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Chullin Daf 11

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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

**Sources that we Follow the Majority**

The *Gemora* asks: Where is the principle which the Rabbis have adopted that ‘we follow the majority’ (*rov*) derived from?

The *Gemora* takes issue with the question: ‘From where, you ask? It is written in the Torah: Tilt after the many! [When a court tries a case, the verdict is decided based upon the majority opinion.]

The *Gemora* explains: In regard to those cases where the majority is in front of us, as in the case of the nine kosher shops (*in town and one sells non-kosher, and we find an unidentifiable piece of meat, we may follow the majority and assume that it came from one of the nine kosher shops*), or the *Sanhedrin* (*where they are judging a capital case, and twelve rule in favor of acquittal while eleven say that he’s guilty, we follow the majority and acquit*), we do not inquire (*for that is derived from the aforementioned verse*). Our question relates to cases where the majority is not before us, as in the case of the boy and girl (*R’ Meir holds that a minor boy should not perform a yibum (levirate marriage - the act of the brother-in-law marrying his widowed sister-in-law, when the brother died without children) because we are concerned that he might be found to be a saris (he cannot father a child due to defects in his body); a minor girl should not perform a yibum because we are concerned that she might be found to be an ayilonis; if they would perform yibum, it would be tantamount to cohabiting with an ervah; the Rabbis disagree and hold that yibum is permitted, for the*

*majority of boys and girls are not sterile*); where then is that principle derived from?

(Mnemonic: ZeMaN SHeVaCH MeKaNeSH.) Rabbi Elozar said: It is derived from the head of an *olah* offering. It is written: *And he shall cut it into its pieces*, which means that he shall cut it (*the olah*) up into its pieces, but not its pieces (*the head*) into pieces. Now, why are we not concerned that the membrane which encloses the brain is punctured (*rendering the animal a tereifah, and then it cannot be offered*)? Is it not because we follow the majority?

The *Gemora* asks: But is this really so? Perhaps he splits the head open and examines the membrane, and as for the rule that ‘he shall cut it into its pieces, but not its pieces into pieces,’ that only prohibits the cutting up of a limb completely in two pieces, but it does not prohibit the cutting open of a limb - as long as the two parts remain attached!

Mar the son of Ravina said: It is derived from the prohibition against breaking the bones of the *pesach* offering. It is written: *And you shall not break a bone in it*. Now, why are we not concerned that the membrane which encloses the brain is punctured (*rendering the animal a tereifah, and then it cannot be offered*)? Is it not because we follow the majority?

The *Gemora* asks: But is this really so? Perhaps he places a burning coal upon its head, and when it burns away the bone he may examine the membrane. Proof that this is permitted is brought from the following *braisa*: He who cuts the sinews

or burns away the bones of the *pesach* offering has not violated the prohibition of breaking its bones.

Rav Nachman bar Yitzchak said: It is derived from the law concerning the tail of a lamb (*of a shelamim or chatas, which must be burned on the Altar*). It is written: *The fat of it, and the entire tail*. Now, why are we not concerned that the spinal cord is severed? (*rendering the animal a tereifah, and then it cannot be offered*)? Is it not because we follow the majority? And he cannot cut off the fat tail lower down (so that the spinal cord remains with the rest of the body), for the verse states that the tail includes the spinal cord.

The *Gemora* asks: But is this really so? Perhaps he splits the tail open and examines the spinal cord, and as for the rule that 'it shall be whole,' that only prohibits the cutting up of a limb completely in two pieces, but it does not prohibit the cutting open - as long as the two parts remain attached!

Rav Sheishes the son of Rav Idi said: It is derived from the case of the heifer whose neck was to be broken. [*Eglah arufah - the law is that upon finding a corpse, and being unable to solve the murder, the leaders of the city closest to the corpse are required to bring a calf to an untilled valley, decapitate it, wash their hands over it, and then they must recite a verse, declaring publicly that they did not kill the person.*] It is written: The calf that was decapitated, which has been interpreted to mean that after the calf was decapitated, the heifer must remain whole. Now, why are we not concerned that it is a *tereifah*? Is it not because we follow the majority? And you cannot say that it does not matter if it is a *tereifah*, for it was taught in the academy of Rabbi Yannai: 'Atonement' is written by it; just as in the case of sacrifices.

Rabbah bar Rav Shila said: It is derived from the case of the red heifer. It is written: *And he shall slaughter it . . . and he shall burn it*, which indicates that just as by the slaughtering, the animal is whole, so too for the burning it must be whole. Now, why are we not concerned that it is a *tereifah*? Is it not because we follow the majority? And you cannot say that it

does not matter if it is a *tereifah*, for the Torah refers to it as a *chatas*.

Rav Acha bar Yaakov said: It is derived from the case of the *Azazel* goat which is sent off the cliff on *Yom Kippur*. It is written: And he shall take the two goats, which implies that both goats should be identical. Now, why are we not concerned that it is a *tereifah*? [*Rashi explains that we are not concerned that the goat offered as a chatas is a tereifah, for that can be checked after the shechitah.*] And you cannot say that it does not matter if it is a *tereifah*, for the *halachah* is that the lot (*for the two goats*) does not assign the goat to *Azazel* unless it is fit to be the one offered to Hashem. And we cannot examine it afterwards, for it was taught in a *Mishna* that it did not reach halfway down the mountain before it was torn limb from limb.

Rav Mari said: It is derived from the case of one that strikes his father or his mother, for which offence the Torah prescribes that he be executed. Now why are we not concerned that the person struck may not have been his father? [*Perhaps the mother cohabited with another man and conceived from him?*] Is it not because we follow the majority, and the majority of a woman's cohabitations are with her own husband (*more often than with a stranger*)?

The *Gemora* asks: But perhaps he is executed only in the case where the father and mother were locked up together in prison (*when this 'son' was conceived*)?

The *Gemora* answers: Even so, there is no guardian against immorality.

Rav Kahana said: It is derived from the case of a murderer, for which offence the Torah prescribes that he be executed. Now why are we not concerned that the victim may have been a *tereifah* (*and one would not be executed then, for the victim would have died anyways*)? Is it not because we follow the majority? And you cannot say that we examine the body, for this is not allowed because it would be defiling the body!

And you cannot say that since a man's life (*the murderer*) is at stake, we should defile the body, for even so (*it will not be a clear proof*), there is always the possibility that there was a wound in the victim in the exact place where the sword penetrated.

Ravina said: It is derived from the law concerning witnesses who are found to be *zomemim* (*when witnesses offer testimony and other witnesses refute them claiming that the first set of witnesses could not possibly testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; the Torah teaches us that we believe the second pair in this instance; the first witnesses are called "eidim zomemim" -- "scheming witnesses," and they receive the exact punishment that they endeavored to have meted out to the one they accused*), in connection with whom the Torah says: *Then you shall do to him as he had conspired to do to his brother*. Now why are we not concerned that the person against whom they testified is a *tereifah* (*and they would not be executed then, for testifying against a tereifah has the same halachah as murdering a tereifah*)? Is it not because we follow the majority? And you cannot say that we examine the accused murderer (*after his death to see if he was a tereifah*), for it has been taught in a *braisa*: If the defendant was not executed, the *zomemim* witnesses are executed; if, however, the defendant was executed, they are not executed.

Rav Ashi said: It is derived from the law of *shechitah* itself, for the Torah says: *Slaughter and then eat*. Now why are we not concerned that there was a hole (*in the esophagus*) in the exact place where it was cut through? Is it not because we follow the majority?

Rav Ashi said: I related this argument to Rav Kahana, and others say that it was Rav Kahana who related it to Rav Shimi, and he said to him: Perhaps the law is that wherever it is possible (*to ascertain the facts and avoid relying on the majority*) we must do so; but only where it is impossible (*to*

*ascertain the facts and avoid relying on the majority – like by the case of shechitah*), we follow the majority? For if you do not accept this reasoning, then the question can be asked: According to Rabbi Meir, who is of the opinion that we are concerned for the minority, should it be the law that meat cannot be eaten? And you cannot reply that this indeed was the case, for it will not explain how the *pesach* offering or other *kodashim* may be eaten (*where the Torah specifically permits its consumption*). It must be concluded that (*according to R' Meir*) wherever it is possible (*to ascertain the facts and avoid relying on the majority*) we must do so; but only where it is impossible (*to ascertain the facts and avoid relying on the majority*), we follow the majority; so too according to those who disagree with Rabbi Meir, wherever it is possible (*to ascertain the facts and avoid relying on the majority*) we must do so; but only where it is impossible (*to ascertain the facts and avoid relying on the majority*), we follow the majority. (11a – 12a)

## INSIGHTS TO THE DAF

### *The Lots for the Goats*

The *halachah* that that the lot (*for the two goats*) does not assign the goat to *Azazel* unless it is fit to be the one offered to Hashem can be explained in two ways. Either, that it is a law in the assigning of the lot - to be regarded as a proper lot - they both have to be fit for the *chatas* which will be offered to Hashem - if one is found to be a *tereifah*, it is a deficient lot; or perhaps there is an inherent law that the goat being sent to *Azazel* must be fit to be offered as the *chatas* for Hashem; a *tereifah* is therefore disqualified from being the goat sent to *Azazel*, and that is why it is not considered a lot.

Rav Elchanan Wasserman in *Koveitz Heoros* says that a practical difference between the two explanations is if it became a *tereifah* after the lot. According to the first explanation it is valid because at the time of the lot it was not a *tereifah*. According to the second understanding, it is still



invalid because the goat being sent to *Azazel* cannot be a *tereifah*.

is like the wise of Israel who are pure of ulterior motives? (HaGaon E. Wasserman, *Beurei Agadaos 'al Derech HaPeshat*).

### ***As they Intended***

The *Mishna* teaches us that the *zomemin* witnesses are only punished if they attempted to have someone executed, but they were found to be *zomemin* before the defendant was executed (*as long as it was after the verdict was handed down*). However, if they were discredited through *hazamah* only after the defendant had been executed, they will not be punished. This is derived from the Scriptural verse: as they intended to do; but not as they actually accomplished.

The Kesef Mishnah explains this seemingly perplexing *halachah* in two manners:

1. When the *zomemin* witnesses actually carry out their plan and the accused is executed - such a sin is of such a magnitude that they cannot get punished in this world. The punishment for such a hideous sin can only take place in the next world- in Gehinnom.
2. Alternatively, he explains, if the accused was actually executed, we assume that he was indeed guilty and deserved to die. Hashem is present by every court case and it must be attributed to Divine Providence that the second set of witnesses did not arrive until after the defendant was executed.

### **DAILY MASHAL**

#### ***Most Drunkards***

HaGaon Rabbi Yehonasan Eibeschutz zt"l was once asked by a gentile king why he doesn't convert as gentiles constitute a majority as compared to the Jews. He replied that a majority is only used in case of a doubt but not when the situation is definite. Though this is true, there's another simple answer. A hundred drunkards do not outweigh one *chacham* and who