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Mishna

He who buys animals or receives them as a gift is exempt from the law of tithing animals. (55b)

Scriptural Source

Rav Kahana cites the source for this: *Your firstborn sons you shall give to Me; so shall you do to your cattle and your flocks.* Just as “your sons” are not bought or received as a gift, so too “your flocks and cattle” (to be subject to the laws of *ma’aser*) are not bought or received as a gift.

The *Gemora* asks: But doesn’t this verse refer to a firstborn (and not to the laws of *ma’aser*)?

The *Gemora* answers: It is written: *And so you shall do.* If the verse has no bearing on the subject of a firstborn, to which doing (i.e., the act of consecration) does not apply, since a firstborn is consecrated from the womb, then apply it to the subject of *ma’aser* on animals (that if the animals are bought or received as a gift, they are not subject to the laws of *ma’aser*).

The *Gemora* asks: But why not say that the verse should be applied to the case of a *chatas* or *asham* (that these types of animals cannot be used for these *korbanos*)?

The *Gemora* answers: The inference to be made must resemble the case of “your son.” Just as “your son” is not redeemed to atone for a sin, so too “your flocks and cattle” must be such, as are not brought to atone for a sin.

The *Gemora* asks: But why not say that the verse should be applied to an *olah* or a *shelamim* (which require the person’s consecration, and do not come to atone for a sin)?

The *Gemora* answers: The inference to be made must resemble the case of “your son.” Just as by “your son,” the redemption is not coming to fulfill a vow or a donation, so too “your flocks and cattle” must be such that are not being offered as a result of a vow or donated offering.

The *Gemora* asks: But why not say that the verse should be applied to an *olah* of appearance offering (which requires the person’s consecration, and does not come to atone for a sin, and is not offered to fulfill a vow or donation)?

The *Gemora* answers: The inference to be made must resemble the case of “your son.” Just as by “your son,” the redemption there is no fixed time for him to become consecrated, so too “your flocks and cattle” must be such that they are offered at no fixed time.

The *Gemora* asks: But (according to Rav Kahana’s analogy), perhaps we should infer as follows: Just as “your sons” are not bought at all, similarly “your flocks and cattle” should not apply at all to where they are bought! Why then did Rav Assi report in the name of Rabbi Yochanan: If one bought ten fetuses which were in the wombs of their mothers, they all enter the pen to be tithed?

Rava said: It is written: *so you shall do*, intimating that only at the time of ‘doing’ (i.e., the act of counting the *ma’aser*) does the Torah impose restrictions. [If, however, it was bought while still in the mother womb, a time that it was not yet fit to be counted, it is not excluded from the obligation of *ma’aser*.]

It was stated above: Rav Assi report in the name of Rabbi Yochanan: If one bought ten fetuses which were in the wombs of their mothers, they all enter the pen to be tithed.

The *Gemora* asks: But have we not learned in our *Mishna*: He who buys animals or receives them as a gift is exempt from the law of tithing animals?

Rabbi Elozar said: Rabbi Yochanan (*my teacher*) appeared (*last night*) to me in a dream (*and therefore I know that*) - I will say a good thought: It is written: *so you shall do*, intimating that only at the time of 'doing' (*i.e., the act of counting the ma'aser*) does the Torah impose restrictions.

Rabbi Shimon ben Ellyakim asked Rabbi Elozar from the following *braisa*: The law of an animal purchased (*that it is not subject to the ma'aser obligation*) applies also to an animal that is premature (*one that is less than eight days old*). [*Evidently, the exemption applies even on animals which are not fit to be counted!?*]

He replied to him: This is not a recognized teaching (*for it was not taught in the Sages' study hall*). And even if you will say that it is a recognized teaching (*it does not create a difficulty*), for it represents the opinion of Rabbi Shimon the son of Yehudah in the name of Rabbi Shimon: An animal, though premature, can enter the pen to be tithed, for it is like the case of a firstborn: Just as a firstborn is sanctified (*from when it leaves the womb*) before its time (*that it is eligible to be sacrificed*), and is sacrificed when its time becomes due, so too a tithing animal can be sanctified before its time, and offered up after its time becomes due. [*This is only applicable by a premature animal; a fetus inside its mother's womb, however, is not fit to be counted at all.*] (55b – 56b)

Mishna

If brothers became partners (*after inheriting their father's estate*), the rule is as follows: When they are still bound to pay the *kalbon*, they are exempt from animal *ma'aser* (*as the rule is: partners are exempt from ma'aser*); and when they are liable to animal *ma'aser*, they are exempt from paying the *kalbon*. [*The Sages decreed when they bring their annual half-shekel contribution to the Temple they must add a small coin – called the kalbon. This was either a surcharge to compensate for any loss incurred in the Temple shekels*

collection in exchanging the half shekels into other money, or because of the shortfall in the weight of the silver half-shekel. Partners, who wish to give a whole shekel together must also add a kalbon as if they were two strangers.]

The *Mishna* explains: if they acquired the animals from the estate (before dividing up the estate), they are obligated to tithe them (*for this is not regarded as a partnership; rather, it is a single entity*), but if not (*they initially divided the estate and later, they rejoined*), they are exempt from tithing (*for they are ordinary partners*).

If they first divided up the estate and then again became partners, they are bound to pay the *kalbon*, and are exempt from animal *ma'aser*. (56b)

Dividing the Estate

The *Gemora* cites a *braisa* which brings the Scriptural sources that partners are exempt from animal *ma'aser*, but two heirs, who inherited animals from an estate (*and did not divide them up*), are obligated in *ma'aser*.

Rabbi Yirmiyah said: Sometimes they (*the heirs*) are obligated to tithe and to pay the *kalbon*, and sometimes they are exempt from both. Sometimes they are obligated to pay the *kalbon* and are exempt from tithing, and sometimes they are obligated to tithing and are exempt from paying the *kalbon*.

He explains: They are obligated to tithe the animals and pay the *kalbon* in the case where they divided the monies (*and became partners afterwards, so they must pay the additional kalbon like all other partners*) but not the animals (*and since the animals were not divided, they are still the fathers' estate and must be tithed*). They are exempt from both, where they divided the animals (*and became partners afterwards, so they are exempt from ma'aser like all other partners*) but not the monies (*and since the money was not divided, they are still the fathers' estate and therefore exempt from paying the kalbon*). They are obligated to pay the *kalbon* and are exempt from tithing animals where both animals and monies were divided. They are obligated to tithe and are exempt from paying the *kalbon* where neither monies nor animals were divided.

The *Gemora* asks: Isn't all this obvious?



The *Gemora* answers: Rabbi Yirmiyah needed to inform us of the case where the animals were divided but not the monies. You might have thought that since they divided the animals, they have indicated their intention of dividing the rest, and therefore they should be obligated to pay the *kalbon*; he therefore informs us that this is not so.

Rav Anan said: This (*that we say that when they divided and then became partners again that they are exempt from tithing*) is meant only when they divided kids against rams (*in accordance with their value*) and rams against kids (*for in that case, one cannot say that it has been retroactively clarified that this is the part which was due from his father's inheritance from the beginning, because at the death of their father, each brother should receive half of the kids and half of the rams; consequently, the animals which were present at the time of the division of the estate are not subject to ma'aser, for they were purchased from each other, while those which are born subsequently, are exempt on account of the brothers becoming ordinary partners*), but where they divided kids against kids and rams against rams, one can say that this is (*retroactively clarified to be*) the portion which was his from the outset (*and therefore each brother's share is still regarded as an inheritance, even after the brothers became partners again*). But Rav Nachman says: Even if they divided kids against kids and rams against rams, we do not say that this was the part which was his at the outset. [*Rav Nachman does not hold the principle of bereirah, and therefore, at first, when the division takes place, the animals are regarded as being purchased from each other, and those born later are regarded as born to brothers who hold the status of partners.*]

Rabbi Elozar says: This (*that we say that when they divided and then became partners again that they are exempt from tithing*) is meant only when they divided nine large animals against ten small ones (*according to their value*), or ten small animals against nine large ones. But if they divided nine animals against nine or ten animals against ten, one can say that this is the part which was his from the outset. But Rabbi Yochanan says: Even if they divided nine animals against nine or ten animals against ten, one does not say that this is the part which was his at the outset.

The *Gemora* notes that Rabbi Yochanan follows the opinion he expressed elsewhere, for Rav Assi said in the name of Rabbi Yochanan: If brothers divide an inheritance, they are regarded as

purchasers (*for they are exchanging their true portions for those that they actually receive*), and they therefore are required to restore their shares to each other at *Yovel*. [*When brothers are partners to their father's estate, they own everything in partnership. When they split the estate, bereirah can tell us that whatever they received in the split was originally what they owned while partners. Rabbi Yochanan, however, considers these brothers to be buyers of each other's portion, indicating that Rabbi Yochanan does not accept bereirah.*]

The *Gemora* notes why it was necessary for Rabbi Yochanan to state both rulings.

The *Gemora* asks (*on those who maintain the principle of bereirah*) from the following *Mishna*: And likewise if partners divided their animals, and one took ten lambs and the other took nine with a dog, the *halachah* is as follows: Those that were taken against the dog are forbidden (*for the altar, for the Torah prohibits animals used in exchange for a dog to be offered on the altar*), but those taken with the dog are permitted. Now, if you say that we hold the principle of *bereirah*, let him pick out one lamb as the equivalent of the dog and the rest should be permitted for the altar!?

Rav Ashi said: If they were all of the same value, it would be you said. We are dealing here, however, where they are not all alike in value, and this dog is equal in value to one lamb plus a little, and this little extends to all. (56b – 57a)