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Temurah Daf 8

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## Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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### Mishna

*Kohanim* have the power to make a *temurah* using an animal belonging to themselves, and *Yisra'elim* also have the power to make a *temurah* using an animal belonging to themselves. *Kohanim* do not have the power to make a *temurah* with a *chatas*, an *asham*, or a *bechor*. **[One cannot make a *temurah* using an animal that does not belong to him. A *chatas* and *asham* do not belong to the *Kohen*; he is awarded its meat after it is slaughtered and its other parts are burned on the altar. The same *halachah* applies to a *bechor* that is given to a *Kohen* by a *Yisroel*. The *Mishna* will discuss the reason for this.]** Rabbi Yochanan ben Nuri said: What is the reason why *Kohanim* do not have the power to make a *temurah* with a *bechor*? Rabbi Akiva said to him: A *chatas* and an *asham* are *Kohanic* gifts and a *bechor* is also a *Kohanic* gift. Just as in the case of a *chatas* and *asham*, *Kohanim* have no power to make a *temurah* with them, so too in the case of a *bechor*, *Kohanim* have no power to make a *temurah* with them. Rabbi Yochanan ben Nuri said: It is understandable that *Kohanim* should have no power to make a *temurah* with a *chatas* and an *asham*, for they have no monetary claim on these offerings while they are alive; will you, however, say that the same applies to a *bechor* on which the *Kohanim* have a monetary claim when it is alive (for it belongs – in its entirety – to the *Kohen*)? Rabbi Akiva replied to him: The Torah has stated: *then it and its substitute shall be holy*. Now, where does the holiness (of the original sacrifice) devolve from? It is from the house of the owner. Similarly, *temurah* cannot be effective except in the house of the (original) owner (not while it is in the possession of the *Kohen*). [Rashi adds that the *Yisroel* can make *temurah* using the *bechor* while it is in his possession.]

### Who Owns the Bechor?

We have learned in a *Mishna*: An unblemished *bechor* may be sold alive, and a blemished *bechor* as well - whether alive or slaughtered; and the *Kohen* may also betroth a woman with it.

Rav Nachman said in the name of Rabbah bar Avuha: This (*that a Kohen can sell it alive and unblemished*) was taught only for nowadays, since a *Kohen* has a monetary claim upon it, but in the era when the Temple was in existence, since an unblemished *bechor* is destined to be offered up, we may not sell it alive, unblemished (for a *Kohen* has no claim on it except from the time when its sacrificial parts are burnt on the altar).

Rava asked to Rav Nachman from the *Mishna*: An unblemished *bechor* may be sold alive. We may infer that it may be sold only while its alive, but not after it was slaughtered. Now to what era does this refer? It cannot refer to nowadays, for there cannot be an unblemished *bechor* that was slaughtered nowadays (for that would be slaughtering a sacrifice outside the Courtyard, and it would be forbidden for benefit)! Then obviously you must say that it is referring to the Temple times (when, however, it may not be sold after it was slaughtered, for it is an abuse of the sacrificial parts to make an ordinary transaction with them), and yet it says: An unblemished *bechor* may be sold alive. [We therefore see that one may sell a live, unblemished *bechor* in the Temple era, contrary to the opinion of Rav Nachman!?!]

Rav Nachman answers: No! It can be referring to nowadays, for does it actually state: One may sell it unblemished but only when its alive, and not after it was slaughtered? It merely wishes to inform us of this very thing - that a *bechor* nowadays may be sold by the *Kohen* when it is unblemished while it is alive (for the *Kohen* does have a monetary claim on it).

The *Gemora* asks on Rav Nachman (who maintains that while the Temple is standing, a *Kohen* is not allowed to sell a live, unblemished firstborn) from the following *braisa*: In connection with a *bechor*, the Torah says: *You shall not redeem*, implying that it may be sold. Now, regarding what time period are we dealing with here? It cannot be referring to nowadays, for the second part of the verse states: *You shall sprinkle their blood upon the altar*, and in the current era, there is no altar in existence! Obviously, then, it is referring to the times when the Temple was in existence. Now, what type of *bechor* is it referring to? It

cannot be a blemished one, for the second part of the verse states: *You shall sprinkle their blood upon the altar and their fat you shall burn*, and a blemished firstborn is not fit for sacrifice! Evidently, we are dealing with an unblemished firstborn, and the *braisa* taught that it may be sold (*proving that the Kohen does in fact have ownership on a live, unblemished bechor*)!?

The *Gemora* answers by saying that the first part of the verse refers to a blemished *bechor* (*and that can be sold*), and the latter part of the verse refers to an unblemished one (*which is sacrificed on the altar*).

Rav Mesharsheya asked on Rav Nachman from the following *Mishna*: If the child of a *Kohenes* became intermingled with her slavewoman's child, when they grow up, they free one another. They are permitted to eat *terumah* (*before they are freed, for one is a Kohen, and the other is the slave of a Kohen*). They share a portion at the granary as one (*for if only one was there, he would not receive terumah; this is because this Tanna maintains that a slave does not receive terumah at the granary unless his master is present*). Their firstborn animals shall graze until they become blemished, and then, they may be eaten. Now, regarding what time period are we dealing with here? It cannot be referring to nowadays, for then what is the difference between a firstborn belonging to us (*Israelites*) and a firstborn belonging to them, since even one belonging to us also requires a blemish to be eaten! Obviously, then, it is referring to the times when the Temple was in existence. Now, if you say that the *Kohen* has a monetary claim on a live, unblemished firstborn, then all is well (*for that is why he can retain the firstborn, saying, "Perhaps I am a Kohen and I have a prior claim, and do not wish to give it to another Kohen, but I shall wait until I am able to eat it"*); but if you say that he has no monetary claim on a live, unblemished firstborn, then let the Temple treasurer come and take it (*to be offered as a sacrifice*)?

Rav Nachman answers: In truth we are dealing with a firstborn of nowadays, and regarding the difficulty you raise as to why a firstborn belonging to us is different from a firstborn belonging to them, the answer is that we give ours (*a blemished bechor in our possession*) to the *Kohen* in its blemished condition, but with a firstborn belonging to them, since one of them is a *Kohen*, they are excluded from the claiming of other *Kohanim*. [*When a bechor becomes disqualified for the altar it may be eaten by its owner; the reason why an Israelite owner may not eat of the flesh of his firstborn, even after it has contracted a blemish, is not because of its sanctity, but because its consumption by a non-Kohen is regarded as stealing from the Kohanim; no such consideration arises in a case where the owner can claim that he himself is a Kohen.*]

The *Gemora* cites another version: Rav Mesharsheya asked: It cannot be referring to nowadays, for then what is the difference between a firstborn belonging to those questionable *Kohanim* and a firstborn belonging to us, since even one belonging to us also requires a blemish to be eaten! Obviously, then, it is referring to the times when the Temple was in existence. Now, if we are referring to a blemished firstborn, why does the *Mishna* say: Their firstborn animals shall graze until they become blemished? Are they not already blemished? Then obviously we are dealing with unblemished firstborns; and only these (*questionable Kohanim*) does the *Mishna* imply that they may not sell, but people who are certainly *Kohanim* may sell!?! [*We therefore see that a Kohen may sell a live, unblemished firstborn in Temple times, contrary to the opinion of Rav Nachman!*?]

Rav Nachman answers: In truth we are dealing with a firstborn of nowadays, and regarding the difficulty you raise that firstborns belonging to us should also be left to graze, the answer is that we cannot disregard the *Kohen*, for there exists no uncertainty of the *Kehunah* (*and therefore, we must give him the firstborn – even those which are blemished*), but these questionable *Kohanim* can put off the *Kohen*, each one saying to the *Kohen*, "I myself am a *Kohen*," "I am a *Kohen*" (*and with that claim, he may retain the firstborn for himself*).

The *Gemora* asks on Rav Nachman from a *braisa*: [*If there were consecrated items in the ir hanidachas - (a subverted city; one that was condemned to be destroyed by fire on account of a majority of its residents worshipping idols), that which is consecrated to the Altar (for sacrifices) must die; that which is consecrated for the Temple repair, must be redeemed; terumah must be left to rot; ma'aser sheini and the Holy Writings should be hidden away.*] Rabbi Shimon said: The Torah says: *its animals*, but not *bechor* or *ma'aser* animals. The Torah says: *its booty*. This excludes consecrated money and *ma'aser* money.

Now, regarding what time period are we dealing with here? It cannot be referring to nowadays, for the law of an *ir hanidachas* is not in force nowadays! This is as we learned in a *Mishna*: An *ir hanidachas* is declared by a Court of seventy-one (*which does not operate nowadays*). Obviously, then, it is referring to the times when the Temple was in existence. Now, what type of *bechor* is it referring to? It cannot be a blemished one, for would it not be included in the verse, '*its animals*' (*and be destroyed, for a blemished bechor is not offered up on the altar – it is eaten by its owner*)? Evidently, we are dealing with an unblemished firstborn. Now, if you say that the *Kohen* has a monetary claim on a live, unblemished firstborn, then all is well (*for then the verse is teaching us a novelty that it is not destroyed along*

with his other possessions); but if you say that he has no monetary claim on a live, unblemished firstborn, then what need is there for the verse, 'its animals'? Why not exclude it from the verse, 'its booty,' from which we can deduce, 'but not the booty of Heaven'?

The Gemora answers: One can still maintain that we are dealing with a blemished animal, and regarding the question that was raised that this should be included in the category of 'its animals,' the answer is that 'its animals' implies whatever is eaten in the manner of 'its animals' (without limitations), excluding the cases of the *bechor* and *ma'aser*, for they are not eaten in the manner of 'its animals.' For we have learned in a Mishna: Consecrated animals that have become disqualified – their proceeds go to the Temple Treasury - may (after they have been redeemed) be sold and slaughtered in the market (and it is not regarded as degrading; this is because their proceeds become sacred and are used for the purchase of other sacrifices), and they may be weighed out by the *litra* (like all other animals). Except in the case of a *bechor* or a *ma'aser* animal, as their profit goes to the owners. [The Mishna is teaching us that we do not allow a *bechor* and *ma'aser* to be denigrated for the benefit of the person who receives the money when it is sold. This is as opposed to other sacrifices that are sold, as their proceeds go to *hekdes*. We therefore allow them to be sold by weight, in order for *hekdes* to get the best value. Since a *bechor* and *ma'aser* have some degree of sanctity remaining, they are therefore excluded from being destroyed in an *ir hanidachas*.]

The Gemora asks on Rav Nachman from the following *braisa*: **[One who swears falsely to support his denial regarding a monetary claim against him, and then afterwards, he admits that he swore falsely, he is obligated to pay back the amount that he owes plus an additional fifth. He also must bring an *asham* sacrifice.]** It is written: "If he will commit a treachery against Hashem (by lying to his fellow)." This includes *kodshim kalim* (sacrifices of a lesser sanctity; they may be eaten anywhere within the city of Yerushalayim - *shelamim*, *todah*, *bechor*, *ma'aser* and *pesach*), which are considered his money; these are the words of Rabbi Yosi HaGelili. Ben Azzai says: This verse comes to include a *shelamim* (and *bechor*, but not *ma'aser*). Abba Yosi the son of Dosai said: Ben Azzai was only referring to a firstborn. **[A Kohen deposited his firstborn with another; the other fellow denied the deposit, taking an oath and then later confessed. He pays the principal together with the additional fifth and brings an *asham* offering. The reason is because a Kohen can sell a firstborn alive, unblemished, and it is therefore considered his money. *Ma'aser*, he is not allowed to sell.]** Now, regarding what time period are we dealing with here? It cannot be referring to nowadays, for it is compared with a *shelamim* (and *shelamim* offerings are not applicable nowadays)!

Obviously, then, it is referring to the times when the Temple was in existence. Now, what type of *bechor* is it referring to? It cannot be a blemished one, for it should be compared with a *shelamim* (and there it could be unblemished as well). Evidently, we are dealing with an unblemished firstborn. This would prove that the Kohen has a monetary claim on a live, unblemished firstborn (for it is being regarded as the Kohen's property, and that is why the laws of the additional fifth apply)!

Abaya deflects the proof by saying that the *braisa* is referring to an unblemished *bechor*, but it is one that was born outside of Eretz Yisroel, and it is in accordance with Rabbi Shimon, who maintains that if an unblemished *bechor* came from outside Eretz Yisroel into Eretz Yisroel they may be offered up (but one is not required to bring them into Eretz Yisroel to be offered up; therefore they are considered his own money and he can sell them alive, but a firstborn of a Kohen which is destined for sacrifice may not be sold according to Rav Nachman, as the Kohen has no monetary claim on it while it is alive).

The Gemora asks on Rav Nachman from our Mishna: Rabbi Yochanan ben Nuri said: It is understandable that *Kohanim* should have no power to make a *temurah* with a *chatas* and an *asham*, for they have no monetary claim on these offerings while they are alive; will you, however, say that the same applies to a *bechor* on which the *Kohanim* have a monetary claim when it is alive (for it belongs – in its entirety – to the Kohen)? Now, what type of *bechor* is it referring to? It cannot be a blemished one, for it is being compared with a *shelamim* (and there it is definitely unblemished). Evidently, we are dealing with an unblemished firstborn, and the Mishna states that the Kohen has a monetary claim on a live, unblemished firstborn.

Ravina deflects the proof by saying that the Mishna is also referring to an unblemished *bechor*, but it is one that was born outside of Eretz Yisroel, and it is in accordance with Rabbi Shimon, who maintains that if an unblemished *bechor* came from outside Eretz Yisroel into Eretz Yisroel they may be offered up.

The Gemora suggests that there are *Tannaim* who differ on this precise point, for it was taught in a *braisa*: Regarding a firstborn in the house of the owner, *temurah* can be made with it, but there can be no *temurah* effected when it is in the house of a Kohen. Rabbi Shimon ben Elozar says: Once it comes into the house of a Kohen, there can be no *temurah* effected through it.

The Gemora develops its proof: But isn't this (last viewpoint) the identical opinion as the *Tanna Kamma*? It must be that the *Tanna*



*Kamma* means as follows: In the house of a *Kohen*, it is the *Kohen* alone who can effect the *temurah*, but not the owner, and consequently we see that the *Kohen* has a monetary claim on the firstborn (and *R' Shimon* disagrees)!

The *Gemora* rejects this line of reasoning, for we can say that the dispute in the *braisa* is the same as the dispute in the *Mishna* between Rabbi Yochanan ben Nuri and Rabbi Akiva. (7b - 8b)

## INSIGHTS TO THE DAF

### ***An Uncertain Kohen Reciting the Priestly Blessing***

The *Mishna* discusses a case regarding the child of a *Kohenes* who became intermingled with her slavewoman's child.

The Shvus Yaakov in his responsa (3) rules that in such a case, each one of the sons will recite the *Kohenly* Blessings and the blessing beforehand. Now, even though, a non-*Kohen* transgresses a positive commandment by reciting the *Kohenly* Blessing and he will be saying a blessing in vain, since the *Kohenly* Blessing entails three positive commandments, it will override the questionable prohibition.

Reb Yosef Engel in Gilyonei HaShas challenges this ruling: He states that there are not three positive commandments involved in this *mitzvah*; it is mentioned three times in the Torah. And that which the Shvus Yaakov stated that once he is reciting the *Kohenly* Blessing, he might as well recite the blessing beforehand, why is this different than any time someone performs a *mitzvah* in a case of uncertainty? He should perform the *mitzvah* without reciting the blessing!

### ***Selling a Bechor in the Market***

By: Reb Avi Lebowitz

The *Mishna* in Bechoros 31a says that one is not allowed to sell the meat of a bechor or ma'aser on the regular meat market because the extra money gotten from selling on the market will only benefit the owners but in no way benefit hekdesch (to the exclusion of disqualified offerings where the original redemption price will be determined by how much the meat can be sold for so hekdesch will benefit). By making

the permission to sell in the market dependent on whether hekdesch benefits indicates that the prohibition is only Rabbinical. However, Tosafos in Bechoros proves from our sugya that it must be Biblical because the *Gemora* says that since it has these halachos restricting their sale, it is not included in the word 'its animals' by an *ir hanidachas* because we only include things that can be eaten as 'its animals'. If these restrictions would only be Rabbinical, it wouldn't make sense to exclude it from *ir hanidachas* based on a verse. Tosafos isn't sure what the verse would be to forbid this and suggests that there must be some verse that forbids degrading hekdesch unless there is a gain for hekdesch.

Perhaps the source of this can be the *Gemora* 7a that says that consecrating a blemished animal is a violation even though it only assumes status of the sanctity of the Upkeep of the Temple, because it is degrading to hekdesch to consecrate a blemished animal since within the same species there are animals that are fit for a korban. Since the nature of this prohibition is the degrading of hekdesch, perhaps it can be expanded to include the degrading of bechor and ma'aser meat by being sold on the open market.

The *Minchas Chinuch* (361) cites Tosafos in Zevachim who says that according to some the prohibition is only Rabbinical as the simple reading of the *Mishna* would imply. If the nature of the prohibition is only Rabbinical, how are we to explain our *Gemora* that exempts it from the booty of the *ir hanidachas* based on these prohibitions? The *Gemora* derives from 'its animals' to exclude anything that isn't eaten as a regular animal. Although the restrictions against selling and weighing are only Rabbinic, the fact of the matter is that it isn't able to be eaten the way a regular animal is and is therefore excluded from *ir hanidachas*. The Torah may not recognize the Rabbinic prohibition, but nevertheless excludes anything which is practically and actually not treated as a regular animal.