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Yevamos Daf 86

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The *Mishna* states: If the daughter of an Israelite is betrothed to a *Kohen*, became pregnant by a *Kohen*, is waiting for *yibum* to a *Kohen*, and similarly, the daughter of a *Kohen* to an Israelite, she does not eat *terumah*.

If the daughter of an Israelite is betrothed to a Levite, became pregnant by a Levite, is waiting for *yibum* to a Levite, and similarly, a daughter of a Levite to an Israelite, she does not eat *ma’aser*.

If the daughter of a Levite is betrothed to a *Kohen*, became pregnant by a *Kohen*, is waiting for *yibum* to a *Kohen*, and similarly, the daughter of a *Kohen* to a Levite, she does not eat *terumah* or *ma’aser*. (85b4 – 85b5)

The *Gemora* asks: And granted that she (the daughter or the wife of an Israelite) is no more than an ordinary woman, but isn’t any ordinary woman permitted to eat *ma’aser*?

Rav Nachman replied in the name of Shmuel: This ruling represents the view of Rabbi Meir who stated: *Ma’aser rishon*¹ is forbidden to common people. For it was taught in the following braisa: *Terumah* to the priest and the *ma’aser rishon* to the Levite; so said Rabbi Meir. Rabbi Elozar ben Azaryah permits it to the *Kohen*.

The *Gemora* asks: Permits it? Does this then imply that some authority forbids it?

The *Gemora* emends it to say: He may give it to the *Kohen* as well. (85b5 – 86a1)

¹ a tenth of one’s produce that is given to the Levite

What is Rabbi Meir’s reason? Rav Acha son of Rabbah replied on the authority of a traditional statement: It is written: *For the tithe of the children of Israel, which they set apart as terumah unto the Lord. Just as terumah is forbidden to common people, so is ma’aser rishon forbidden to common people.*

The *Gemora* asks: May it be assumed that just as in the case of *terumah* the penalties of death and of a fifth are incurred, so are the penalties of death and of a fifth incurred in the case of *ma’aser rishon*?

The *Gemora* cites a Scriptural verse (regarding *terumah*): *and die because of it for they will have desecrated it.* And it is written (also in regards to *terumah*): *he shall add its fifth to it.* The (first) verse teaches us: (one dies) *because of it*, and not because of *ma’aser*. The (second) verse teaches us: (one adds a fifth) *to it*, but not to *ma’aser*. (85b5 – 86a1)

The *Gemora* asks: And the Rabbis (what do they derive from the analogy between *terumah* and *ma’aser*)?

The *Gemora* answers: Just as *terumah* is a cause of *tevel* (untithed produce; and if one eats *tevel*, he is liable to death by the hands of Heaven), so is *ma’aser rishon* a cause of *tevel* (and one who eats *tevel* of *ma’aser rishon* will also be liable to death by the hands of Heaven²); and this is in agreement with what was taught in the following braisa: Rabbi Yosi said: It might have been presumed that liability is incurred only for *tevel* from which nothing whatsoever had been

² This is despite the fact that one who eats *ma’aser rishon* itself is not subject to the death penalty.

separated from it; from where is it known that liability is also incurred when *terumah gedolah* had been separated from it, but not *ma'aser rishon*, *ma'aser rishon*, but not *ma'aser sheini*³, or even if *ma'aser ani*⁴ alone had not been separated from it? It is written (regarding *ma'aser sheini*): *You may not eat within your gates*, and further on it was stated (regarding *ma'aser ani*): *that they may eat within your gates, and be satisfied*. [A *gezeirah shavah* is established.] Just as 'your gates' which was stated below refers to *ma'aser ani*, so too 'your gates' which was stated here refers to *ma'aser ani*, and concerning it, the Merciful One has stated: *You may not* (which teaches us that a Biblical prohibition exists against eating *tevel* – even if it is *ma'aser ani* alone that has not been separated from it).

[The *Gemora* explains why the *gezeirah shavah* and the verse is necessary.] And if the derivation had been made from the verse alone, it might have been assumed to imply a negative commandment, but not the death penalty; therefore, we were taught the earlier verse as well.

The *Gemora* cites another version (where R' Yosi's exposition is used as a challenge): That *ma'aser rishon* is a cause of *tevel* may surely be derived from the verse cited by Rabbi Yosi!?

The *Gemora* answers: If the exposition would have been made from that verse alone, it might have been assumed to imply a negative commandment, but not the death penalty; therefore, we were taught the earlier verse as well. (86a2 – 86a3)

The *Gemora* asks: We have explained the *Mishna* according to the opinion of Rabbi Meir. Let us analyze the latter part of the *Mishna*. The *Mishna* stated: If the daughter of a Levite is betrothed to a *Kohen*, became pregnant by a *Kohen*, is

waiting for *yibum* to a *Kohen*, and similarly the daughter of a *Kohen* to a Levite, she does not eat *terumah* or *ma'aser*. Why is she forbidden to eat *ma'aser*?

Rav Sheishes replied: The meaning of the *Mishna* when it states that she may not eat is that she may not give permission to one to set apart the *terumah* (the *terumas ma'aser*⁵ from the *ma'aser* of her husband).

The *Gemora* asks: Does this then imply that a married woman may give such permission?

The *Gemora* answers: Yes, and cites a *braisa* (which supports this opinion). It is written: *And you may eat it in every place, you and your household*. This teaches us that a daughter of an Israelite, married to a Levite, may give permission for *terumah* (*terumas ma'aser*) to be separated (from her husband's *ma'aser*). You say that it teaches us permission for *terumah* to be separated; perhaps it is not so, but to eat it (that a Levite's fully married wife may eat *ma'aser*). It can be replied: If she may eat *terumah*, which is subject to greater restrictions, how much more may she eat *ma'aser*, which is subject to lesser restrictions. The verse must consequently have taught us that a daughter of an Israelite, married to a Levite, may give permission for *terumah* to be separated. (86a3 – 86a4)

Mar the son of Ravana answers: The *Mishna* is teaching us that she is not given a share in the *ma'aser* in the granary.

The *Gemora* asks: This is a satisfactory explanation according to the one who holds that we don't give her *terumah* is to avoid possible situations of *yichud* (*prohibition against a man being alone with a woman*) between her and people giving out *terumah* at their granaries. However, according to the one that holds that this is because the woman might get

³ a tenth of one's produce that he brings to Yerushalayim and eats there in the first, second, fourth and fifth years of the *Shemittah* cycle; it can also be redeemed with money and the money is brought up to Yerushalayim, where he purchases animals for *korbanos*

⁴ tithes for the poor

⁵ the Levite takes one tenth of his *ma'aser* received, and gives it to the *Kohen*; it has the sanctity of *terumah*

divorced, and will subsequently be unable to eat *terumah* and people might not realize that this happened, and will still give her *terumah*; may not a divorced woman who is the daughter of a Levite eat *ma'aser*?

The *Gemora* counters: And according to your argument, may not a divorced woman who is the daughter of a *Kohen* eat *terumah*! But the fact is that the ordinance is a preventive measure against distributing *terumah* to a divorced woman who was the daughter of an Israelite.

The *Gemora* asks: If so, why did the *Mishna* mention betrothed? The same rule should be applied even to one who was married.

The *Gemora* answers: Since in the first clause betrothed was taught, betrothed was also taught in the final clause. (86a4)

The Rabbis taught in a *braisa*: *Terumah Gedolah* belongs to the *Kohen*, and *ma'aser rishon* belongs to the Levite; so said Rabbi Akiva. Rabbi Elozar ben Azaryah said: *Ma'aser* is given to the *Kohen*.

The *Gemora* asks: Is *ma'aser* given to a *Kohen*, and not to a Levi?

The *Gemora* answers: He meant to say that it is also given to a *Kohen*.

The *Gemora* asks: What is Rabbi Akiva's reason?

The *Gemora* answers: it is written: *To the Leviim you shall speak and you shall say to them* (regarding *ma'aser*). The verse is speaking about the Leviim.

The *Gemora* explains that Rabbi Elozar ben Azaryah would explain the verse like Rabbi Yehoshua ben Levi, for Rabbi Yehoshua ben Levi said: In twenty-four passages, the

Kohanim are referred to as *Leviim*, and the following is an example: *And the Kohanim the Leviim the sons of Tzadok*.

The *Gemora* explains that Rabbi Akiva does not explain the verse like this, for it is written (in that verse regarding *ma'aser*): *you may eat it anywhere*. This refers to someone who may eat it in all places; this would exclude a *Kohen*, who cannot eat it in a cemetery.

Rabbi Elozar ben Azaryah, however, would explain that as follows: [He may eat it] wherever he wants – that he does not need (to eat it within) the wall (of Yerushalayim⁶), and that if he eats it while he is *tamei*, he does not incur lashes. (86a5 – 86b1)

The *Gemora* records an incident: There was a certain garden from which Rabbi Elozar ben Azaryah used to receive *ma'aser rishon*. Rabbi Akiva went and transferred its gate so that it faced a cemetery, thus preventing the *Kohen* from entering the garden. Rabbi Elozar ben Azaryah said: Akiva with his bag (*referring to the fact that Rabbi Akiva used to be a shepherd*), but I live (*Rabbi Tarfon could live on his wealth*)! (86b1)

It was stated: Why were the Levites penalized by being deprived of the *ma'aser*? Rabbi Yonasan and the Elders dispute this matter. One holds: It is because they did not go up to *Eretz Yisroel* in the days of Ezra. The other holds: It is because the *Kohanim* might depend upon it during the days when they are *tamei* (*and may not eat terumah*).

The *Gemora* asks: According to the one who holds that the Levites were deprived of *ma'aser* because they did not go up, one can well understand why they were penalized. However, according to the one who said that the reason is in order that the *Kohanim* may depend upon it while they are *tamei*, were the Levites penalized for the sake of the *Kohanim*?

⁶ For only *ma'aser sheini* needs to be eaten within the walls of Yerushalayim; this does not apply to *ma'aser rishon*.



Rather, all agree that the penalization was due to their not going up in the days of Ezra; they differ, however, on the following point: One is of the opinion that their forfeit belonged to the poor, while the other is of the opinion that *Kohanim*, during the days of *tumah*, are also regarded as poor.

The Gemora asks: Why, then, did Rabbi Akiva transfer its gate so that it faced a cemetery?

The Gemora answers: It was this that he (R' Akiva) said to him: If you come to claim it (the *ma'aser*) as a penalty, you are entitled to it; but if you come to demand it as your share (for you maintain that *Kohanim* are Biblically entitled to *ma'aser*), you have no claim upon it. (86b2)

The Gemora asks: From where is it known that they (the Levites) did not go up in the days of Ezra?

The Gemora answers: It is written: *And I gathered them together at the flowing river, at the Ahava; and there we encamped for three days. I viewed the people and the Kohanim, and found there no Leviim.*

Rav Chisda stated: At first, officers were appointed only from the Levites only, for it is written: *And the officers of the Levites before you;* but now, officers are appointed only from the Israelites, for it is written: *And officers of the many at your head.* (86b3)

INSIGHTS TO THE DAF

Ruling on Hashkafa

Tosfos discusses the penalty that Ezra established regarding the Levi'im and their *ma'aser*. In the middle of this discussion, Tosfos issues the following statement: We have ruled that Malachi is the same person as Ezra.

The Maharatz Chayus asks: How can Tosfos rule regarding this issue? The entire discussion of who Malachi was, is a

historical fact, and the issue is one of Aggadata, and not halachah. It seems strange to issue a ruling on a historical fact.

The criteria of the mitzvah to give the gifts of *kehunah*

HaGaon Rabbi Chayim Kanievski writes a magnificent insight (*Derech Emunah*, Ch. 9, halachah 20) to distinguish between the mitzvah to give *terumah* to a *Kohen* and the mitzvah to give the gifts of *kehunah* that bear no sanctity.

The marriage of a *kohenes* and a *Yisraelis* doesn't change their origin:

The Torah said (Vayikra 22:11, Terumos 8:1) that a *Yisraelis* who is wed to a *Kohen* may eat *terumah* (which is a sanctified gift of *kehunah*) as when she marries, she attains a new status that allows her to eat the holy gifts of *kehunah*. The Torah also rules that a *kohenes* who is wed to a *Yisrael* must not eat the sanctified gifts of *kehunah*, such as *terumah*, *bikkurim* and *chalah*, as the sanctity of *kehunah* left her when she married a *Yisrael*. However, the marriage doesn't change their origin. In other words, a *Yisraelis* wed to a *Kohen* does not become a *kohenes* of the tribe of *kehunah* but remains a *Yisraelis* who may eat the holy gifts of *kehunah*. The opposite is also true: a *kohenes* wed to a *Yisrael* loses her sanctity but still remains a daughter of the *kehunah*.

Therefore, a *kohenes* wed to a *Yisrael* may receive gifts of *kehunah* which bear no sanctity, such as the foreleg, cheeks and stomach, as she is a *kohenes* and nothing prevents giving these gifts to her, as explained in our *sugya*.

Now that we have established these facts, we shall concentrate on the following question. Does a person who gives the foreleg, cheeks and stomach to a *Yisraelis* wed to a *Kohen* observe the mitzvah to give the gifts to the *kehunah*?

This question contains two polar aspects. On the one hand, she's no *kohenes* and gifts of *kehunah* must be given to a *Kohen*. On the other hand, she's wed to a *Kohen* and may even eat *terumah*.

The author of *'Aroch HaShulchan* rules (Y.D. 61:36) that he who gave them to her did not observe the mitzvah! He must give the gifts to a *Kohen* and not to his wife who is a *Yisraelis* (see *ibid*, that he explains the Sifrei accordingly).

Apparently, his ruling explicitly contradicts the halachah that someone who gives *terumah* to a *Yisraelis* wed to a *Kohen* fully observes the mitzvah. Could it be? *Terumah*, which bears great sanctity and which is eaten only by *Kohanim*, may be given to a *Yisraelis* wed to a *Kohen* whereas the foreleg, cheeks and stomach, which bear no sanctity and may be eaten by anyone, must be given only to a *Kohen* and not to his wife – what is the logic? HaGaon Rabbi Chayim Kanievski states an ingenious difference while the reasons that served as a basis for our question are the very answer!

Terumah is holy and is eaten only by *Kohanim*. Therefore, if we discuss the criteria of the mitzvah to give *terumah*, we can say that the mitzvah is to give the holy *terumah* to anyone to whom the halachos of the sanctity of the *kehunah* apply and who may eat it. As the *Kohen's* wife is included in the group of people who may eat *terumah*, we can observe the mitzvah to give *terumah* by giving it to her.

However, the foreleg, cheeks and stomach are not sanctified and anyone may eat them. Therefore, if we want to define to whom is the mitzvah to give them, it's impossible to decide that the mitzvah is observed when we give the gifts to someone fit to eat them as everyone is fit to eat them, even a *Yisrael*. Therefore, we must seek another definition that distinguishes between *Kohanim* and *Yisraelim* and that is, that the gifts should be given only to a member of the tribe of *Kohanim*! It is therefore obvious that the foreleg, cheeks and stomach mustn't be given to the *Kohen's* wife, as she is not a daughter of the *kehunah*.

The explanation is fine and the idea ingenious but Rabbi Kanievski finally concludes that it's incorrect as *ma'aser rishon*, given to a *Levi*, does not resemble *terumah* but resembles the foreleg, cheeks and stomach. It bears no

sanctity and anyone may eat it. Nonetheless, it is evident from our Gemara and the Rishonim that someone who gives *ma'aser rishon* to a *Levi's* wife observes the mitzvah to give it (see *'Aroch HaShulchan*, *ibid*, *se'if* 33, who maintains that someone who gives *ma'aser rishon* to a *Levi's* wife does not observe the mitzvah but the Acharonim disagree, as proven in *Derech Emunah*, *ibid*).