtered and subsequently gave birth. Rabbi Yehoshua says: Even when the mother has been slaughtered, if the hide is still intact, the offspring is not (regarded as) an orphan. (57a)

Scriptural Sources

The Gemora seeks the Scriptural sources for the laws mentioned in the Mishna. The Gemora cites a braisa which cites a verse discussing sacrificial animals:

Verse	Exclusion
An ox or a sheep	Kil’ayim
Or a goat	Resembler
When it is born	Born by Casearean
Then it shall be seven days	Premature
Under its mother	Orphan

Rabbi Yishmael the son of Rabbi Yochanan ben Berokah says: It is written here by *ma’aser*: Under the staff, and there (by *korbanos*) it is written: Under its mother. Just as there, all of those names are excluded, similarly here, all the names are excluded. And just as here, a *tereifah* is excluded, so too there, a *tereifah* is excluded.

The Gemora notes that when our Mishna says ‘all’ animals etc., it is coming to include that which was taught in the following braisa: A rovea (an animal which sodomized a person) or with a nirva (an animal that was sodomized by a person), one that was set aside for an idolatrous sacrifice or if it was worshipped (one poured wine between its horns as a libation), one that was used for a harlot’s payment or for a dog’s exchange, a tumtum (where a thick membrane covers its genitals, and therefore the gender is not known) or androgynous (a hermaphrodite – one that has both male and female genitals) — all of these enter the pen to be tithed. But Rabbi Shimon ben Yehudah said in the name of Rabbi Shimon: A tumtum and an androgynous do not enter the pen to be tithed.

The Gemora asks: What does the Tanna of our Mishna hold? If he draws an analogy between ‘under’ and ‘under’ mentioned in connection with sacrificial animals, these also (those mentioned in the braisa) should not be tithed? And if he does not derive it from sacrificial animals, from where does he derive them?

The Gemora answers: One may still say that he does utilize the *gezeirah shavah* from sacrificial animals, but the Torah included these (others mentioned in the braisa), for it is written: For their corruption is within them, they have a blemish. It was taught in Rabbi Yishmael’s house of study: Whenever the verse says, “corruption” it refers to illicit relations and idolatry. It indicates illicit relations, as the verse regarding the generation of the flood says: For all flesh has corrupted its way on the land. It refers to idolatry, as the verse says: Lest you corrupt, and you will make an image for yourself etc. Therefore we will say that wherever a blemish disqualifies, so too illicit relations and idolatry disqualifies, and wherever a blemish does not disqualify, so too illicit relations and idolatry does not disqualify;

and in the case of *ma'aser*, since a blemish does not disqualify, immorality and idolatry also do not disqualify. The case of an animal which sodomized a person or an animal that was sodomized by a person fall under the category of immorality; an animal set aside for an idolatrous sacrifice or one that was worshipped are cases of idolatry. And that which was used for a harlot's payment comes under the category of immorality, and the one exchanged for a dog is compared with the case of the harlot. Regarding a *tumtum* and an *androgynous*, he holds that there exists a doubt (*regarding its gender, and with respect to ma'aser, it makes no difference*).

And as for Rabbi Shimon ben Yehudah, he holds that a *tumtum* and an *androgynous* are of a doubtful gender. Now, regarding sacrificial animals, the Torah restricted the offering to a definite male and a definite female, prohibiting a *tumtum* and an *androgynous*; and with regard to *ma'aser* animals, we derive through the *gezeirah shavah* of 'under' and 'under' mentioned in connection with sacrificial animals.

The *Gemora* cites a *braisa*: All animals enter the pen to be tithed except *kil'ayim* and *tereifah*; these are the words of Rabbi Elozar the son of Yehudah, a man of Kefar Bartosa, who reported this in the name of Rabbi Yehoshua. Rabbi Akiva said: I have heard from him that this applies also to offspring which came forth through Caesarean section, a premature animal and an orphan.

The *Gemora* asks: And how does the *Tanna Kamma* (R' Yehoshua) hold? If he draws an analogy between 'under' and 'under' mentioned in connection with sacrificial animals, these also (*those added by R' Akiva*) should not be tithed? And if he does not derive it from sacrificial animals, we can indeed understand why *tereifah* is not tithed, because it is written: *All that shall pass under the staff*, thus excluding the case of *tereifah* which does not pass, but with regard to *kil'ayim*, from where does he know this (*that it should be excluded*)?

The *Gemora* answers: He does in fact derive them through the *gezeirah shavah*, and in respect of animals born by means of Caesarean section, he holds like Rabbi Shimon, who said that such animals are legitimate newborns, and not like that of Rabbi

Yochanan (*who states that R' Shimon was not referring to sacrificial animals*). And with respect to a premature animal, he agrees with the opinion of Rabbi Shimon ben Yehudah. Regarding an orphan, he is dealing with a case where the hide (*of the mother*) is still intact, and Rabbi Yehoshua is following his own reasoning, for he said that even if one slaughtered the mother and the hide is intact, the young is not regarded as an orphan (*for its hide warms the newborn*). (57a – 57b)

Orphaned Animals

Rabbi Yishmael ben Sisri of Arkas Leveinah testified before Rebbe: In our town, we strip the hide from the dead mother and put it on the living offspring (*thus enabling the newborn to survive*). Rebbe said: The reason of our *Mishna* is now revealed.

He further testified: The lettuces in our town have six hundred thousand peelings in their small leaves. Once a certain cedar tree fell in our place and sixteen wagons alongside each other passed along its length. Once the egg of a bar Yochani fell and its liquids swamped sixteen cities and broke three hundred cedar trees.

The *Gemora* asks: But does it actually throw down its egg?

Rav Ashi answers: The egg which it threw was a rotten one. (57b)

Periods for Ma'aser

There are three periods (*during the year*) for animal *ma'aser* (*the Rabbis decreed that the animals which are born between the following periods must be tithed at the approach of the period before eating from them; prior to these intervals, however, one may eat from them even without tithing*) – the halfway point (*fifteen days*) before *Pesach*, the halfway point (*fifteen days*) before *Shavuos*, and the halfway point (*fifteen days*) before *Sukkos*; these are the words of Rabbi Akiva.



Ben Azzai says: On the twenty-ninth of *Adar*, on the first of *Sivan* and on the twenty-ninth of *Av*.

Rabbi Elozar and Rabbi Shimon say: On the first of *Nissan* (fourteen days before *Pesach*), on the first of *Sivan* and on the twenty-ninth of *Elul*.

The *Mishna* asks: And why did they say the twenty-ninth of *Elul*, and not the first of *Tishrei* (for then it would be fourteen days before *Sukkos*)? It is because it is a *Yom Tov* (*Rosh Hashanah*), and you cannot tithe animals on a *Yom Tov* (for the tenth animal needs to be 'marked,' and the dabbing with red paint will be forbidden on account of 'dyeing'); consequently the Rabbis fixed it earlier, for the twenty-ninth of *Elul*.

Rabbi Meir says: The first day of *Elul* is considered the New Year for animal tithing (so that those born before this period do not enter the pen with those born subsequently, as it would be tithing the new for the old).

Ben Azzai says: Those born in *Elul* are tithed by themselves. [He is uncertain if the law follows R' Meir, or is like R' Elozar and R' Shimon, who state in *Rosh Hashanah* (2a) that the New Year for tithing animals is the first of *Tishrei*. Therefore, all those animals born in the month of *Elul* cannot be tithed with those born before, nor with those born later.]

All those born from the first of *Tishrei* until the twenty-ninth of *Elul* combine with each other (to enter the pen to be tithed together; this is in accordance with the opinion of R' Elozar and R' Shimon, who state in *Rosh Hashanah* (2a) that the New Year for tithing animals is the first of *Tishrei*). Five animals that were born before the New Year (whenever that may be) and five that were born after the New Year do not combine, but five animals that were born before the period of tithing and five that were born after the period of tithing do combine (to enter the pen to be tithed together). If so, why did they designate the three periods for animal *ma'aser*? It is for the purpose of informing us that until the period arrives, it is permitted to sell and slaughter the animals, but after the period has arrived, he must not

slaughter it (without tithing it first); though if he did slaughter it, he is exempt from any penalty.

The *Gemora* explains that these three periods correspond to the three periods when animals give birth: some give birth early in the season, some late in the season, and some in the summer. (57b)