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DAF Notes
Insights into the Daily Daf
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Yevamos Daf 89

Daf Notes is currently being dedicated to the neshamah of

Tzvi Gershon Ben Yoel (Harvey Felsen) o"h

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

THE KESUVAH OBLIGATION

The *Mishna* had stated: If a woman's husband went overseas, and they came (*one witness*) and said to her, "Your husband died," and she married, and afterwards her husband returned, she must leave this one and this one and she does not receive her *kesuvah* from either one of them.

The *Gemora* explains: The reason that the Rabbis instituted a *kesuvah* (*an obligation for the husband or his estate to pay the wife a certain amount of money in case he divorces her or dies*) is in order for it to be not so light in his eyes to divorce her; in this case (*when the husband reappears*), we want him to separate from her. This is why there is no *kesuvah* obligation. (89a1)

THE conditions included in the KESUVAH

The *Mishna* had stated: She does not receive compensation for the fruits that he consumed from her usufruct property, or sustenance, or depreciation (*if the husband made use of her melog property until it was worn-out, he is not required to pay her its monetary value*); not against this one and not against this one.

The *Gemora* explains: All these are conditions that are included in the *kesuvah*. If she does not receive the *kesuvah*, she does not receive the conditions either. (89a1)

SHE MUST RETURN THE MONEY

The *Mishna* had stated: If she took any of these payments from this one or from this one, she must return it.

The *Gemora* asks: Isn't this halachah obvious? If she is not entitled to these payments, of course she would be required to return them?

The *Gemora* answers: We might have thought that since she grabbed these monies, *Beis Din* will not compel her to return them; the *Mishna* teaches us that we take the money away from her. (89a2)

SEPARATION OF IMPROPER PRODUCE AS TERUMAH

The *Mishna* had stated: And the child born from either of these men is a *mamzer* (*the child from the first man is a mamzer Biblically and the child from the second one is a mamzer Rabbinically*).

The Gemora cites a *Mishna*: One may not separate *terumah* from produce which is *tamei* for produce which is *tahor* (*since it is not edible, the Kohen will be losing out*). If he did so inadvertently, the *terumah* is valid. If he did so intentionally, (*the Chachamim instituted*) it has no validity.

The *Gemora* asks: What does the *Mishna* mean when it states that it has no validity?

The *Gemora* answers: Rav Chisda says: It has no validity at all; even the produce which was separated as *terumah* reverts to its previous status of *tevel* (*untithed produce that one cannot eat until tithing has been performed*). Rabbi Nassan the son of Rabbi Oshaya says that it has no validity in regards to rectifying the remainder of the produce; however, the produce that was used to separate the *terumah* is regarded as *terumah*.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

The *Gemora* explains why Rav Chisda does not agree with Rabbi Nosson the son of Rabbi Oshaya, for if the produce that was used to separate the *terumah* is regarded as *terumah*, sometimes he will be negligent and not separate *terumah* again for the remainder. (89a2 – 89a3)

The *Gemora* asks on Rav Chisda: Why is this case different from that which we learned in the following *Mishna*: If one separated *terumah* from cucumbers on other cucumbers, and they were found to be bitter (*and not edible*). Similarly, if one separated *terumah* from melons on other melons, and they were found to be spoiled, the *terumah* is valid, but he must separate *terumah* again. (*We see that even if he separated terumah incorrectly, the terumah is still valid; why does Rav Chisda maintain that the terumah has no validity at all?*)

The *Gemora* answers: The two cases are not comparable. The *Mishna* is discussing a case where he separated the *terumah* incorrectly, but inadvertently; hence, the *terumah* is valid. Rav Chisda is discussing a case where he intentionally transgressed and a forbidden act has been committed.

The *Gemora* asks from two cases where he acted unwittingly: In the first *Mishna*, when he unwittingly separated terumah which is *tamei*, the *terumah* is valid, but in the other *Mishna* (*in the case of the spoiled cucumbers or melons*), he must separate *terumah* again. What is the reason for this distinction?

The *Gemora* answers: In the case of the spoiled cucumbers, it is an erroneous act, which is almost a willful one since he should have tasted it first (*to determine if they are in fact edible*); however, in the case of the *terumah* which is *tamei*, there was no way of knowing that the produce was *tamei*.

The *Gemora* asks from two cases where he acted willfully: In the first *Mishna*, when he willfully separated terumah which is *tamei*, the *terumah* has no validity. However, contrast this with what we learned in the following *Mishna*: If a man separated *terumah* of a non-perforated plant-pot (*which is not subject to terumah, since it has not grown directly from the ground*) for the produce of a perforated pot (*which is subject to terumah because a plant in a perforated pot is deemed to be growing from the ground since it derives its nourishment through the holes of the pot from the ground itself*), the former becomes *terumah*, but he must separate *terumah* again from the remainder. (*Why is the terumah in this case valid, while in the case of the produce which was tamei, it has no validity at all?*)

The *Gemora* answers: In the case of produce grown in two different vessels (*the produce designated as terumah grew in one kind of pot while the other produce grew in another kind of pot*) a man would obey to separate *terumah* again; however, in the case of the *tamei* and the *tahor* which grew together, he might not obey (*to give terumah again, were the portion he has set aside was allowed to retain the name of terumah. He would argue that, in view of the validity of his act, no further terumah should be separated. Hence it was ordained that his act is void and that the quantity he has set aside is not to be regarded as terumah*). (89a3 – 89a4)

The *Gemora* turns its attention to Rabbi Nassan the son of Rabbi Oshaya. He said that *terumah* which was separated from produce which is *tamei* has no validity in regards to rectifying the remainder of the produce; however, the produce that was used to separate the *terumah* is regarded as *terumah*.

The *Gemora* asks: What is the distinction between this case and that which we learned in the following *Mishna*: If a man separated *terumah* of a perforated plant-pot (*which is subject to terumah*) for the produce of a non-perforated pot, the *terumah* is valid, but the *Kohanim* cannot eat from it until *terumah* is separated again for the produce of the non-perforated pot. (*Why does Rabbi Nosson rule that the terumah is regarded as terumah, whereas in this Mishna, the terumah is regarded as tevel?*)

The *Gemora* answers: The *tamei* produce is considered *terumah* because Biblically, it is a valid *terumah* separation, for Rabbi Ilai said: How do we know that if someone separates *terumah* from inferior quality produce for a superior quality, his *terumah* is valid? This is as the verse states: *And you will not carry a sin when you take its fat from it*. If taking "scrawny" produce is invalid, why would the verse say that it is a sin? It must be that this teaches us that if someone separates *terumah* of inferior quality off of produce of superior quality that the taking of *terumah* is valid (*but considered sinful*). (89a4 – 89b1)

BEIS DIN UPROOTING SOMETHING FROM THE TORAH

The *Gemora* returns to Rav Chisda's opinion: Rabbah asked Rav Chisda: According to you that maintains that one who inadvertently separated *terumah* which was *tamei* for produce that was *tahor* has no validity at all, and even the produce which was separated as *terumah* reverts to its previous status of *tevel*; what is your reasoning? It is based on a Rabbinical decree that if the produce that was used to separate the *terumah* is regarded as *terumah*, sometimes he will be negligent and not separate *terumah* again for the remainder. Is it halachically possible for the produce to be *terumah* under Biblical law, and on account of our concern for negligence, the Rabbis removed it from its *terumah* status and returned it to its *tevel* state? Does *Beis Din* have the authority to make a condition that will uproot something from the Torah?

Rav Chisda answered Rabbah: And you do not hold that *Beis Din* has the authority to make a condition that will uproot something from the Torah? Did we not learn in our *Mishna* that the child born from either of these men is a *mamzer*? It is understandable that the child born from the second man is classified as a *mamzer* because she is legally married to the first man; but, why is the child born from the first man a *mamzer*? Isn't the woman his legal wife, and the child should be regarded as a legitimate child? Nevertheless, the Rabbis decreed that this child is a *mamzer*, and he would be permitted to marry a *mamzeres*. This indicates that *Beis Din* has the authority to make a condition that will uproot something from the Torah.

Rabbah said to Rav Chisda: Shmuel said that this child is forbidden to marry a *mamzeres*. Ravin also said this in the name of Rabbi Yochanan. Why does the *Mishna* refer to him as a *mamzer*? It is only because he is prohibited to marry an ordinary Jewess. (89b2)

BEIS DIN CAN DECLARE THAT SOMEONE'S PROPERTY IS OWNERLESS

Rav Chisda sent the following message to Rabbah in the hands of Rav Acha bar Rav Huna: Do you think that *Beis Din* does not have the authority to make a condition that will uproot something from the Torah? But we learned in the following *braisa*: When does a husband become entitled to inherit the estate of his wife who is a minor? (*The braisa is discussing a case where they were only Rabbinically married; a minor girl's father died, and her mother or brothers married her off. She can perform mi'un, a refusal, and leave the marriage until she becomes an adult. In this case, she dies before becoming an adult. The braisa is inquiring: At what age may it be definitely assumed that the minor is no longer likely to make a declaration of refusal and may, consequently be regarded as one's proper wife?*) Beis Shammai say: When she becomes an adult. Beis Hillel say: After she enters the *chupah* with him (*although she can still perform mi'un, we assume that after nisuin, she will not leave him*). Rabbi Elozar says: From after she cohabits with him. According to each of the opinions, it is from that point and on that her husband is entitled to inherit her if she would die, and he may become *tamei* to her corpse (*if he is a Kohen*), and it is at that time that she is eligible to eat *terumah* because of him.

The Gemora asks: Beis Shammai say: When she becomes an adult. Can this mean even though she has not entered the chupah? [It cannot, for there has been no nisuin yet!]

The Gemora explains Beis Shammai to mean that she became an adult and entered the *chupah* with him, and it is this that Beis Shammai said to Beis Hillel: In respect of your statement, 'After she enters the *chupah* with him,' it is only when she became an adult that the chupah is effective, but otherwise, the chupah alone is of no avail.

The Gemora asks: Rabbi Elozar says: From after she cohabits with him. But, surely, Rabbi Eliezer said that the marital act of a minor has no legal force (and she cannot eat terumah if the husband is a Kohen, and he cannot contaminate himself for her, and he does not inherit her property)?

The Gemora explains Rabbi Elozar to mean that she became an adult and she cohabited with him.

Rav Chisda presents his proof: The *braisa* states that once we are not concerned for *mi'un*, the husband inherits her even though her father (*his heirs*) should inherit her from a Biblical standpoint (*since she is still not Biblically married to her husband*). Nevertheless, the Rabbis decreed that her husband inherits her. This is a proof that *Beis Din* has the authority to make a condition that will uproot something from the Torah.

Rabbah objects to this proof: The reason why the husband is the inheritor even though he is not Biblically her husband is not because *Beis Din* has the authority to make a condition that will uproot something from the Torah; rather, it is because *Beis Din* has a right to declare the person's property ownerless. (*The Rabbis have consequently full authority to transfer the property of the minor from her father's heirs to her husband, and such transfer cannot be regarded as uprooting a Biblical law.*)

The *Gemora* provides two sources that *Beis Din* has authority to declare a person's property ownerless, and in fact, it becomes ownerless.

The first source is from Rabbi Yitzchak, who said: How do we know that whatever is declared ownerless by *Beis Din* is indeed ownerless? The verse states: "*Whoever will not come in three days as per the advice of the officers and elders will have all of his possessions taken away, and he will be separated from the congregation of the exile*."

Rabbi Elozar states that the source of this principle is from a different verse. The verse states: "*These are the inheritances that Elozar the Kohen, Yehoshua bin Nun, and the heads of the families bequeathed* etc." Why does it say, "the heads," and "fathers?" [*It should have said, "the heads of the tribes!"*] This teaches that just as fathers can bequeath to children whatever they want, so too the heads of the people had the right to give out the portions of inheritance as they saw fit.

Rav Chisda quotes the next ruling in the braisa: He (the husband by Rabbinic marriage) may become *tamei* to her corpse. But, surely, by Biblical law, it is only her father who may contaminate himself for her, and yet it is the husband who by a Rabbinical law was allowed to contaminate himself for her!? [This is a proof that *Beis Din* has the authority to make a condition that will uproot something from the Torah.]

The Gemora deflects the proof: This was allowed only because she is a meis mitzvah (an unattended corpse; and a Kohen is permitted to become tamei to such a corpse).

The Gemora asks: Is she, however, a meis mitzvah? Surely, it was taught in a braisa: What is a case of a *meis mitzvah*? Any corpse that has no people around to bury it, but if the *Kohen* can call other people and they will bury the corpse, it is not regarded as a *meis mitzvah*. [Now, here, aren't there others to call to bury her?]

The Gemora answers: Here also, since they (her relatives) are not her heirs, they would not answer even if he were to call upon them.

Rav Chisda quotes the final ruling of the braisa: And she may eat terumah on his account. [This is a proof that *Beis Din* has

the authority to make a condition that will uproot something from the Torah.]

The Gemora deflects this proof, as the braisa is referring only to Rabbinical terumah. (89b2 – 90a1)

INSIGHTS TO THE DAF

KESUVAH OBLIGATION

The reason that the Rabbis instituted a *kesuvah* (*an obligation for the husband or his estate to pay the wife a certain amount of money in case he divorces her or dies*) is in order for it to be not so light in his eyes to divorce her.

Tosfos asks: From this *Gemora*, it seems apparent that a *kesuvah* obligation is merely Rabbinic in nature; yet it is written in the *kesuvah* explicitly that one is obligated Biblically to present his wife with two hundred silver *zuzim*, according to the law of Moshe and Israel.

Tosfos answers that our *Gemora* is referring to a *kesuvah* given to a widow, where the obligation is only a Rabbinic one in order that the husband should not easily divorce her.

Tosfos explains our *Gemora*: Just as the Rabbis enacted that there is a *kesuvah* obligation to a widow for the aforementioned reason, so too, the Rabbis penalized a virgin, where the *kesuvah* obligation is a Biblical one, that if she went and married another man based on the testimony of one witness, and the husband reappeared, she should not receive her *kesuvah* in order for the husband to divorce her easily.

Many Rishonim disagree with Tosfos and maintain that the *kesuvah* obligation is merely Rabbinic even for a virgin.

The Rosh explains: The phrase "according to the law of Moshe and Israel" which is written in the *kesuvah* does not mean that there is a Biblical obligation; it is merely stipulating the type of silver that the husband is required to give to his wife.

Buried on the Land where he Died

The *Gemora* states that if a person dies and has no one to bury him, he is considered a *meis mitzvah*. The *halacha* is that he is buried on the land where he died, even if the land is privately owned. This is one of the ten conditions that Yehoshua made upon the division of Eretz Yisroel.

Why did Yehoshua make such a condition? Would it not be more appropriate to bury a person in a regular cemetery? The Chazon Ish[1] writes that there was a concern that one who dies without relatives would be left to the devices of other people who would neglect the dead body on the road, thus leaving the corpse unprotected. Yehoshua therefore decreed that a person who dies and has no one to attend to his burial should be buried where the body was found.

The Taz and Shach[2] write that nowadays in lands outside of Eretz *Yisroel*, we must bury an unattended corpse in the cemetery, because even if the person was buried at the site of his death, we are not certain that the site will be undisturbed.

Perhaps there is another aspect to burying an unattended corpse at the site of his death. It is said: *v'chiper admaso amo*, and He will appease His Land and His people, and this can be interpreted to mean that the land itself atones for the person. Burial is a sign of respect for the dead body, and although one normally buries a corpse in a cemetery, Eretz Yisroel is unique that anywhere in the Land is considered a respectful location. This would explain why Yehoshua was the one who set this condition, because the condition was unique for Eretz Yisroel.

DAILY MASHAL

[1] Oholos 22:22

[2] Yoreh Deah 364:3

Is a Disqualified Esrog always Inferior?

The owner of an *esrog* orchard separated the required *terumah* and tithes, including *ma'aser rishon* which he gave to a Levite. The latter was glad to get such a large amount of *esrogim* and thought he would find at least one of them to be a choice specimen for the *mitzvah* of *arba'ah minim*. After a thorough search, however, he discovered that all the fruit were unfit for the *mitzvah* and he came to the owner of the orchard in resentment. "You took great care to separate *ma'aser rishon*," he asserted, "but you separated inferior fruit from the superior – *esrogim* unfit for their *mitzvah* as *ma'aser* for those kosher for their *mitzvah* – and the *Gemora* says that someone who uses bad fruit to separate the required gifts for good fruit is a sinner."

The owner of the orchard asked Rav Yitzchak Silberstein to decide the question and the latter referred him to his brother-in-law HaGaon Rav Chayim Kanievski. Rav Kanievski ruled that the *ma'aser* had been properly separated as "good" and "bad" refer only to the fruit's edibility. In that sense one should prefer using a big, ripe *esrog* for tithing rather than an *esrog* considered choice for its *mitzvah*, even if the former is disqualified for the *mitzvah* of *arba'ah minim*.