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Trading with Shemittah Produce

The *Mishnah* had stated: Rabbi Shimon says: They originally called them gatherers of *Shemittah*, but when the bandits increased, they eventually called them merchants of *Shemittah*.

Rav Yehudah explains what Rabbi Shimon meant: At first the Rabbis ruled that gatherers of the *Shemittah* produce are eligible to testify (*for it was assumed that they planned to consume it before the time of bi'ur i.e. removing - the produce of Shemittah may be kept as long as that produce is still available in the fields for the animals; afterwards, it may no longer remain in the house; the produce may never be sold*), but those trading in it are not. But when they saw that large numbers of people offered money to the poor, who then went and gathered the produce and brought it to them, they revised the law and decreed that both gatherers and traders are disqualified.

The sons of Rechavah challenged this explanation: Why did the *Mishnah* say, “When the bandits increased”? It should have stated, “When the traders of *Shemittah* produce increased”!?

Rather, the explanation is as follows: At first the Rabbis ruled that both the gatherers and the traders (*of Shemittah produce*) were ineligible. But when the bandits increased, viz., the collectors of the royal tax on produce, as Rabbi Yannai proclaimed, “Go and plant your produce for the taxes even during *Shemittah* (*in order to avoid a huge loss, it was permitted to violate the Rabbinic prohibition of*

planting during Shemittah nowadays), they revised the law and enacted that only traders of *Shemittah* produce were disqualified, but not gatherers. (26a1)

Rabbi Chiya bar Zarnoki and Rabbi Shimon ben Yehotzadak once, during *Shemittah*, went to Assia to intercalate the year (*according to Tosfos, they went to discuss the future years, for a leap year cannot be made outside of Eretz Yisroel, and it cannot be made during Shemittah*). They were met by Rish Lakish, who joined them, saying, “I will come and see their methods.” On the way, he saw a man plowing, and remarked to them, “That *Kohen* is violating the prohibition of plowing during *Shemittah*.” But they replied, “Can he not say that he is merely a worker for the produce tax (*or that he was hired by a gentile*)?” Further on, he saw a man pruning his vineyard, and again observed, “That *Kohen* is violating the prohibition of pruning during *Shemittah*.” But they replied, “Can he not say that he is merely cutting the twigs to be used as netting for an olive press (*a legitimate purpose*)?” Rish Lakish replied, “The heart knows whether it is for ‘*aikel*’ – netting, or ‘*akalkalos*’ – perverseness! — Now, which remark did he make first? Shall we say, his first remark was the one first recorded: then for the other too they could have suggested [the same excuse], “I am an imperial servant on the estate.” Hence the latter remark must have come first, and only subsequently did he make the other observation.

The *Gemara* notes that Rish Lakish assumed that the person was a *Kohen* for *Kohanim* were suspected of violating the prohibitions associated with *Shemittah*, as it was taught in a Baraisa: If a se'ah of terumah [accidentally]



fell into a hundred se'ahs of Shemittah produce, it [the terumah] is nullified. In case of a lesser quantity [of Shemittah produce], the whole must be left to rot. Now, we raised the question: Why must it be left to rot? Why not let it be sold to a Kohen at a price of terumah less the value of the one se'ah! To which Rav Chiya replied in the name of Ulla: This fact proves that the Kohanim were suspected of violating the laws of the shemittah.

They said: Rish Lakish is an argumentative person, and so, on reaching their destination, they ascended to the upper floor and removed the ladder (*leaving Rish Lakish below*).

Thereupon, Rish Lakish went before Rabbi Yochanan and asked: Are people suspected of violating *Shemittah* laws (*or defending those who violate them*) qualified to intercalate the year? But then he said: This presents no difficulty, for there is a similar case of three herdsmen upon whose calculations the Rabbis relied (*and here too, there were other calculations made which determined that the year should be intercalated*). Subsequently, however, he said: There is no comparison between the two cases, for there it was the Rabbis who eventually decided and declared the leap year, whereas here, it is a confederacy of wicked men, and such men may not be part of the quorum. Rabbi Yochanan replied: It is troubling (*that you refer to these great men in such a negative manner*).

When they came before Rabbi Yochanan, they complained: He referred to us as herdsmen, and you made no objection at all!? Rabbi Yochanan answered: Even had he called you shepherds (*which is worse, for they are always disqualified*), what could I have said?

The *Gemara* cites the origin for the term "a confederacy of wicked men": Shevna (*who was appointed over Chizkiyah's palace*) used to lecture before one hundred thirty thousand students, whereas Chizkiyah lectured only before one hundred ten thousand students. When Sancheriv came and besieged Yerushalayim, Shevna wrote

a note, which he shot on an arrow saying: Shevna and his followers are willing to surrender; Chizkiyah and his followers are not. Chizkiyah was afraid, and said: Perhaps, Heaven forbid, the mind of the Holy One, Blessed be He, is with the majority; and since they wish to surrender, we must follow them and do likewise! Thereupon the prophet Yeshayah came and reassured him: They are a confederacy of the wicked, and as such cannot be counted as a quorum (*and although they are in the majority, you are not to follow them*).

Shevna, confident that he would become the king, went (*as an act of rebellion*) to hew out for himself a sepulcher among the sepulchers of the house of David (*to be buried there*). The prophet Yeshayah told him that he will be punished with the following: *Behold, God will cause you to wander the wandering of a man*; Rav said: The wandering of a man is a greater hardship than that of a woman (*when a woman wanders, people have compassion on her*). *And will wrap you around*; Rabbi Yosi the son of Rabbi Chanina said: This teaches us that he will suffer *tzaraas* - here it is written, and will wrap you around, and elsewhere [in reference to a metzora] it is said: *And he shall wrap himself up to his lip. He will encircle you as a hat, as a wall, to a wide open land*; and it was taught in a Baraisa: he wanted to bring shame to his master's house, his own glory will be turned to shame.

The *Gemara* relates: When Shevna left to surrender, the angel Gavriel shut the gates after him (*so he left alone*). On being asked by the enemy, "Where are your followers," he answered, "They have deserted me." They said to him, "Then you were merely mocking us!" So they bored holes through his heels, tied him to the tails of their horses, and dragged him over thorns and thistles.

Rabbi Elazar cites a Scriptural verse proving that Shevna was seeking pleasure. Here it is written: *Go approach that shochein [the treasurer]; and elsewhere it is written: And*

she [the Shunamite] shall be for him a shochenes [companion].

It is written: *When the shashos are destroyed, what has the righteous done?* Rav Yehudah and Rav Eina explain the verse: One interpreted it to mean the following: If Chizkiyah and his followers had been destroyed, people will ask, “How has the Righteous One (Hashem) rewarded the virtuous Chizkiyah?” The other explained: If the Beis Hamikdash had been destroyed, people will ask, “What has happened to the might of the Righteous One?” Ulla interpreted it as follows: Had the designs of that wicked man (Shevna) not been frustrated, people will ask, “How would the righteous one (Chizkiyah) have been rewarded?”

Now, according to the [last] explanation, viz., had the designs of the wicked man [etc.], it is well: hence it is written: When ha-shashos are destroyed. The explanation which refers it to the Temple is likewise [acceptable]. For we learned in a Mishnah: A stone lay there [beneath the Ark] ever since the time of the Early Prophets and it was called ‘shesiyah’. But as for its interpretation as referring to Chizkiyah and his party: where do we find the righteous designated as ‘foundations’? — In the verse: For God’s are the pillars of the earth and He has set [va-yashes] the world upon them. Alternatively, [it may be deduced] from the following: Wonderful is His counsel and great his tushiyah [wisdom].

Rabbi Chanan explains why the word “*tushiyah*” refers to Torah: Torah studying weakens a person’s strength. Another explanation: Because of the Satan, it was given in secrecy. Another explanation: It is composed of mere words, which are immaterial, and upon which the world was, nevertheless, founded.

Ulla said: One’s worries (*thoughts*) about his livelihood can cause him to forget his Torah, as it is stated: He abolishes the

thoughts of the skilled [i.e., scholars], lest their hands perform nothing substantial [tushiyah].

Rabbah said: If he learns Torah just for its own sake, his anxiety will not affect him, as it is stated: There are many thoughts in man’s heart, but the counsel of God, that shall stand - counsel in which there is the word of God [i.e., study of the Torah] will stand forever [under all circumstances]. (26a1 – 26b2)

Announcing the Disqualification

The *Mishnah* had stated: Rabbi Yehudah says: When are they unfit for testimony and judgment, when they have no other job. However, if they have another job, they are fit to testify and judge.

Rabbi Avahu said in the name of Rabbi Elazar: The *halachah* follows Rabbi Yehudah.

Rabbi Avahu said in the name of Rabbi Elazar: All of them (*mentioned in our Mishnah*) require an official announcement in *Beis Din* (*in order to become disqualified*).

There is a dispute between Rav Acha and Ravina if a herdsman requires the official announcement or not. One holds that no announcement is necessary, for Rav Yehudah said in the name of Rav that ordinary herdsmen are disqualified. The other one maintains that we make this announcement regarding all herdsmen (*even if we do not know for certain that they allowed the animals to graze in other people’s fields*).

Now, on the view that it is not required, it is correct: hence the dictum of Rav Yehudah in Rav’s name, viz., a shepherd in general is incompetent. But according to the view that an announcement is necessary, what is meant by ‘a shepherd in general is incompetent’? — That in general he is proclaimed so.



The *Gemara* relates an incident: A certain gift document was witnessed by two robbers. Rav Pappa bar Shmuel wished to declare it valid, since their disqualification as witnesses had not been publicly announced. But Rava said to him: Granted that announcement is necessary in the case of people declared only by the Rabbis as robbers; must those defined as such by Biblical law also be announced? [*Certainly not!*]

(Mnemonic: *Davar, v-arayos, ganav*). Rav Nachman said: Those who accept charity from idolaters (*davar achier*) are disqualified as witnesses. This, however, is only if they accept it publicly, but not if they accept it in private. And even if they accepted it publicly, the law is applicable only if it was possible for them to obtain it privately, and yet they degraded themselves by accepting it publicly. If, however, it is impossible to accept it privately, he is not disqualified, for it is his only means of livelihood.

Rav Nachman said: One who is suspected of adultery is eligible as a witness.

Rav Sheishes asked him: Answer me, my master; forty stripes on his shoulders (*even on a Rabbinic level*) and yet you say that he is eligible!?

Rava said: Even Rav Nachman admits that he is disqualified from testifying regarding matrimonial matters.

Ravina, and others state it was Rav Pappa said: That is only where his testimony is to release her; but if it is to bind her in marriage, there is no objection to his testimony.

The *Gemara* asks: Is this not obvious? [*Why would he lie to make her forbidden to him?*]

The *Gemara* answers: We might have thought that he would prefer this, for “stolen waters are sweet,” therefore

he teaches us that as long as she remains unmarried, she is even more available to him.

Rav Nachman said: One who steals produce in Nissan or in Tishrei is not regarded as a thief (*because he justifies his actions*). The *Gemara* qualifies the ruling to be referring to a case of a sharecropper, where the quantity taken is small and the produce is fully ripe (*where only then can he justify taking a little bit more*).

One of Rav Zevid’s farm-workers stole a *kav* of barley, and he disqualified him. Another one stole a cluster of dates, and he disqualified him as well. [*These workers were not sharecroppers.*]

There were certain grave diggers who buried a corpse on the first day of *Shavuos*, so Rav Pappa excommunicated them, and disqualified them as witnesses.

Rav Huna the son of Rav Yehoshua, however, declared that they were eligible to serve as witnesses.

Rav Pappa asked him: But surely, they are wicked men!?

Rav Huna replied: They might have thought that they were doing a *mitzvah*.

Rav Pappa asked: But were they not excommunicated?

Rav Huna answered: They might have thought that (*although it was a mitzvah*) the Rabbis provided for us atonement by excommunicating us. (26b2 – 26b4)

INSIGHTS TO THE DAF

Justifying their Actions

The *Gemara* relates: There were certain grave diggers who buried a corpse on the first day of *Shavuos*, so Rav Pappa excommunicated them, and disqualified them as

witnesses. Rav Huna the son of Rav Yehoshua, however, declared that they were eligible to serve as witnesses. Rav Pappa asked him: But surely, they are wicked men!? Rav Huna replied: They might have thought that they were doing a *mitzvah*.

Shulchan Aruch (34:4) rules: Anyone who violates even a Biblical prohibition, but justifies it by thinking that they are doing a *mitzvah*, would not become disqualified.

The *Gemara* then asks: But were they not excommunicated? According to Rashi the question is: We excommunicate them and they violate the same prohibition a second time, so they can't justify that they are doing a *mitzvah*? To this the *Gemara* answers: Even though we excommunicate them, they still convince themselves that they are doing a *mitzvah*; just that they think that the excommunication is necessary for atonement of desecrating *Yom Tov*.

Rashi seems to explain the justification of the gravediggers to be similar to one who fasts a *ta'anis* for a dream on *Shabbos*; although he is doing the right thing, he needs to fast again for atonement for fasting on *Shabbos*. Here too, they think that they are doing the right thing by burying the dead on *Yom Tov*, just that they require the excommunication to serve as atonement for their actions.

The Ran seems to have a different approach in this question and answer. The Ran seems to understand that if they were to repeat the transgression again after being excommunicated, they would certainly become disqualified because they should understand from the excommunication that they committed a transgression. The question of the *Gemara* is that since we put them in excommunication and they don't bother coming to *Beis Din* to justify their actions, we should assume that they are intentional violators and disqualified for testimony? To this the *Gemara* answers that the reason that they don't come to justify their actions is because as soon as they are

excommunicated, they realize that they did a transgression and want the punishment of excommunication to serve as atonement.

We are left with a dispute between Rashi and the Ran if they would bury someone a second time after being put in excommunication, whether they would be disqualified. But, all agree that the justification of "I was performing a *mitzvah*" is not just a rationale to make them Biblically eligible, but would even make them eligible on a Rabbinic level.

Why is this different than all those who are listed in the *Mishnah* (24b), who become Rabbinically disqualified even though they can justify their actions, such as a gambler, where Tosfos writes that even according to the opinion that they are regarded as thieves on a Biblical level, they are only Rabbinically disqualified because they don't realize the severity of their actions? Also, one who lends with interest and violates a Biblical prohibition, Tosfos writes that they would only be Rabbinically disqualified since he justifies taking the money with the consent of the borrower?

The answer seems to be that when they justify their actions by saying that they are doing a *mitzvah*, that is when they aren't even Rabbinically disqualified, but if they merely justify their actions by not realizing the severity of the prohibition, then they would still be Rabbinically disqualified.

However, this wouldn't explain those trading in *Shemittah* produce, where Tosfos says that even if they violate a Biblical prohibition, they would only be Rabbinically disqualified, since they consider themselves to be providing livelihood to the poor in the *Shemittah* year. Clearly, they justify by saying that they are doing a *mitzvah*, yet they are Rabbinically disqualified, so why are the gravediggers not even disqualified on a Rabbinic level?



Reb Avi Lebowitz suggests that there is a distinction between the gravediggers who think that the act of burying is a *mitzvah*, and those who do business with *Shemittah* produce, who know that making money with *Shemittah* produce isn't a *mitzvah*, but think that the benefit of the *mitzvah* of providing livelihood to the poor would offset the transgression. When they think that their action is a *mitzvah*, they aren't even Rabbinically disqualified, but when they just think that their transgression is offset by a *mitzvah*, they are still Rabbinically disqualified.

DAILY MASHAL

Hypnosis

The *Gemara* ruled that one of the people who are disqualified from providing testimony is someone who accepts charity from an idolater. This, however, is only if they accept it publicly, but not if they accept it in private. And even if they accepted it publicly, the law is applicable only if it was possible for them to obtain it privately, and yet they degraded themselves by accepting it publicly. If, however, it is impossible to accept it privately, he is not disqualified, for it is his only means of livelihood.

The Nimukei Yosef explains that the Torah says "*v'chai bahem*," meaning that in cases of *pikuach nefesh*, we are allowed to transgress the prohibitions that the Torah placed upon us, therefore he is not disqualified.

Rav Moshe Feinstein learned this *Gemara* differently, and thereby permits an interesting question. He was asked if one may heal himself via hypnosis.

Reb Moshe (Igros Moshe Yoreh De'ah 3:44) starts to speak about hypnosis in general, and he begins by stating that hypnosis is not magic (*which would be forbidden to engage in*), rather it is a natural phenomenon. He cautions that if the hypnotizer might cause him to transgress a prohibition under hypnosis, then he should not go to him, since one

cannot claim in such an instance that he was forced. However, although there isn't any prohibition when going to a hypnotizer who is trusted that he won't cause him to violate prohibitions, still Reb Moshe held that he is degrading himself, which by doing so has the "smell of a prohibition," as we see from the *halachah* that one who eats in the street is disqualified since he is degrading himself.

Then Reb Moshe answers the question, and rules that since it is being done for *refuah*, then he may go to a kosher hypnotizer, because the problem of degrading oneself does not apply in cases where it is necessary.

He brings proof from our *Gemara*, in which he maintains that is clear that the *Gemara* was not referring to a case where it was *pikuach nefesh*, because then there is no need for the *Gemara* to mention it, for all prohibitions are permitted. Therefore, he concludes that our *Gemara* was speaking in an instance where there was no *pikuach nefesh* and yet one is permitted to degrade himself in times of necessity; hence he permits one to heal himself via hypnosis.