

18 Tammuz 5779
July 21, 2019



Temurah Daf 2

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Introduction to Temurah

The essence of the prohibition of *temurah* (exchanging)

We are now starting to learn Tractate Temurah which, like the previous tractate, concerns dedicating to *hekdesh*. In this *masechta* we shall learn about the halachos and rules regarding *kodoshim* for the altar, sacrifices and their offspring, while the main subject is the prohibition of *temurah*.

Temurah means exchanging. A person who sanctified an animal to be offered as a sacrifice must not exchange it for another animal, and if he did so, the Torah asserts that “it and its substitute will be holy, it shall not be redeemed” (Vayikra 27:10). Both the first sacrifice and the animal meant to exchange it are *hekdesh*. The exchange only partially succeeded. The first sacrifice remains holy, but still, the sanctity spreads to the other animal.

Two aspects of *temurah* – What is the prohibition?

There’s an interesting and essential issue concerning the prohibition of *temurah*, which involves many *sugyos* in our tractate. The act of *temurah* consists of two parts – attempting to remove the sanctity from the first sacrifice and rendering it *chulin*, and also, he is replacing it with another animal instead. We must clarify what is the root of the prohibition: the attempt to render the first sacrifice *chulin*, or the transferring of its sanctity to the other sacrifice. Many Acharonim (see *Sefer HaMaftaiach* on Rambam, *Hilchos Temurah* 1:1) discuss this important

question while there are different proofs for both opinions.

Rabbi Yochanan says (3a) that the prohibition of *temurah* is regarded as a negative mitzvah comprising an act and therefore a person incurs lashes for it. In other words, he who commits a sin that doesn’t comprise an act – e.g., keeping *chametz* during Pesach – is not punished with lashes. Rabbi Yochanan maintains that *temurah* is a *lav sheyesh bo ma’aseh* - a negative mitzvah comprising an act – as with his words the sin **takes effect**: the animal meant for exchange becomes sanctified and becomes a sacrifice. We thus see that the prohibition is the converting of the second animal into *hekdesh* for the purpose of exchanging.

On the other hand, the Gemora (4b) says that the fact the second animal becomes *hekdesh* is a positive mitzvah that “repairs” the sin of exchanging, and that he is nonetheless punished with lashes for a different reason. We thus see that the prohibition is the attempt to take out the first sacrifice to *chulin* while the sanctity of the animal meant to exchange it is not part of the sin.

Mishna

All people can effect a *temurah* (*the owner illegally attempts to exchange a different animal with the original korban; the halachah is that the temurah animal gets the same sanctity as the original one, and both animals must*

be brought as a korban) - men as well as women; not that one is permitted to exchange, but that if one did so, the substitute is sacred, and he incurs forty lashes. (2a)

Is it Allowed?

The Gemora asks: The Mishna contains a contradiction in itself. First it states that all people can effect a *temurah* - implying that it is permissible to exchange in the first instance, and then it says: not that one is permitted to exchange, implying that it takes effect only after it has been done!?

The Gemora interjects: But how can you understand the Mishna altogether when it states that all people can effect a *temurah* in the first instance? Instead of bringing a contradiction from the Mishna, you could rather challenge it from the Scriptural verse, which says: *He shall not exchange it and he shall not substitute it!*

Rav Yehudah therefore explained the Mishna as follows: All people have the ability to effect a *temurah* - men as well as women; not that one is permitted to exchange, but that if one did so, the substitute is sacred, and he incurs forty lashes. (2a)

Who can Effect Temurah? A Heir? A Woman? An Idolater? A Minor?

The Gemora asks: And when it states: All people can effect a *temurah*, what is 'all' coming to include?

The Gemora answers: It is meant to include the heir, in contrast to the opinion of Rabbi Yehudah, for it was taught in a *braisa*: The inheritor performs *semichah*, and he effects *temurah*. Rabbi Yehudah says: The inheritor does not perform *semichah*, and the inheritor cannot effect *temurah*.

The Gemora explains their reasoning:

Verse	Rabbi Yehudah	Rabbi Meir
<i>On his offering</i> (#1)	But not on his father's offering	But not on an idolater's offering
<i>On his offering</i> (#2)	But not on an idolater's offering	But not on his friend's offering
<i>On his offering</i> (#3)	But not on his friend's offering	All owners perform the <i>semichah</i>
	Either he does not hold that all owners perform <i>semichah</i> , or alternatively, he holds of it, but he learns idolater and friend from the same verse	
	And just as by the end of sanctification, the inheritor does not perform <i>semichah</i> , so too by the beginning of sanctification, he may not effect <i>temurah</i>	And just as by the beginning of sanctification, the inheritor can effect <i>temurah</i> , so too by the end of sanctification, he performs <i>semichah</i>
<i>Substitute, he will substitute</i>	Includes a woman in the laws of <i>temurah</i>	An inheritor may effect <i>temurah</i>
<i>And if (he will substitute)</i>	He doesn't expound anything from this	Includes a woman in the laws of <i>temurah</i>

Now, the Gemora asks: According to the view both of Rabbi Meir and of Rabbi Yehudah, the reason (*why the*

laws of making a *temurah* apply to a woman) is because the Torah expressly included her, but if the Torah would not have included her, I would have thought that if a woman made a *temurah*, she would not be punished with lashes. But surely Rav Yehudah reported in the name of Rav and likewise a *Tanna* in the academy of Rabbi Yishmael taught: It is written: *A man or woman who will do from among any of the sins of a person*. This teaches us that all punishments that are mandated by the Torah for sinners are for both men and women alike!?

The *Gemora* answers: You might have thought that this is the case only regarding punishments which apply equally, both to the individual and the community, but here, since the punishment does not apply equally in all cases, for we have learned in a *Mishna*: A community or partners cannot effect *temurah*; therefore, in the case of a woman as well - if she made a *temurah*, she would not be punished with lashes. The verse therefore informs us that this is not so.

[A minor cannot declare a vow. This is because he lacks the mental capacity to understand the nature and purpose of a vow. He therefore cannot consecrate anything either. In order to effect a *temurah*, which involves the sanctification of the substitute animal, he would need to be an adult. One who is twelve years old and a day and older reaches a stage where his vow can possibly be effective. This is determined by investigating his mental capacity. If we determine that he understands the nature and purpose of his vow, it is ruled to be valid.]

Rami bar Chama inquired: Can a minor, who has reached the stage where he is capable of making vows, and therefore his consecration of an animal would be valid, effect a *temurah*? Do we say that since he has the ability to consecrate, he can make *temurah*, or perhaps, since he is not subject to punishments, he cannot effect a *temurah*? [Rashi explains that the prohibition of making a

temurah (which does not apply to a minor) and the effectiveness of the *temurah* are dependent on each other. One who is not subject to the prohibitions might not be able to effect a *temurah*.]

He inquires further: And if you were to maintain that a minor can effect a *temurah*, since ultimately he comes into the category of being punishable (when he becomes an adult), can an idolater effect an exchange? Should we say, since he can legally consecrate an animal for a sacrifice, as it has been taught in a *braisa*: *A man, a man*. What need is there for torah to repeat 'man'? It is in order to intimate that idolaters can make vowed and voluntary offerings just like a Jew; do we say that they therefore can also effect a *temurah*? Or perhaps, since they will never come into the category of punishments, when an exchange is performed by them, the second animal is not sacred?

Rava attempts to bring a proof that an idolater can effect a *temurah* from the following *braisa*:

Rabbi Shimon lists the ways that an idolater's sacrifice is different than a Jew's sacrifice:

1. One may not benefit from them, but is not liable for *me'ilah* – *misuse* if one did
2. *piggul* – if it was offered while planning to eat it at the wrong time
3. *nossar* – *leftover* : if it is left over beyond the allowed period of eating
4. *tamei* – *impure* : if it became impure, or if the one eating is impure
5. *temurah* – *exchange* : if one tried to exchange another animal for it, the new animal does not become sacrificed
6. *nesachim* – *libations* : an idolater may not bring a standalone wine sacrifice (libations), but his sacrifice does require libations.



Rabbi Yosi says that for all of these, he rules strictly, since the verse that allows an idolater to sanctify an animal concludes with *lashem – for Hashem*, making it equivalent to other sacrifices.

The *braisa* concludes by saying that only items sanctified by an idolater as an actual sacrifice are excluded from *me'ilah*, but one is liable for *me'ilah* on items that an idolater donated to the Bais Hamikdash maintenance fund.

At any rate, the *braisa* did state that an idolater cannot effect a *temurah*!

The *Gemora* notes that Rami bar Chama would say that his inquiry does not refer to a case where an idolater consecrated an animal for his own atonement (*for then, he cannot effect temurah using that animal, for he is not subject to punishments*); his inquiry was applicable only to a case where an idolater consecrated an animal so that a Jew may be atoned for (*by its offering*). Do we go by the person who consecrates (*and therefore, since it was an idolater, it cannot effect temurah*) or by the person for whom atonement is made (*which is a Jew, and therefore, temurah from this animal could be effective*)? [*The Gemora now understands his inquiry different than it did before. He is inquiring: who is the owner of the korban? Is it the idolater, who was the one who consecrated the animal, and he cannot effect temurah? Is it the Jew for whom the atonement is for, and therefore, the Jew will be able to effect temurah?*]

The *Gemora* asks: But why not resolve this inquiry from what Rabbi Avaha said? For Rabbi Avahu reported in the name of Rabbi Yochanan: If someone consecrates an animal (*for his friend's korban*), the consecrator redeems it (*after it developed a blemish*) by paying the full price plus one fifth of its value. The one who receives atonement

(*the friend*) can effect *temurah*. And one who separates *terumah* from his grain in order to exempt someone else's grain, he has the benefit of gratitude (*he may decide which Kohen to give it to*). [*We see from here that with respect of effecting temurah, we go by the one who the atonement is being made for; accordingly, in our inquiry, the Jew should be able to effect temurah from this animal!*]

The *Gemora* explains that this would not resolve Rami bar Chama's inquiry, for there, as the consecration came through the agency of a Jew, we go by him to whom atonement is made, and thus both the beginning (*by the consecration*) and the end (*by the atonement*) are in the hand of a Jew, but here, the question is: Do you require that both the beginning and the end should remain in the control of one who can effect a *temurah*, or not? The *Gemora* leaves the question unresolved. (2a – 3a)

DAILY MASHAL

Temurah

Once one has designated a specific animal as a korban to Hashem may not exchange it for another animal, regardless of the value or quality of the second animal. In the event that he does replace the animal, the substitute animal attains the same kedushah, sanctity, as the korban, and both must now be brought as korbanos. This is referred to by the Torah as *Temurah*, substitution. What is the rationale behind this law?

The Rambam in Hilchos *Temurah* 4:13 explains that the Torah has delved into the human psyche and understands that it is human nature for a person to be concerned regarding his possessions, always seeking to increase his holdings. Although he has chosen an animal to serve as his korban, there is always the possibility that he will retract his first choice and seek to replace it with an



inferior animal. Thus, the Torah discourages his action by consecrating both animals. It is, likewise, forbidden to exchange an animal of lower quality with one of better quality, since this will ultimately lead to substitution of animals in which one might substitute an inferior animal for one of improved quality.

Horav Avrohom Pam, zl, in his *Ateres Avraham*, recently translated by Rabbi Sholom Smith, cites the *Sefer HaChinuch* who derives a fundamental lesson in Jewish history from the law of *Temurah*. Once an animal has been consecrated as a *korban*, the *kedushah* is lasting. Unless the animal develops a *mum*, physical blemish, that renders it *pasul*, invalid, it retains a holiness that cannot be removed or exchanged. If the owner attempts to rescind the *kedushah*, not only will his attempt be in vain, it will bring about additional *kedushah*, for the second animal will now also be sanctified, since he came with his actions to uproot holiness. Instead, the converse will occur. The *kedushah* will expand further, and other objects will, in turn, become sanctified.

Rav Pam notes that the history of *Klal Yisrael's* persecutions coincides well and attests to the rationale of the *Temurah* law. Throughout the millennia, attempts have been made to impugn the integrity of Torah and to undermine the *kedushah* of *Klal Yisrael*. Each time they ultimately failed, and, in fact, the paradoxical result was unprecedented Torah expansion. Let us go back to the first exile, *galus Mitzrayim*, whereby the Egyptians sought to assimilate *Klal Yisrael* into their immoral society. They failed, and *Klal Yisrael* grew and became stronger. Indeed, a number of Egyptians converted and joined *Klal Yisrael* upon their redemption.

A parallel was experienced by the Jews during the tenure of *Mordechai* and *Esther*, when the wicked *Haman* sought to destroy every Jew. The result was the same:

failure for *Haman* and increased devotion to *Hashem* by the Jews, followed by joy and festivity with the *Yom Tov* of *Purim*. *Haman's* downfall catalyzed an increased awareness of, and respect for, the Jewish religion bringing about mass conversions in the land. This was the Jewish response to *Haman's* decree: the more they were pushed down, the more they would grow.

The more things change, the more they stay the same. The lesson extends into contemporary times. We live in a day and age when Orthodoxy and its way of life are not accepted - nor can it be ignored. The non-Jewish world either vilifies us or, at best, views us as parasites. Some of our own alienated brethren who would do anything to remove the taint of Jewishness from themselves have established ideological platforms to extirpate the Torah's teachings and traditions from this assimilated society. Rav Pam suggests that while this circumstance is certainly tragic, we cannot and must not forget the lesson of *Temurah*. Wherever there is an attempt to abate *kedushah*, it eventually results in a positive augmentation of Torah life and a rise in commitment. Not only will those who asperse Torah fail, they will personally attest to its veracity and sanctity. Today we find *baalei teshuvah*, newly-returned, committed Jews, descendants of prominent free-thinkers who contended with the Torah authorities of their day, who devote their lives to Torah and *mitzvos*. This is the ultimate victory: the eternity of our Torah and its intrinsic *kedushah* within our People.