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Yevamos Daf 73

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The Gemora proceeds to explain the argument between the Tanna Kamma and Rabbi Yehudah regarding the eligibility of an androgynous (*hermaphrodite*) to consecrate the *mei chatas*.

They follow their respective opinions stated elsewhere, as we learned in the following braisa: All are permitted to perform sanctification, with the exception of a deaf-mute, an imbecile and a minor. Rabbi Yehudah permits in the case of the minor, but invalidates the sanctification of a woman and an androgynous.

What is the Tanna Kamma’s reason? Because it is written [Bamidbar 19:17]: *And for the contaminated person, they shall take some of the ashes of the burning of the purification (animal), and he shall put upon it spring water in a vessel.* Those who are ineligible (*a minor*) for the gathering (*of the ashes of the red heifer*) are also ineligible for the sanctification, but those who are eligible (*a woman*) for the gathering are also eligible for the sanctification.

Rabbi Yehudah can explain: If so, the Torah should have used the expression “*He shall take*” (*since it is referring to the one that gathered*), why then did it write: “*And they shall take*”? It is obviously to indicate that even those who are ineligible (*a minor*) for the gathering are eligible for the consecration.

The Gemora asks: If so, a woman should also be eligible?

The Gemora answers: The verse stated: “*and he shall put,*” but not “*and she shall put.*”

The Gemora asks: Why doesn’t the Tanna Kamma expound like Rabbi Yehudah?

The Gemora answers: Had it been written, “*He shall take*” and “*he shall put,*” it might have been assumed that only one individual must take and only one must put; therefore the Torah wrote, “*And they shall take.*” And if it had been written, “*And they shall take*” and also “*And they shall put,*” it might have been assumed that two must take and two must put; therefore the Torah wrote, “*And they shall take*” and “*and he shall put,*” to indicate that even if two take the ashes and one put the water, the consecration is valid.

It is written [Bamidbar 19:19]: *And the tahor person shall sprinkle upon the tamei on the third day, and on the seventh day.* The word “*the tahor*” implies that he is *tamei* in some respect. This teaches us that a *tevul yom* (*one who has immersed in a mikvah but still has tumah on him until nightfall*) is qualified for the Red Heifer service. (72b – 73a)

They inquired of Rav Sheishes: Can an uncircumcised person eat *maaser sheini* (*one brings one tenth of his produce to Yerushalayim to be eaten there*)?

The Gemora explains the inquiry: Do we say that just as the Pesach offering is derived from *maaser sheini* in respect to an *onein* (*one whose close relative passed away and has not been buried yet*) (*the prohibition of an onein eating from the korban Pesach is derived from the prohibition regarding maaser sheini*), so too, we will derive the prohibition of an uncircumcised person eating *maaser sheini* from the prohibition of him eating from the Pesach offering? Or perhaps, we can derive a stringent prohibition (*Pesach*) from

a lenient one (*maaser sheini*), but we cannot derive a lenient prohibition from one which is stringent?

Rav Sheishes responded to them: The answer to your question can be found in the following Mishna [Bikkurim 2:1]: In respect of *terumah* and *bikkurim* (*the first ripe fruits which had to be brought to the Beis Hamikdash in Yerushalayim*), one is liable to the penalties of death (*if he eats them illegally*) and a fine of a fifth (*of the value of the food, in addition to its actual cost, which a non-Kohen must pay if he consumed unwittingly any quantity of terumah or bikkurim*); they both are forbidden to a non-Kohen, and they are the property of the Kohen; they become nullified (*when intermingled with non-sanctified produce*) in a mixture of one hundred and one; and they require washing of the hands (*prior to touching or eating these foods*); and one who was *tamei* and immersed himself in the *mikvah* is required to wait until sunset before eating these foods. All these restrictions apply to *terumah* and *bikkurim*, but not to *maaser sheini*.

Rav Sheishes explains his proof: Now, if that were so (*an uncircumcised person may eat maaser sheini*), the Mishna should have also stated: The uncircumcised is forbidden to eat of *terumah* and *bikkurim*, which is not applicable to *maaser sheini*.

The Gemora objects to this proof: Perhaps the Tanna omitted this halachah?

The Gemora asks: What other halachah did the Tanna omit, that you may claim that he omitted this one as well?

The Gemora answers: The Tanna did omit other halachos, for the latter part of the Mishna states: There are restrictions that apply to *maaser sheini* and *bikkurim*, but not to *terumah*, since *maaser sheini* and *bikkurim* must be brought to Yerushalayim; and they require confession; and they are forbidden to an *onein*. Rabbi Shimon permits an *onein* to eat *bikkurim*. *Maaser sheini* and *bikkurim* are subject to the laws of removal (*they must be disposed of by Pesach of the fourth*

and seventh year of the Shemithah cycle), but Rabbi Shimon exempts *bikkurim* from being removed.

The Gemora comments: The Mishna omitted the law that *maaser sheini* and *bikkurim* may not be burned for one's personal use when they are *tamei*, whereas one is permitted to burn *terumah* for one's personal use when it is *tamei*. The Mishna also omitted the law that one who eats *maaser sheini* and *bikkurim* while they are *tamei* will incur lashes, whereas one who eats *terumah* while *tamei* will not incur lashes. Just as the Tanna omitted these halachos, so too, he may have omitted the halachah regarding the uncircumcised. (73a - 73b)

The Mishna had stated: The *Tanna Kamma* maintains that *bikkurim* cannot be eaten by a Kohen who is an *onein*, while Rabbi Shimon says they can.

The Gemora asks: From where do we know this?

The Gemora answers: The *Tanna Kamma* derives this from the following verse: *You may not eat within your cities the maaser of your grain, or of your wine, or of your oil etc., nor the terumah of your hand*, and a master has said: *and the terumah of your hand* refers to *Bikkurim*. Now, the verse is comparing *ma'aser sheini* to *bikkurim*. Just as *ma'aser sheini* cannot be eaten by an *onein*, so too *bikkurim* cannot be eaten by an *onein*.

Rabbi Shimon, however, understands that this is permitted, as the Torah compares *bikkurim* to *terumah* (*tithe given to the Kohen*). Just as one who is an *onein* can eat *terumah*, so too an *onein* can eat *bikkurim*. (73b)

The Mishna had stated: *Maaser sheini* and *bikkurim* are subject to the laws of removal (*they must be disposed of by Pesach of the fourth and seventh year of the Shemithah cycle*), but Rabbi Shimon exempts *bikkurim* from being removed.

The Gemora explains the rationale behind the dispute: The Tanna Kamma compares the two (Bikkurim with maaser sheini), while Rabbi Shimon does not. (73b)

The Mishna had stated: They may not be burned (for one's own pleasure) when they (the maaser sheini and bikkurim) are in a state of tumah, and a person who eats of them while they themselves are tamei is to incur lashes.

The Gemora asks: From where is this derived?

The Gemora answers: From that which was taught in a braisa: Rabbi Shimon said: It is written: I have not eaten any of it while I was *tamei*. This means that "I have not eaten *ma'aser sheini* while I was *tamei* and it was *tahor*, or while I was *tahor* and it was *tamei*." And where is the warning against eating it? I do not know.

The Gemora interjects: But there is an explicit verse which warns against eating *ma'aser sheini* while the person is *tamei*, as it is written: *A person who will touch it will become tamei until the evening, and he shall not eat from the holies unless he immerses his body in water?*

The Gemora explains that Rabbi Shimon was inquiring as to where is the warning against eating *ma'aser sheini* when it is *tamei*.

It is written: *You may not eat ma'aser sheini within your cities*, and later it is written (regarding a blemished bechor): *in your cities, the tamei and the tahor person may eat it together*.

The Gemora explains: The academy of Rabbi Yishmael taught that this ("*together*") means that even a *tahor* person and one who is *tamei* may eat from the blemished *bechor* out of the same platter, without any concern (*although it will emerge that the tahor person will be eating the meat which is tamei; it became tamei from the contact from the person with bodily tumah*). Thus the Torah is saying that the manner which is allowed to you elsewhere (*by the blemished bechor*)

does not apply here (*by the ma'aser sheini*), and it cannot be eaten together (*for it will emerge that a tahor person will be eating ma'aser sheini which is tamei*). (73b)

The Mishna had stated: But these laws do not apply to *terumah* (and one may burn *terumah* which is *tamei* – even for his own personal benefit).

The Gemora asks: From where do we derive this?

Rabbi Avahu said in the name of Rabbi Yochanan: [*It is written regarding the confession of the tithes -- viduy ma'asros (before Pesach on the fourth and seventh years of the shemithah cycle, he must make sure that all tithes from the previous years were given to their proper destination; on the final day of Pesach, he must declare that he has removed all the holy things from his house):*] *Neither have I consumed it in a state of tumah. 'It' (ma'aser sheini) was not consumed (in a state of tumah), but oil of terumah that became tamei may be consumed.*

The Gemora asks: Yet (*perhaps*) the inference should be as follows: '*It*' (*ma'aser sheini*) was not consumed (*in a state of tumah*), but consecrated oil that became *tamei* may be consumed?

The Gemora answers: Doesn't the following *kal vachomer* teach us otherwise: if *ma'aser (sheini)*, which is light (*i.e., its sanctity is less than that of sacred food*), yet the Torah stated: *it was not consumed in a state of tumah*; then how much more so regarding sacred food, which is more stringent (*that it should not be consumed in a state of tumah*)!?

The Gemora asks: If so, in the case of *terumah* as well, let us say this *kal vachomer* (*for terumah is also more stringent than ma'aser sheini*)!?

The Gemora answers: Surely '*mimenu*' – '*it*' is written (*and it must exclude the case of terumah*).

The Gemora asks: And why do you prefer it that way (to exclude *terumah* from the inference, and include sacred food from the *kal vachomer*)?

The Gemora answers: It is logical that I do not exclude sacred food (from the prohibition), since it is stringent in respect of the following: [Mnemonic: PaNaK IKaS] (2) *Piggul*¹, (2) *Nossar*², (3) *Korban*, (4) *Me'ilah*³, (5) *Kares*, and (6) it is forbidden to an *onein*⁴. [Since *Kodesh* is so strict in all these matters, it is logical that the limitation does not apply to it.]

The Gemora asks: On the contrary, *terumah* is not to be excluded, since it is stringent in respect of the following: [Mnemonic MaCHPaZ] (1) Death (if eaten by a non-Kohen), (2) a fifth (when a non-Kohen inadvertently eats *terumah*), (3) it cannot be redeemed, and (4) it is forbidden to strangers (non-Kohanim)!?

The Gemora answers: The former are more numerous.

Alternatively, sacred food is more stringent, since it involves the penalty of *kares*. (73b)

The Gemora stated above: One who eats *maaser sheini* and *bikkurim* while they are *tamei* will incur lashes, whereas one who eats *terumah* while *tamei* will not incur lashes.

The Gemora infers that he does not receive lashes, but it is forbidden.

The Gemora asks: From where is this derived?

The Gemora answers: It is written: You shall eat it within your cities [the *tamei* and the *tahor* together]. We infer: only 'it' (the *tamei* and the *tahor* may be eaten together), but not any other (i.e., *terumah*); and a negative prohibition that is

¹ a *korban* whose *avodah* was done with the intention that it would be eaten after its designated time

² sacrificial meat that has been leftover beyond the time that the Torah designated for its consumption

³ one who has unintentionally benefited from *hekdes* or removed it from the ownership of the *Beis Hamikdash* has committed the

transgression of *me'ilah*, and as a penalty, he would be required to pay the value of the object plus an additional fifth of the value; he also brings a *korban asham*

derived from a positive one has only the force of a positive one.

Rav Ashi said: From the first clause (of the Mishna) as well you may infer that the Tanna taught some and omitted others, since he did not state: And they (the obligation of *terumah* and *bikkurim*) apply in all the years of the Shemittah cycle, and cannot be redeemed, and that this does not apply to *maaser sheini*. This indeed proves it. [Although these two laws apply exclusively to *terumah* and *bikkurim*, the Tanna omitted them; evidently, he did not teach all of their applicable laws.] (73b – 74a)

⁴ one whose close relative passed away and has not been buried yet