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Asham Taluy

[The *Mishna* discusses the cases that one would be liable to bring an *asham taluy* – a suspensive offering. This *korban* is brought in a case where one is uncertain if he committed a sin – a sin that if he inadvertently transgressed, he would be liable to bring a *chatas*; in certain cases of uncertainties, he would be liable to bring an *asham taluy*. The uncertainty arises only afterwards, when he is told, or remembers that there was good reason to doubt whether the act committed was permitted. At the time of performance, however, he felt sure that the act was allowed. In all the instances of the *Mishna*, it must be laid down that at the time of action, the offender was under the impression that the legitimacy of his act was beyond question. It is only afterwards that he learns that there was some doubt as to the permissibility of his act. For if the uncertainty of the case was known to him from the beginning, it would be his obligation to refrain from his act; and if he did not do so, he would be considered a willful transgressor, and as such, no offering would be acceptable for the atonement of his sin.] If a person was uncertain whether he had eaten *cheilev* (forbidden fat) or not; or even if he had certainly eaten of it, but was uncertain as to whether it had the requisite quantity (at least the size of an olive) or less; or if there were before him *shuman* (permitted fat) as well as *cheilev*, and he ate of one of them (thinking that they were both *shuman*) and he does not know which one of them he ate; or if his wife and his sister were with him in the house and he inadvertently cohabited with one of them, and (due to the darkness) he does not know with which of them he inadvertently acted; or if he did forbidden labor, but he does not know whether it was on *Shabbos* or on a weekday, he is liable to bring an *asham taluy*.

Just as if a person (inadvertently) ate *cheilev*, and then he ate *cheilev* again in one spell of unawareness, he is liable only to one *chatas* offering, so, too, when the transgression is in doubt (in a case where he ate two olive-size measures of fat, and he found out afterwards that they might have been *cheilev*, but he did not become aware of their uncertain status in between the two eatings), he is only liable to one *asham taluy*. If, however, in between (the two eatings) he became aware (that the first piece he ate might have been *cheilev*); just as he would be liable to bring a *chatas* offering for each eating (in a case where he became aware in between the two eatings that he most definitely ate *cheilev*), so too here, he is liable to bring an *asham taluy* offering for each and every piece that he ate. And just as one who ate, in one spell of unawareness, *cheilev*, blood, *piggul* and *nossar* – he would bring a *chatas* offering for each and every one, so too, when the transgression was in doubt, he is liable to bring an *asham taluy* for each and every act.

It was stated: Rav Assi said: The first case of the *Mishna* refers to one piece about which there was an uncertainty whether it was *cheilev* or *shuman*. Chiya bar Rav said: It refers to one of two pieces (where he thought both of them were *shuman*, and he found out that one was definitely *cheilev*, but he does not know which one he ate; there, he brings an *asham taluy*; however, if there was one piece and he does not know what it was that he ate, he would not bring an *asham taluy*).

The *Gemora* notes the basis of their dispute: Rav Assi holds that the way the word is written in the Torah is determinant in Biblical exposition (*yeish eim lamesores*), and by *asham taluy* it is written: *mitzvas* (in the singular form, meaning that there was one piece), and Chiya bar Rav maintains that the way a word is pronounced is determinant in Biblical exposition (*yeish eim*



lamikra), and it is read: *mitzvos* (commandments; meaning that there were two pieces).

Rav Huna asked to Rav Assi, and others say that Chiya bar Rav asked to Rav Assi: Our *Mishna* states: If there were before him *shuman* as well as *cheilev*, and he ate of one of them (thinking that they were both *shuman*) and he does not know which one of them he ate (he brings an *asham taluy*). May we not infer that just as this latter clause refers to two pieces, so too does the first clause refer to two pieces?

Rav said to them: Do not draw conclusions from something which may be interpreted in the opposite direction, for Rav Assi can answer you that the latter clause deals with two pieces and the former deals with one piece.

The *Gemora* asks: But if so, may we not argue: If one is liable to an offering in the case of one piece, how much more so in the case of two pieces?

The *Gemora* answers: The *Tanna* of the *Mishna* is following the format of "this and needless to say also this."

The *Gemora* asks: Now according to Chiya bar Rav who holds that as the latter clause refers to two pieces so too the former refer to two pieces, why is this repetition necessary?

The *Gemora* answers: The latter clause is an explanation of the former: If a person was uncertain whether he had eaten *cheilev* or not, he brings an *asham taluy* ... and how does such a case arise? If there were before him *shuman* as well as *cheilev*.

Rav Yehudah said in the name of Rav: If there were before a person two pieces, one of *shuman* and the other of *cheilev*, and he ate of one of them and does not know which one of them he ate, he is liable; however, if there was one piece before him, and there was a doubt whether it was *shuman* or *cheilev*, and he ate of it, he is exempt.

Rava said: Although the spelling is *mitzvas* (commandment), we read it *mitzvos* (commandments).

Abaye asked him from the following *braisa*: Rabbi Eliezer says: If one eats of the *cheilev* of a *koy* (an animal whose classification is uncertain – is it an animal, and then its *cheilev* would be forbidden; is it a beast (*chayah*), and its *cheilev* would be permitted), he is liable to an *asham taluy* (and this is similar to the case of 'one piece')!?

He replied: Rabbi Eliezer holds that the way the word is written in the Torah is determinant in Biblical exposition (*yeish eim lamesores*), and by *asham taluy* it is written: *mitzvas* (in the singular form, meaning that there was one piece).

They asked from a *Mishna*: [One who performs *yibum* with his *yevamah* and she was found to be pregnant and later gave birth; if the child is viable, he must divorce her and they are required to bring a *chatas* offering. If, however, the child is not viable, he may keep her as a wife.] If the child is viable, but we are uncertain if the child is a nine-month-old baby from the first brother or the seven-month-old child of the second brother; he must divorce her, and the child is deemed to be legitimate, and they are required to bring an *asham taluy*.

The *Gemora* answers: This is in accordance with Rabbi Eliezer's view.

They asked from a *Mishna* which says that if *niddah* blood was found on his cloth immediately after a husband had relations with his wife, they are *tamei* and liable to bring a *chatas*; if it was found upon hers after a time (where it was not 'immediately,' and therefore it might have occurred after relations were finished), they are *tamei* out of doubt, but are exempt from an offering. And upon this it was taught in a *braisa*: They are nevertheless liable to bring an *asham taluy*.

The *Gemora* answers: This is in accordance with Rabbi Eliezer's view.

Rabbi Chiya said in the name of Rav: If there were before a person two pieces, one of *shuman* and the other of *cheilev*, and he ate of one of them and does not know which one of them he

ate, he is liable; however, if there was one piece before him, and there was a doubt whether it was *shuman* or *cheilev*, and he ate of it, he is exempt.

Rabbi Zeira offers a different reason for this: He is of the opinion that in the case of two pieces it is possible to determine the transgression (through examining the other piece, and therefore the *korban* will atone on a temporary basis until it has been determined if he sinned or did not); in the case of one piece, it is not possible to determine the transgression (*and therefore the atonement of the korban will be on a permanent basis – that is not the purpose of an asham taluy*).

The *Gemora* notes that a practical difference between the two reasons given would be in a case where there were two pieces before him – one was the size of an olive and the other was only half of an olive (*and he ate the one with the full measure*). According to Rava, he is exempt, for the case does not fulfill the term '*mitzvos*' (*for there are not two full pieces*); according to Rabbi Zeira, however, there is the possibility of determining the transgression. (17a – 17b)

DAILY MASHAL

Is a doubt of Torah treated strictly by the Torah?

This week Daf HaYomi learners are occupied at length with *sugyos* about doubts concerning various transgressions and by the nature of things, we shall relate to a difference of opinions among the Rishonim about "a doubt of the Torah should be treated strictly" and its close links to our Gemara.

Everyone agrees that a doubt of the Torah must be treated strictly. In other words, regarding any situation of doubt whether a halachah of the **Torah** applies, we must decide strictly and apply the prohibition. According to most Rishonim, particularly the Rashba (Kidushin 73a), the source for this rule is from the **Torah** while Rambam states (*Hilchos Isurei Biah* 18:17,

etc.) that this halachah is only a rabbinical decree but that from the Torah's viewpoint, a doubt of the Torah is treated leniently.

This difference of opinions is expressed at length in the Acharonim and a considerable amount of discussion was devoted to it in *Shev Shema'atesa* by the author of *Ketzos HaChoshen* and *Sha'arei Yosher* by HaGaon Rabbi Shimon Shkop.

The connection with an *asham taluy*: One of the firm questions on Rambam's opinion is from the Torah itself, which explicitly relates to a case of a doubt and decides that one should behave strictly! If a person is in doubt as to if he ate forbidden fat (*cheilev*) or permitted meat, he must bring an *asham taluy* (*taluy* – "depending" because there's a doubt as to if he committed a transgression). According to Rambam, asks the Rashba, a doubt of the Torah should be treated leniently so why must he bring a sacrifice?

Indeed, Rambam himself relates to this question. At first he states his principle (*Hilchos Tumas Meis* 9:12): "But all the doubts, whether concerning impurity or forbidden food or sins of immorality or Shabbos, are only a rabbinical decree." In other words, being strict in the doubts arising from these halachos is only a rabbinical decree but from the Torah's viewpoint, a doubt should be treated leniently. Rambam later adds: "Still, regarding something for which one is punished with *kareis* for an intentional transgression, its doubt is forbidden from the Torah, for he who does it must bring an *asham taluy*." In other words, although a doubt of the Torah is treated leniently, prohibitions punishable with *kareis* are different, that in doubts arising from them one must behave strictly!

If you look inside, you'll see that this explanation by Rambam is in parentheses, and not for nothing. It explicitly contradicts the sentence opening the halachah, that "all the doubts...or sins of immorality or Shabbos, are only rabbinical decrees". Are not the prohibitions of Shabbos and immorality punished with *kareis*? The Acharonim (Maharit, II, *Y.D.* 1; *Bnei Shemuel*, 41; etc.; see Rambam, Frenkel edition) claim that it is obvious that a pupil's notation was mistakenly introduced into the text but that this

was not Rambam's intention. How, then, can we reconcile the question from *asham taluy*? Indeed, in their opinion, there's an entirely different difference between the types of doubts. First, let's turn to our Gemara.

In our *sugya* the Amoraim disagree as to when a person becomes obligated to bring an *asham taluy*. Some say that anyone who encountered a doubtful prohibition must bring one. Some disagree, that only if a "prohibition was established", one must bring an *asham taluy*. In other words, if someone was faced with two parts of an animal, a piece of meat and a piece of forbidden fat, then he is faced with a definite prohibition – the forbidden fat. He then ate one piece but doesn't know which. In this case he must bring an *asham taluy* because the prohibition was established before the doubt arose as to what he ate. However, a person who ate a piece of meat before he could verify its identity does not bring an *asham taluy* though there's a doubt that he maybe ate forbidden fat, because in the instance of a regular doubt of a prohibition, one doesn't bring an *asham taluy*.

The *asham taluy* as an indication when to be strict concerning a doubt of the Torah: Rambam rules (*Hilchos Shegagos* 8:2) according to those who hold that only in a case of an "established prohibition" one must bring an *asham taluy*. Therefore, his opinion is clear. In every instance of doubt in which the Torah did not rule that one should bring an *asham taluy*, it thus ruled that in this doubt one should be lenient while in a doubt of an "established prohibition", in which the person involved must bring an *asham taluy*, the Torah instructed that this doubt should be treated strictly and he who didn't behave strictly must bring a sacrifice (see 'Aroch HaShulchan, Y.D. 110, *se'if* 14, and *Otzar HaChidushim*, here, in the name of HaGeRiz HaLevi zt"l).

This explanation of Rambam's opinion greatly serves the Acharonim when they want to defend his opinion from different proofs in the Talmud indicative that *sfeika d'oraysa lechumra mid'oraysa*. Once they explain that Rambam adopts the opinion that only in a case of an "established prohibition" is a doubt of the Torah treated strictly by the Torah, nothing prevents us

from contending that the proofs presented against Rambam are according to the second opinion concerning *asham taluy*, which he doesn't adopt as halachah.