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Is it Effective or not?

[The *Gemora* will cite a dispute between Abaye and Rava regarding prohibitions where the Torah says: **Do not do the following legal act. If one violates that prohibition and does what the Torah forbids him to do, is that “legal act” effective or not?**] Abaye said: Any act which the Torah forbids, if one (*transgressed, and*) did it (*anyway*), it is effective, for if you were to think that the act has no legal effect, why then would the violator be punishable with lashes (*for he has done nothing of consequence*)?! Rava, however, said: The act is not effective at all, and the reason why one is punishable with lashes is because one has transgressed a command of the Merciful One. (4b)

The *Gemora* asks: And what does Abaye say to this (*for since we know that he does not receive lashes, what is the necessity for the verse “all his days”*)?

The *Gemora* answers: If the Torah would not have said: *all his days*, I might have thought that he has violated a prohibition (*by divorcing her, and it is effective that he is not required to remarry her, and therefore he incurs lashes*), but that if he wishes, he may remarry her, and if he wishes he does not need to; the verse (*“all his days”*) therefore teaches us that this is not so (*and he is obligated to remarry her*). [*It emerges that according to Rava, he does not receive lashes for the divorce was not regarded as permanent, whereas according to Abaye, he does not incur lashes, for the divorce was ineffective, for he must remarry her.*]

Violating a Woman and Divorcing her

The *Gemora* asks on Rava from the following *braisa*: [**One who violates a woman is obligated to marry her, and he is prohibited from divorcing her forever.**] If a violator divorced his victim, he must remarry her to avoid lashes. Now, if you say that since one has transgressed the command of the Merciful One he is punished with lashes, then here, he too, should be punished with lashes!? [*However, according to Abaye who holds that the punishment of lashes is determined by the validity of the act, he does not incur lashes, since the divorce is ineffective, for he must remarry her.*] This refutes Rava, does it not?

The *Gemora* cites another version: They asked on Abaye from the following *braisa*: If a violator divorced his victim, if he is a *Yisroel*, he must remarry her to avoid lashes. If he is a *Kohen* (*who may not marry a divorcee*), he receives lashes and he cannot remarry her. At any event, the *braisa* says: If he is a *Yisroel*, he must remarry her to avoid lashes. This refutes Abaye, does it not (*for according to him, the violator’s action should be effective, and he should not be required to remarry her*)?

The *Gemora* answers that the case is different there, since the Torah says: [*He cannot divorce her*] *all his days*, intimating that all his days - if he divorces her - he is required to remarry her.

The *Gemora* answers that Rava can tell you that the case is different there, for the Torah says: [*He cannot divorce her*] *all his days*, intimating that all his days - if he divorces her - he is required to remarry her (*and it emerges that the Torah is prohibiting him from divorcing her ‘permanently,’ accordingly, he has not transgressed the command of the Torah*).

[*The Gemora explains the necessity for the verse “all his days” according to Rava:*] Rava can answer you that if the Torah would not have said: *all his days*, I might have thought that he would incur lashes (*for trying to transgress the commandment of the Torah*) and that he must remarry her, (*and I would have thought that he receives lashes*) for it (*the prohibition of divorcing her*) is an ordinary negative commandment, since it is written: *He cannot divorce her*.

It is for this reason that the Torah wrote: *all his days* - to make the law of one who violates a woman (*and divorces her*) a negative commandment remediable by a positive commandment, for which there is no punishment of lashes. [It emerges that according to Rava, the verse 'all his days' is necessary to teach us that he does not receive lashes for the prohibition is remedied by the positive commandment of remarrying her, whereas according to Abaye, the phrase is needed to teach us that he must remarry her.] (4b – 5a)

Inferior Terumah

[The Gemora will now challenge both Abaye and Rava from various laws proving that someone's action against the commandment of the Torah can either be effective (which will refute Rava) or ineffective (which will refute Abaye).]

The Gemora asks on Rava: But is there not the case of one who separates *terumah* from inferior grain for superior grain, concerning which the Torah wrote: *from all its best*, which teaches us that the best grain should be used, and not the inferior? And yet we have learned in a Mishna: We may not separate *terumah* from inferior grain for superior grain, but if one did so, it is regarded as *terumah*. Evidently, we see that a forbidden act is indeed effective! Shall we say that this refutes Rava?

The Gemora answers that Rava can tell you that the case is different there, for it will be as Rabbi Il'la said, for Rabbi Il'la 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*).

The Gemora explains that Abaye needs the verse to say: *And you will not carry a sin (for according to him, it is effective anyway)*, for otherwise, I might have thought that the Torah is saying: Perform a *mitzvah* in the best possible way, but if one did not do so, he is not called a sinner; the verse therefore informs us that this is not so (*and he is called a sinner if he did not do it in the best possible manner*). (5a)

Different Species for Terumah

The Gemora asks on Abaye: But is there not the case of one who separates *terumah* from one species to serve as *terumah* for another species, concerning which the Torah writes: *kol chelev yitzhar* – *all the best of oil (v'chaal chelev tirosh v'dagan – and all the best of wine and grain)*. Since the verse used the word *chelev* – *best* more than once, we learn that one must give a separate choice (i.e., *terumah*) for each species. And we have learned in a Mishna: One may not take *terumah* from one species on another, and if one did, it does not take effect. Evidently, we see that a forbidden act is not effective! Shall we say that this refutes Abaye?

The Gemora answers that Abaye can tell you that the case is different there, since the Torah says: *their first*, thus implying the first of this species and the first of that species (*separately; and therefore, it is ineffective if the terumah is taken from one species to another*). The Gemora notes that Rabbi Il'la said likewise: It is written: *Their first*, intimating the first of this species and the first of that species.

The Gemora explains that Rava needs the verse to say: *their first (for according to him, it is ineffective anyway)*, for otherwise, I might have thought that it is only in the case of wine and oil, with reference to which the Torah writes: *the best, the best*; we may not separate one species for the other (*and we would derive that oil cannot be separated for wine and grain, and wine and grain cannot be separated for oil*), but in the case of wine and grain, where 'the best' is mentioned only once, we may separate one species for the other; the Torah therefore writes: *their first (to teach that one must separate from each species separately)*. (5a)

Charamim – Dedications to the Kohanim

The Gemora asks on Abaye: But is there not the case of *charamim* (*donations to Kohanim; while they are still in possession of the donator, they are considered consecrated; once they are given to the Kohen, they have no more sanctity*), with reference to which the Torah says: *it shall not be sold or redeemed*. And we have learned in a Mishna: The *charamim* of the Kohanim are not subject to redemption, but must be given to the Kohen. Evidently, we see

that a forbidden act is not effective! Shall we say that this refutes Abaye?

The *Gemora* answers that Abaye can tell you that the case is different there, since the Torah says: *it is most holy*, intimating that it shall remain in its status (*of sanctity, so that it may be given to the Kohen*).

The *Gemora* notes that according to Rava, the text '*it is*' comes to exclude the case of a firstborn, for it has been taught in a *braisa*: In connection with a *bechor*, the Torah says: *You shall not redeem*, implying that it may be sold, and in connection with tithing, it is written: *It shall not be redeemed*, intimating that it is forbidden to be sold either alive or slaughtered, whether unblemished or blemished. [*"It is" written by cherem teaches us that only a cherem cannot be sold, but a bechor can be sold.*] (5a – 5b)

Temurah

The *Gemora* asks on Rava: But is there not the case of *temurah*, concerning which the Torah wrote: *He shall not exchange it nor substitute for it*, and yet we have learned in a *Mishna*: not that one is permitted to exchange, but that if one did so, the substitute is sacred, and he incurs forty lashes. Evidently, we see that a forbidden act is indeed effective! Shall we say that this refutes Rava?

The *Gemora* answers that Rava can tell you that the case is different, for the Torah says: *then it and its substitute shall be holy*.

The *Gemora* explains that Abaye needs the verse to say: *then it and its substitute shall be holy* (for according to him, *it is effective anyway*), for otherwise, I might have thought that the sanctity of the consecrated animal ceases and this one enters into holiness (*in its stead*); therefore, the Torah informs us that this is not so (*and that they are both holy*). (5b)

Bechor and Ma'aser

The *Gemora* asks on Abaye: But is there not the case of a firstborn of which the Torah says: *you shall not redeem*, and we have learned in a *Mishna*: All sacrifices (*rendered unfit for the altar due to a*

blemish) are subject to redemption and their exchanges are also subject to redemption, except in the case of a *bechor* or *ma'aser* (*and if one attempts to redeem them, nothing is accomplished – the animal retains its sanctity and the money used remains chullin*). Evidently, we see that a forbidden act is not effective! Shall we say that this refutes Abaye?

The *Gemora* answers that Abaye can tell you that the case is different there, since the Torah says: *they are holy*, intimating that they shall remain in their sacred status.

The *Gemora* notes that according to Rava, the word '*they are*' intimates that '*they*' are offered up, but not their exchanges.

The *Gemora* asks: And from where does Abaye derive this ruling?

The *Gemora* answers: He derives it from the verse: *Whether it be an ox or sheep, it is Hashem's*; the firstborn itself is offered up but not its exchange.

The *Gemora* asks: And does Rava not derive this from here as well?

The *Gemora* answers: It is indeed so that he does derive it from that verse.

The *Gemora* asks: Then what need is there for the phrase '*they are*'?

The *Gemora* answers: It teaches us that if the blood of a firstborn or a *ma'aser* became mixed up with the blood from other offerings that are offered up, they are still offered on the altar (*and the meat is rendered permissible by the sprinkling, for things which are offered up do not nullify one another; here we apply the same ruling to all cases of things which are offered up*).

The *Gemora* asks: And from where does Abaye derive this ruling?

The *Gemora* answers: principle from the verse: *and he shall take from the blood of the bull and from the blood of the goat*. [*This is referring to the Yom Kippur service; the blood from these animals are mixed together and applied on the inner altar. Although there is more blood of the bull, it does not nullify the blood of the goat.*]



Rava, however, does not derive it from there because he maintains that the blood is not mingled for the sprinkling on the horns of the inner Altar (*but rather, they are applied separately*), in accordance with Rabbi Yonasan. (5b)

INSIGHTS TO THE DAF

“If he did it, it doesn’t help” – The famous sugya

One of the famous *sugyas* of our tractate is that of “if he did it, it doesn’t help” (*I ’avid, lo mehanei*).

This *sugya* is unique in that it is directly and indirectly connected to a considerable amount of mitzvos. Our Gemara alone discusses about 14 different topics from all parts of the Torah applying to this *sugya*: the mitzvah of leaving *peiah* (a corner of produce in the field for the poor), separating *terumah*, the prohibition for a *kohen gadol* to wed a widow, the prohibition on interest, thievery, the mitzvah of the firstborn animal, *ma’asar beheimah*, the prohibition on *temurah* (exchanging a sacrifice), etc. The Rishonim, followed by the Acharonim, continued to discuss other issues connected to this matter.

Abayei and Rava disagreed. Abayei holds that “anything that Hashem said not to do, if he did it, it helps” and Rava disagrees and contends that “it doesn’t help”. According to Rava, if the Torah forbade something, someone who transgressed the prohibition succeeded in doing nothing, except where the Torah explicates differently (and indeed, in his opinion, the Torah explicated so in most cases – see the Gemara). Nonetheless, he is punished with lashes because he wanted to transgress a prohibition of the Torah. Abayei disagrees and maintains that though the Torah said not to do something, if he did it, he succeeded. For example, it is forbidden to take inferior fruit and separate them as *terumah* for superior fruit. According to Abayei, he who did so transgressed a prohibition but succeeded in separating *terumah*. According to Rava, if not that the Torah explicitly said that this separation is valid, it would not take effect as it was done in opposition to the Torah.

There is a great struggle in explaining Rava’s statement. At the basis of the quandary there is the clear distinction between two types of prohibitions. There are prohibitions which are only acts. It is forbidden to steal. It is forbidden to murder. No one imagines that Rava means that if someone murdered, he didn’t succeed in doing it because the Torah forbids it. He murdered and his victim is dead. On the other hand, there are prohibitions that essentially consist of a result – such as acquiring a forbidden woman by *kidushin*, where the very essence of the prohibition is the effectiveness of the *kidushin* – and in this case it is obvious that Rava meant that the *kidushin* are invalid. Giving a ring to a woman harms no one. The prohibition does not lie in the giving of the ring but in the result and as soon as the result is rendered invalid, there is no *kidushin*.

Many prohibitions consist of these two ingredients together: an act and its validity. In these cases, where one can only invalidate the result but not the act, there is much discussion. Here is an example of a prohibition containing an act and a result. We learnt in Bechoros that a firstborn pure animal is sanctified. If it develops a defect, it becomes mundane but it is forbidden to inflict it with a defect. A person who intentionally inflicts a defect on a firstborn animal performed a forbidden **act** and caused the **result** that the animal becomes mundane and from now on one may work with it (from the Torah but Chazal prohibited to work with it). How would Rava regard this case? As the act is irreversible – the firstborn has a defect – and the transgression cannot be rectified, is the result also not invalid or, perhaps, Rava would say that true, the act was committed, a prohibition was transgressed but we’ll invalidate the result – we won’t permit the firstborn for mundane use? There are disagreeing opinions concerning this question.

Tosfos (4b, s.v. *Rava*), who relate to the instance of the firstborn animal, assert that according to the reasoning of Rava, we should disqualify the result. The firstborn animal would be forbidden for mundane use (see *ibid*, that they replied that as a defect which developed by itself permits it for mundane use, this case is no worse; in other words, inflicting the defect does not depend on the way it is inflicted but on the reality). We thus learn that in Tosfos’ opinion, anywhere where we can invalidate something of the transgression, be it an act or a result, we invalidate it.

On the other hand, HaGaon Rabbi Akiva Eiger zt”l proves from the Rishonim that Rava does not hold that anything that can be invalidated from the transgression is invalidated but only an



invalidation which causes that the transgression itself will be completely invalidated. For example, if we invalidate forbidden *kidushin*, we cause that no prohibition was committed at all.

After all, says Rabbi Eiger, the Torah forbids tattooing. A person once tattooed a *get* for his wife on his slave's hand and gave her the slave to divorce her. If we say that any act committed by a transgression is invalid – in other words, we invalidate its result – it should be that this *get*, written by the forbidden act of tattooing, should also not achieve its result and one cannot use it for divorce (because, unlike a defect, a *get* must be written at the husband's command whereas a *get* written of itself is disqualified). Nonetheless, we discover that the *get* serves to divorce her (Tosfos, Gitin 20b). We must conclude that Rava means that we invalidate any result whose invalidation causes preventing the prohibition but, in our case, even if we assert that the *get* is invalid, a tattoo was certainly made and a transgression was committed (see Responsa Rabbi 'Akiva Eiger, I, 129, where he devotes a long discussion to the issue, and Nesivos HaMishpat, 208, S.K. 2).

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*.

DAILY MASHAL

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