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Eiruvim Daf 37

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Bereirah**

Rav says that we don't accept the *Mishna's* statement that Rabbi Yehudah accepts the concept of *bereirah* – retroactively clarifying an action later, since Ayo taught a *Mishna* which cites Rabbi Yehudah not accepting *bereirah*.

The *Gemora* cites Ayo's *Mishna* in which Rabbi Yehudah says that one cannot place two *eiruvim* and tomorrow decide which one he wants, but he can stipulate that his *eiruv* in the direction of the sage should take effect. Rabbi Yochanan explains that the case which Rabbi Yehudah allows is only when the sage already arrived before *Shabbos*, but the person just didn't know yet. Since he already arrived, there is no clarification necessary, but simply a discovery of known facts.

The *Gemora* asks why Rav rejected the *Mishna* instead of rejecting Ayo's *Mishna*, and answers that we have another *Mishna* which indicates that Rabbi Yehudah doesn't accept *bereirah*. The *Mishna* discusses one who bought wine from Cutheans, but has no containers into which to place *terumah* and *ma'aser*. Rabbi Meir says that one may state that he is taking *terumah* and *ma'aser* now, stipulating that he will designate the actual wine for each later, and immediately drink the wine, while Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon say that one may not, indicating that Rabbi Yehudah does not accept this form of *bereirah*.

Ulla said: Ayo's version is not correct, by reason of what was stated in our *Mishna* (that R' Yehudah uses the principle of *bereirah* to validate an *eiruv*).

The *Gemora* asks: What, however, about that which was taught in the *braisa*: Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon say that one may not (use this procedure, indicating that Rabbi Yehudah does not accept this form of *bereirah*)?

The *Gemora* answers: Ulla read (the names of the *Tannaim*) in pairs, as follows: [The first opinion holds of *bereirah*, and concludes:] these are the words of Rabbi Meir and Rabbi Yehudah, but Rabbi Yosi and Rabbi Shimon forbid this procedure.

The *Gemora* asks: But is Rabbi Yosi of the opinion that there is no principal of *bereirah*? Have we not in fact learned in a *Mishna*: Rabbi Yosi said: If two women bought their "nests" (pigeon sacrifices; a pair of birds as offerings after childbirth) jointly (and they did not designate to whom each nest belonged to who), or gave the money for their nests to the *Kohen* (without designating to whom the money belonged), the *Kohen* may offer whichever (nest) he wishes as an *olah* (a burnt-offering), and whichever he wishes as a *chatas* (sin-offering). [He may also bring an *olah* and a *chatas* from one nest, and an *olah* and a *chatas* from the other nest. Now, since an *olah* is unacceptable unless it is offered in the name of the person for whom it was originally intended, while a *chatas* is completely disqualified if it is offered for a person other than its owner, or as a different kind of sacrifice, and since R' Yosi, nevertheless, allows the *Kohen* to offer up any of the birds either as a *chatas* or as an *olah* for either of the women, it obviously follows that he

uses the principle of *bereirah*, so that when the Kohen offers up any of the four birds, it is assumed that this particular bird was retroactively selected by the particular woman for the particular sacrifice for whom it is now offered. How then could it be maintained that R' Yosi does not uphold *bereirah*?]

Rabbah replied: There, it is a case where the women originally stipulated (that the choice be left to the Kohen; therefore, the question of *bereirah* does not arise at all).

The *Gemora* asks: But if that is the case, what need was there to state such an obvious ruling?

The *Gemora* answers: The *Mishna* is teaching us that the law is in agreement with Rav Chisda, for Rav Chisda said: Bird offerings are designated (as a *chatas* or an *olah*) only at the time of purchase by the owner or at the time of offering by the *Kohen*.

The *Gemora* asks: But still, is Rabbi Yosi of the opinion that there is no principal of *bereirah*? Have we not in fact learned in a *Mishna*: If an *am ha'aretz* (ignorant person) said to a *chaver* (colleague), "Buy for me one bundle of vegetables or one loaf of bread" (and though he purchased his own vegetables or bread together with those of the *am ha'aretz* without specifying which was for himself and which was for the other, and though the seller also was an *am ha'aretz* whose produce the *chaver* must separate *ma'aser* from, as it is regarded as *demai*), he (the *chaver*) does not need to separate *ma'aser* from it (from that which he bought for the *am ha'aretz*); these are the words of Rabbi Yosi. [Since no mention was made at the time of purchase as to which bundle or loaf of bread was for the *chaver* and which for the *am ha'aretz*, every part of the purchase is regarded as that of the *chaver*, and that part of it which he subsequently gives to the *am ha'aretz* is regarded as a partial sale of his own purchase. As a *chaver* must not sell to an *am ha'aretz* any *demai*, he must separate *ma'aser* from it before he gives it to him. Now since R' Yosi ruled that the *chaver* does not need to

separate *ma'aser* from it, he obviously accepts the principle of *bereirah*, so that when the *am ha'aretz* selects, or the *chaver* selects for him his part of the purchase, the selection is deemed to be retroactive. How then could it be maintained that R' Yosi does not accept the concept of *bereirah*?] The Sages, however ruled: He must separate *ma'aser* from it.

The *Gemora* answers: Reverse the rulings (that R' Yosi is the one who maintains that the *chaver* needs to separate the *terumah*).

The *Gemora* cites a *braisa* (challenging the viewpoint that R' Yosi does not accept the principle of *bereirah*): If a man said, "Let the *ma'aser sheini* which I have in my house be redeemed with the *sela* that will come from my purse into my hand," Rabbi Yosi said: It is redeemed. [Evidently, he does hold of *bereirah*!?

The *Gemora* answers: Reverse it (to say): Rabbi Yosi said: It is not redeemed.

The *Gemora* asks: What reason, however, do you see for reversing (the reading of) two statements for the sake of one, why not reverse the one for the sake of the two?

The *Gemora* answers: The last cited *braisa* was definitely taught in a reversed form, since in the clause at the end it was stated: Rabbi Yosi, however, admits that where a man said, "The *ma'aser sheini* which I have in my house shall be redeemed with the new *sela* that will come from my purse into my hand," the *ma'aser sheini* is redeemed. Now since he ruled here that it is redeemed, it follows that in the previous case, his ruling was that it is not redeemed.

The *Gemora* asks: What, however, are the circumstances of the case of the new *sela*? If there are two or three other new *sela* coins in his purse, so that a retroactive clarification is possible, then this case is exactly identical with the first one (and the redemption should be invalid);



and if, however, there was only one, what does the expression, 'that will come' mean?

The *Gemora* answers: Just as in the first clause it was taught, 'that will come,' it was taught in the end clause as well, 'that will come.'

Rava asked Rav Nachman: Who is that *Tanna* who does not accept the principle of *bereirah* even in the case of a Rabbinical law? For it was taught in a *braisa*: If a man said to five people, "Behold I am arranging an *eiruv* for one of you whom I may choose, so that if I wish it, he will be allowed to go (*beyond the techum*), and for those who I do not wish it, will not go," the *eiruv* is effective if he made up his mind while it was still day, but if he decided after dark, the *eiruv* is not effective? Rav Nachman remained silent and gave him no answer at all.

The *Gemora* asks: But why could he not tell him that the *Tanna* was one of the school of Ayo (*cited above*)?

The *Gemora* answers: He did not hear (*of Ayo's version of R' Yehudah's ruling*).

Rav Yosef said: Do you wish to remove all the *Tannaim* from the world? The fact is that the matter is one that the *Tannaim* differ on, for it was taught in a *braisa*: If a man said, "Behold I am arranging an *eiruv* for all the *Shabbasos* of the entire year, so that whenever I should wish it I would go (*beyond the techum*), and whenever I should not wish it I would not go," his *eiruv* is effective if he decided while it was yet day, but if he decided after dark, Rabbi Shimon said: His *eiruv* is effective, while the Sages said: His *eiruv* is not effective.

The *Gemora* asks: But surely, we heard of Rabbi Shimon who does not accept the principle of *bereirah*, so that a contradiction arises between two rulings of Rabbi Shimon?

The *Gemora* answers: Rather, reverse it (*and R' Shimon holds that the eiruv is ineffective*).

The *Gemora* asks: But what difficulty is this? Is it not possible to say that Rabbi Shimon does not accept the principle of *bereirah* only with respect to a Biblical law, but in respect to a Rabbinical law, he may well accept it?

The *Gemora* answers: Rav Yosef is of the opinion that he who accepts the principle of *bereirah* does so in all cases, making no distinction between a Biblical and a Rabbinical law, while he who does not accept the principle of *bereirah* does not do it in any case irrespective of whether a law is Biblical or Rabbinical.

Rava replied: There (*regarding the wine bought from Cutheans*), the case is different, for it is essential that the *terumah* separation should be the first, so that whatever remains shall be distinguishable (*from it at the time of the separation*).

Abaye said to him: Now then, if a man who had before him two pomegranates of *tevel* said, "If rain will fall today this one shall be *terumah* for the other, and if no rain will fall today the other shall be *terumah* for the first," would (*even if the principle of bereirah is accepted*) his declaration here as well, whether there was rain that day or not, be ineffective? And should you say that it is indeed so, it cannot be, for we learned in a *Mishna*: If a man said, "The *terumah* of this pile and its *ma'aser* portions shall be designated in the middle of it," or (having a pile of *ma'aser*) he says, "The *terumas ma'aser* of this *ma'aser rishon* shall be in the middle of it," Rabbi Shimon said: He has thereby called the name (*and it is a valid designation*)? [*Evidently, separation of terumah is valid even though the remaining parts are not distinguishable!?*]

The *Gemora* answers: There, the law is different, because the remainder of the produce is surrounding the *terumah* (*so it is regarded as being distinguishable*).

Alternatively, the *Gemora* answers, it is in accordance with the reason indicated elsewhere: They said to Rabbi Meir:

Do you not agree that we should be concerned that the wineskin might break (*before the terumah and ma'aser were actually separated*) and it will emerge that he was retroactively eating *tevel* (*untithed produce*)! Rabbi Meir answered them: We will concern ourselves with this only when the wineskin actually breaks.

The *Gemora* asks: According to the previous assumption, however, that it is essential that the *terumah* separation should be the first, so that whatever remains shall be distinguishable from it, what could they have meant?

The *Gemora* answers: It is this that they meant: According to our view (*the reason for the prohibition is that*) it is essential that the *terumah* separation should be the first, so that whatever remains shall be distinguishable from it, but even according to your view, do you not agree that the wineskin might break (*before the terumah and ma'aser were actually separated*) and it will emerge that he was retroactively eating *tevel* (*untithed produce*)! Rabbi Meir answered them: We will concern ourselves with this only when the wineskin actually breaks. (36b – 38a)

## INSIGHTS TO THE DAF

### **Bereirah**

In the course of discussing Rabbi Yehudah's ruling, the *Gemora* introduces the concept of *bereirah*. *Bereirah* is a wide ranging concept, appearing throughout Shas, in a variety of forms, having ramifications in many halachic areas. Below are a number of facets of *bereirah*, which appear in the Rishonim and poskim.

### **Cases**

#### **Courtyard neighbors**

The *Gemora* (Nedarim 55b-56b) discusses the status of two people who are partners in a courtyard. They both have use rights, but it may depend on *bereirah* to

determine exactly when each one has ownership at a given time.

### **Partners**

The *Gemora* (Beitzah 37b-38a) discusses cases of partners who split their joined item, insofar as *techumim* ownership. *Bereirah* allows us to consider the ultimate allocation reflective of the original true ownership.

### **Inheritance**

This case is discussed by Rabbi Yochanan (*in Bava Kamma*), and appears in many other *Gemoros*.

### **Separating Tithes**

This case is discussed by Rabbi Meir and Rabbi Yehudah in our *Gemora*, and appears in many other *Gemoros*.

### **Choosing a Techum**

The *Gemora* (here) discusses various *Eruvei Techumim*, where the actual details of the *Eruv* are left for later clarification, using *Bereirah*. The *Gemora* includes a lengthy discussion of Rabbi Yehudah's position on *Bereirah*, based on multiple conflicting sources.

### **Why does (or doesn't) it work?**

Tosfos (Eruvin 37b Ela) states that those who do not accept *bereirah* feel that later designation is meaningless, and therefore the action is not effective at all. In our case, this means that the separation that will happen after *Shabbos* is meaningless, and therefore, the declaration at the onset of *Shabbos* has no wine to take effect on, and the declaration does not take effect at all. Rashi (Chulin 14b osrin), on the other hand, states that those who do not accept *bereirah* simply hold that the later designation cannot resolve the lack of clarity. In the case of the wine, when the person declares that he is taking the tithes from

wine that will be designated later, the tithes now exist in the wine, but the person cannot designate them later. Therefore, this wine has indeterminate tithes, and none of it can be used.

See Shaarei Yosher (3:22 v'af shera'isi) for a more detailed discussion of how *bereirah* does work, and what are its limitations. See Shiurei R. Dovid Lifshitz (Chulin, #29) for a further discussion of this dispute.

### **How much is unclear?**

The Ran in Nedarim (55b v'ika) suggests that the case of partners' use in a courtyard can be considered full ownership, even according to those who generally do not accept *bereirah*, since the bulk of the "split" is already done, with only the exact time that it will be used left for later clarification.

### **Will it definitely be clarified?**

Tosfos (Gittin 25b Rabbi Yehudah) states that some cases of *bereirah* are less acceptable, since there may never be any clarification. For example, as opposed to our case of the wine - where *some* wine will be taken, but it's not known which - a case of one who consecrates the coin that he will take from his pocket, is a case where it's possible that no coin will be chosen at all.

### **Who decides?**

The *Gemora* in Gittin (25a-b) raises the possibility that *bereirah* may be more acceptable in the case where the area left for later clarification depends on another party. If *bereirah* is unacceptable because the party doing the action must decide before acting, then if the only clarification is external, the active party has done his part, and left the rest up to something else. Examples of this are:

1. A person who betroths a woman, but stipulates that it will only take effect if the woman's father agrees.
2. A person who gives his wife a *Get*, which should be effective one moment before he dies. This is making it dependent on outside party, i.e., Hashem.

### **Explicit exceptions**

There are cases where the Torah states an explicit detail, which overrides the general rules of *bereirah*.

The Torah explicitly states that a *Get* must be written "la" - for her (the wife), and from this the *Gemora* learns (Gittin 2b) that a *Get* must be written "lishma" - explicitly for the wife's sake. From this verse, Tosfos (24b l'aizo) suggests that even those who accept *bereirah* may invalidate a *Get* which was written for the sake of "the wife that I choose"

The *Gemora* (in *Bava Kamma*) mentions the case of brothers who split their father's estate as a case of *bereirah*. Tosfos (Gittin 48a Ee) suggests that, even without *bereirah*, inheriting brothers could be not subject to return on the Yovel year, due to the inherent nature of inheritance and Yovel.

### **Torah vs. Rabbinic**

The Ri in Tosfos (Nedarim 56b) rules that we accept *bereirah* in all areas of *halachah*. The Rambam (Eruvin 8:7, Trumos 1:21, Yom Tov 5:20) rules that in Rabbinic areas of *halachah*, we accept *bereirah*, while in areas of Torah *halachah*, we do not accept *bereirah*.

### **Two Lugin**

The *Gemora* cites a *braisa*: If someone buys wine from the Cutheans (*converts to Judaism after an outbreak of wild animals in Eretz Yisroel and their conversion was debated as to its validity; they observed some commandments, but*

not others), he should say the following: “The two *lugin* (a measurement) that I will eventually separate (from the one hundred *lugin* in total) are *terumah* (tithe for the kohen), ten are *ma’aser rishon* (tithe for the Levite), nine are for *ma’aser sheini* (to be eaten in Yerushalyim),” and after redeeming the *ma’aser sheini* (with coins), he can drink right away. These are the words of Rabbi Meir. Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon forbid this leniency.

Rashi explains the *braisa* to be referring to a case where he does not have a vessel to separate the tithes in the orderly fashion which is required to allow him to drink the wine. Some explain it that he did not have any *tahor* vessels.

Rashi in *Sukkah* (23b) explains that the fellow purchased the wine *bein hashemashos* (close to sunset) on Friday and he did not have time to separate the *ma’aser* before *Shabbos*. Since it is forbidden to separate *ma’aser* on *Shabbos*, he did not have what to drink. Tosfos challenges Rashi’s explanation, for if that would be the case, he would not even be allowed to orally declare it to be *ma’aser*, for it is forbidden to fix his produce on *Shabbos*!?

The Kaftor va’Ferach answers that Rashi holds that the manner prescribed in the *Gemora* is permitted, for he is not actually fixing it on *Shabbos*. He is separating the *ma’aser* after *Shabbos* and retroactively the produce is remedied on *Shabbos*. It emerges that he did nothing on *Shabbos*.

Tosfos explains that the remedy discussed in the *Gemora* is only when it is still *bein hashemashos*. At that time, there was a Rabbinic decree not to separate *ma’aser*, but one, at that time, is permitted to orally declare it to be *ma’aser*.

### **Cutheans**

The *Gemora* cites a *braisa*: If someone buys wine from the Cutheans (converts to Judaism after an outbreak of wild

animals in Eretz Yisroel and their conversion was debated as to its validity; they observed some commandments, but not others), he should say the following: “The two *lugin* (a measurement) that I will eventually separate (from the one hundred *lugin* in total) are *terumah* (tithe for the kohen), ten are *ma’aser rishon* (tithe for the Levite), nine are for *ma’aser sheini* (to be eaten in Yerushalyim),” and after redeeming the *ma’aser sheini* (with coins), he can drink right away. These are the words of Rabbi Meir. Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon forbid this leniency.

Tosfos explains that although the Cutheans observed the *mitzvos* that are expressly written in the Torah, and therefore, it would be safe to assume that they already separated *terumah* and *ma’aser*, nevertheless, they are only trusted with respect to the food which they eat. However, the produce which they sell to others, they are not trusted, for the Cutheans were not particular about the transgression of *lifnei iver* (placing a stumbling block in front of a blind man). Tosfos in *Sukkah* (23b) explains further that they (the Cutheans) understood that verse only in its literal sense. They maintained that it is forbidden to place a stumbling block in front of a blind man, but there is no prohibition against causing someone else to sin.

However, Tosfos asks: Would selling the produce without separating *terumah* and *ma’aser* not be regarded as stealing from the *Kohanim*? Stealing is a prohibition that they seemingly did observe!

Tosfos answers that since *terumah* and *ma’aser* is considered money that has no claimants (for which Kohen is regarded as its owner), it was not considered stealing in their eyes.

Other Rishonim add that, in truth, it is not regarded as stealing. Stealing is only when one takes something away from an owner who can make a claim to it. Since the *Kohanim* cannot forcibly take the produce from him, it is not considered stealing.