

28 Iyar 5782
May 29, 2022



Yevamos Daf 83

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamah of

Tzvi Gershon Ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

Rav said: Rabbi Yosi’s ruling in the Mishna (*that an androgynous entitles his wife to eat terumah*) cannot be correct, because Rabbi Yosi taught differently in the following braisa: Rabbi Yosi said: An androgynous is a being unto itself, and the Chachamim could not determine whether it is a male or a female.

The Gemora asks: On the contrary! Let Rav say that Rabbi Yosi’s ruling in the braisa is not correct because he taught differently in the Mishna?

The Gemora answers: By the fact that Rabbi Yosi deserted his partner (Rabbi Shimon) in the braisa, this would indicate that he retracted from his ruling of the Mishna.

Shmuel said: Rabbi Yosi’s ruling in the braisa cannot be correct, because Rabbi Yosi taught differently in the Mishna.

The Gemora asks: On the contrary! Let Shmuel say that Rabbi Yosi’s ruling in the Mishna is not correct, because he taught differently in the braisa, since we have heard that Shmuel is concerned for the individual opinion when it is a stricter one (*even when it is opposed to a majority opinion*)!?

The Gemora answers: He is only concerned for an individual stricter opinion if a Mishna will not be uprooted because of it; here, where we would be compelled to uproot a Mishna, Shmuel is not concerned for the individual opinion. (82b – 83a)

They said in the school of Rav in the name of Rav: The halachah follows Rabbi Yosi with respect to an androgynous and with respect to grafting. Shmuel said: The halachah

follows Rabbi Yosi with respect to a woman bleeding in labor and with respect to rendering unfit.

The Gemora explains: When Rav said that the halachah follows Rabbi Yosi with respect to an androgynous, he is referring to the halachah cited above (*an androgynous entitles his wife to eat terumah*).

When Rav said that the halachah follows Rabbi Yosi with respect to grafting, he was referring to the following Mishna: One is not permitted to plant a tree, nor bend a vine and insert it into the ground, nor graft during the year preceding *Shemittah*, less than thirty days before Rosh Hashanah (*since it takes thirty days for all types of planting to take root*). If one does plant a tree within thirty days of Rosh Hashanah prior to a *Shemittah* year, the tree must be uprooted. Rabbi Yehudah maintains that a tree takes root within three days. Rabbi Yosi and Rabbi Shimon hold that a tree takes root within two weeks of its being planted. Rav Nachman rules in the name of Rabbah bar Avuha that according to all these opinions, you must add an additional thirty days to satisfy the requirement of adding from the ordinary onto the holy.

The Gemora now explains Shmuel’s statement: When Shmuel said that the halachah follows Rabbi Yosi with respect to a woman bleeding in labor, he was referring to the following Mishna: How many days can a woman’s labor last in order that we will attribute her discharges to the impending childbirth (*and not render her a zavah, which would make her tamei*)? Rabbi Meir says: Even forty or fifty days before childbirth. Rabbi Yehudah says: Only a month prior to childbirth. Rabbi Yosi and Rabbi Shimon say: Labor will never be longer than two weeks.

When Shmuel said that the halachah follows Rabbi Yosi with respect to rendering unfit, he was referring to the following Mishna: One who spreads his vines over the grain of his friend, has rendered the grain unfit on account of kilayim of the vineyard and he will be liable to pay; these are the words of Rabbi Meir. Rabbi Yosi and Rabbi Shimon say: A person cannot prohibit something that does not belong to him. (83a – 83b)

The Gemora inquires: What would Shmuel hold regarding an androgynous?

The Gemora answers: Come and hear from what Shmuel said to Rav Anan: Rabbi Yosi's ruling in the braisa cannot be correct because Rabbi Yosi taught differently in the Mishna.

The Gemora inquires: What would Shmuel hold regarding grafting?

The Gemora answers: Come and hear from what Shmuel said to Rav Anan: The law should be taught according to the one that said: "three and thirty."

The Gemora inquires: What would Rav hold regarding a woman in labor?

The Gemora says: Let this matter remain unresolved (*until Eliyahu comes*).

The Gemora inquires: What would Rav hold regarding rendering unfit?

Rav Yosef says: Come and hear from that which Rav Huna said in the name of Rav: The halachah is not in accordance with Rabbi Yosi.

Abaye said to him: What reason do you see for relying upon this statement? Rely, rather, on that which Rav Adda said in the name of Rav: The halachah is in agreement with Rabbi Yosi!

Rav Yosef answers: Who is it that is referred to by the phrase: At the school of Rav it was stated? It is Rav Huna (as stated in the Gemora in Sanhedrin 17b), and Rav Huna was the one who stated that the halachah is not in agreement with Rabbi Yosi. (83b)

The Mishna had stated: Rabbi Yehudah says: A *tumtum* (*undetermined sex*) that was torn and was found to be a male, does not submit to *chalitzah*, because he is classified as a *saris*.

Rav Ami said: What would Rabbi Yehudah say regarding the *tumtum* of Biri, whom they performed a surgery and tore open his genital covering, and afterwards, he fathered seven children?

The Gemora answers: Rabbi Yehudah would say to you: Go check and see from where his children came (*his wife probably committed adultery*). (83b)

The Gemora cites a braisa: Rabbi Yosi the son of Rabbi Yehudah said: A *tumtum* should not perform a *chalitzah* because he might be torn open and found to be a *saris-chamah*.

The Gemora asks: Is every *tumtum* that is torn open a male?

The Gemora answers: The following is what he meant to say: A *tumtum* should not perform a *chalitzah* because he might be torn open and found to be a female; and even if he is found to be a male, perhaps he will be found to be a *saris-chamah*.

The Gemora asks: What is the practical difference between them?

Rava replied: The practical difference between them is the question of disqualification (of the yevamah for yibum) where other brothers are in existence (besides the



tumtum)¹, and the requirement of chalitzah where no other brothers exist². (83b)

Rav Shmuel bar Yehudah said in the name of Rabbi Abba the brother of Rabbi Yehudah bar Zavdi, who said the name of Rabbi Yehudah, who said it in the name of Rav: A male will be liable for stoning for cohabiting with an androgynous from either of two places (*his anus or his female organ*).

The Gemora asks from the following braisa: Rabbi Eliezer says: One is liable to stoning on account of cohabiting with an androgynous, as with a male. When is this ruling applicable? Only when a male cohabits with the androgynous through his male organ; however, if he cohabits with the androgynous through his female organ, he will be exempt from punishment.

The Gemora answers: This is a matter of a Tannaic dispute, and Rav said his statement according to the Tanna who maintains that he will be liable for either of two places, for it was taught in a braisa: Rabbi Simai stated that in respect of the androgynous, the penalty of stoning is incurred through either of his organs.

The Gemora asks: What is Rabbi Simai's reason?

Rava replied: Bar Hamduri has explained it to me as follows: *And you shall not cohabit with a male, as the cohabitations of a woman*; what male is it that is capable of two manners of cohabitations? Obviously, it is the androgynous.

The Gemora asks: And the Rabbis (R' Eliezer)?

The Gemora answers: Though he is capable of two manners of cohabitation, it is nevertheless written: *with a male* (the anus).

¹ According to R' Yehudah, who regards him as definitely a saris, the yevamah, if the tumtum performed chalitzah with her, is not thereby disqualified from subsequently marrying any of the other brothers, since the chalitzah of a saris is null and void. According to R' Yosi, however, the yevamah is disqualified, since the tumtum might

The Gemora asks: From where, however, do the Rabbis derive the law concerning an ordinary male?

The Gemora answers: From: *and the (male)*.

The Gemora asks: From where do they derive the prohibition in respect of unnatural cohabitation with a woman (in an incestuous relationship)?

The Gemora answers: From: *woman*. (83b)

Rav Shizbi stated in the name of Rav Chisda: It is not in all respects that Rabbi Eliezer maintains that the androgynous is a proper male. Since, were you to say so, such an animal would be fit for a consecrated offering. And from where is it derived that it may not be consecrated? It is from what the Rabbis taught in a braisa: A bird that had been sodomized by a person, or that it was set aside for idolatry or worshipped as an idol, or it was used as a harlot's payment, or if it was exchanged for a dog, or a *tumtum* or an *androgynous*, its carcass (*when a Kohen performs melikah on it – the slaughtering of a bird korban*) render one's clothes impure if he swallowed it (*as is the law of any kosher bird which becomes neveilah*). Rabbi Elozar says: A *tumtum* and an *androgynous* do not render one's clothes impure if he swallowed it, for Rabbi Elozar used to say: Wherever you find (*in the Torah*) '*male*' or '*female*,' you exclude the case of a *tumtum* and an *androgynous* from it. However, in the case of a bird (*korban*), since the Torah does not in that connection mention '*male*' or '*female*,' you do not exclude the case of a *tumtum* and an *androgynous* from it. (83b)

Rav Nachman bar Yitzchak said: We also learned a similar Mishna: Rabbi Eliezer said: *kil'ayim (mixed breed)*, a *tereifah*, a fetus extracted through Caesarean section, *tumtum* and an *androgynous* cannot become consecrated, nor can they cause consecration (*to others*). And Shmuel explained this as

possibly be a male and his chalitzah might be effective.

² According to R' Yehudah, no chalitzah is necessary; while according to R' Yosi, chalitzah must be performed owing to the possibility of his being a male.



follows: They do not become consecrated through *temurah* (the owner illegally attempts to exchange a different animal with the original korban; the halachah is that the *temurah* animal gets the same sanctity as the original one, and both animals must be brought as a korban), nor do they cause consecration by effecting *temurah* (unto others). This proves what has been said. (83b – 84a)

INSIGHTS TO THE DAF HOW SHOULD WE RULE?

The Gemora cites a Mishna which states that if one plants a tree within thirty days of Rosh Hashanah prior to a Shemithah year, the tree must be uprooted. Rabbi Yehuda maintains that a tree takes root within three days. Rabbi Yosi and Rabbi Shimon hold that a tree takes root within two weeks of its being planted.

The Rambam and other poskim all rule in accordance with Rabbi Yosi and Rabbi Shimon. The Sfas Emes questions as to why the Rambam does not rule regarding lands outside of Eretz Yisroel in accordance with Rabbi Yehuda who holds that three days is sufficient. There is a principle that we rule outside of Eretz Yisroel in accordance with the viewpoint which is most lenient in Eretz Yisroel.

The Shagas Aryeh (14) and the Noda Beyehudah (kamma Y”D 88) answer that whenever the Gemora rules explicitly like the Tanna who is stringent, the principle of ruling in Chutz La’aretz in accordance with the lenient opinion does not apply.

DAILY MASHAL NOT A FACTUAL DISPUTE

The Gemora cites a Mishna which states that if one plants a tree within thirty days of Rosh Hashanah prior to a Shemithah year, the tree must be uprooted. Rabbi Yehuda maintains that a tree takes root within three days. Rabbi Yosi and Rabbi Shimon hold that a tree takes root within two weeks of its being planted.

The Chasam Sofer (Y”D 284) comments that this is not a factual dispute as to how many days it takes for a tree to take root for everyone holds that it takes root in three days or less and the facts can attest to this. The argument is regarding a case where for some reason the tree did not take root. After how long can it be stated with a certainty that the tree will not take root any longer.

Interestingly, the Chazon Ish (Shvi’is 17:28) explains exactly the opposite. He also comments that there is no factual dispute amongst the Tannaim and everyone agrees that a tree can only begin to take root within three days. The argument is if that little bit is considered taking root or is a much firmer attachment to the ground necessary.