

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

R' Kahanah's interpretation of the pasuk he cited as the source for the Mishnah's ruling is unsuccessfully challenged numerous times.

2) Purchasing ten fetuses

R' Assi in the name of R' Yochanan rules that one who purchases ten fetuses places them in a pen and tithes them.

R' Elazar responds to a challenge to this ruling from our Mishnah.

R' Elazar's response is unsuccessfully challenged.

A Baraisa presents a case in which a harlot's payment enters the pen to be tithed.

The ruling of the Baraisa is analyzed.

The final interpretation of the Baraisa is understood as consistent with Abaye's statement that a Cuthean harlot's payment may not be used as a korban whereas a Jewish harlot's payment may be used as a korban.

Abaye presents the sources for his rulings.

3) **MISHNAH:** The Mishnah discusses when brothers are obligated to tithe their jointly-owned animals and when they are obligated to give a separate kalbon.

4) Jointly-owned animals

A Baraisa presents the source for the Mishnah's ruling that animals that are jointly owned are exempt from tithing.

This exposition is unsuccessfully challenged.

5) The connection between tithing and the kalbon

R' Yirmiyah elaborates on the connection between tithing and the kalbon.

The necessity for R' Yirmiyah to elaborate on all these cases is explained.

6) Brothers who reconstitute their partnership

The Gemara presents a dispute between R' Anan and R' Nachman about the Mishnah's ruling that brothers who divide the estate and then reconstitute are exempt from tithing.

It is noted that R' Elazar and R' Yochanan debate the same issue. ■

Distinctive INSIGHT

Brothers and partners and the law of ma'aser

האחין והשותפין

The verse (Shemos 13:12) teaches the law of bechor, and it specifically says that the only animals which are included in this halacha are those which are "לך - of yours (singular)." This seems to imply that this mitzvah does not apply to an animal which is owned by partners. Yet, we know that the law of bechor does in fact apply even to jointly-owned animals, as we find in Devarim (12:6), "בכרת בקרכם - the firstborns of your (plural) herds." The Gemara explains that we use the rule "if this law cannot be applied to its context, we apply it to a different context," and we refer the exclusion of jointly-owned animals to the mitzvah of ma'aser. This teaches that ma'aser does not apply to animals which are owned by partners.

The Mishnah begins with the halacha that animals that are owned by brothers and partners are exempt from ma'aser. Rashi explains that the Mishnah is teaching only one halacha, that "brothers who are partners" are exempt. Brothers who inherit their father's flocks and have not yet divided the estate are obligated in ma'aser, because at that point the brothers are not considered as individual buyers who decided to combine their resources. They are direct owners of the one, consolidated estate, and they would be obligated in the mitzvah of ma'aser.

However, after they divide the estate, even if they later decide to join as partners, they now are considered joint owners in these animals. They are therefore exempt from this mitzvah just as are any partners.

In his Commentary to Mishnah (9:3), Rambam cites a text in the Mishnah that reads "brothers and partners" are exempt from ma'aser. The halacha therefore is that brothers and partners are categories which are each exempt. The reason is that the law of ma'aser only applies to animals born in one's own flock. Partners invest and buy animals from the market or they

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REVIEW and Remember

1. How can the Gemara use a pasuk that discusses bechor to teach about tithing animals?
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2. How is it possible to offer an ארתג as a korban?
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3. When are brothers obligated to tithe their jointly owned animals?
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4. What is the point of dispute between R' Elazar and R' Yochanan?
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In memory of my mother, Mrs. Dorothy Lane
by her son Jerry Lane, Oak Park, MI

HALACHAH Highlight

Nullifying a partner's chometz

האחין השותפין

Brothers who are partners

There were once twelve partners in the liquor business. The liquor was chometz, so in advance of Pesach eleven of the partners sold their chometz. The twelfth partner did not. The obvious question was the permissibility of the liquor after Pesach. Sefer Minchas Moshe¹ cited Sefer Tiferes Yosef who permitted 11 parts of the liquor. Since the prohibition against eating chometz that was not sold is Rabbinic one could rely upon Sha'agas Aryeh's position that regarding Rabbinic matters we can employ retroactive clarification - ברירה. Although there are authorities who maintain that one may not rely upon Sha'agas Aryeh's position to consume the chometz, in this case one could also invoke Pnei Yehoshua's opinion that the liquor itself is Rabbinic chometz and as such one can permit eleven parts of the liquor even for consumption.

Tiferes Yosef then entertained the possibility that the twelfth part should be nullified in the other eleven parts and all of the liquor should be permitted but he rejected this suggestion for the following reason. In order for the nullification to take effect it would have to occur on Pesach so that the owner do not violate **בל יראה** and the chometz could be permitted after Pesach. However, the chometz can not be nullified on Pesach because even the eleven parts that were sold to a gentile are prohibited for consumption and nullification requires a prohibited substance to be nullified in a permitted substance. He then notes that since the twelfth partner declared his chometz nullified and it was in the possession of the gentile, the gentile took ownership of that chometz and the twelfth part is at least permitted for benefit.

(Insight...continued from page 1)

join resources and combine their individual animals into one herd.

Brothers inherit animals which were born in their father's possession, and at the moment they inherit it they are as buyers. Both in the case of partners as well as in the case of brothers, the animals are exempt from ma'aser because they were not all born in the possession of an individual person who now owns them. According to this, any animals born in the possession of either partners after they join their resources, or animals born in the combined flock of brothers who join as partners would be obligated in ma'aser, even though these animals are owned by more than one person. This is also the halachic ruling of Rambam (Hilchos Shekalim 1:4 and Bechoros 6:10). According to Rashi, any animal owned by more than one person is exempt from ma'aser.

Minchas Chinuch (Mitzvah 360) writes that even according to Rambam, a lone heir would be obligated in ma'aser, because inheritance itself is not a purchase. Only multiple heirs are considered as multiple buyers and are therefore exempt. ■

Minchas Moshe rejected the possibility of nullifying the twelfth partner's portion for another reason. It is the value of the twelfth partner's share that needs to be nullified and the Gemara in Beitza (38a) teaches that money is not nullified. Maharsham³ suggests that the twelfth part should be nullified. Since the chometz owned by the gentile will become permitted after Pesach but the chometz owned by the twelfth partner will not it can be considered a mixture of permitted and prohibited substances and the prohibited substance is nullified. ■

1. ספר מנחת משה חוקת הפסח דין כ"ג.
2. תפארת יוסף סי' כ"ב.
3. שו"ת מהרש"ם ח"ח סי' ע"ג. ■

STORIES Off the Daf

"This Is Not a Mishnah!"

זו אינה משנה

The rule about dissenting opinions, that **אלו ואלו דברי אלקים חיים**, that both are the word of God, can be very confusing. It is very difficult to fathom how two opposing opinions can both be correct. The Ritva explains this in a wondrous manner: "When Moshe received the Torah at Sinai, God provided him with forty-nine perspectives to declare a matter pure, and forty-nine to declare it impure. Moshe Rabbeinu asked, 'Master of the universe,

why are these necessary?' God answered, 'So that they should be transmitted to the sages of every generation, that the law will be determined by them in accordance with the needs of their time.'"¹

This teaches that there are many valid paths to genuine Torah observance, all of which were received by Moshe on Sinai. But of course not all statements made are the words of the living God. As we find on today's daf, sometimes a statement thought to be a mishnah is no mishnah at all. This means that sometimes what appears to be part of the chain of tradition is actually not and needs to be clarified as such.

Rav Menachem Mendel of Rimanov, zt"l, explains how the baalei mishnah

reached a state in which they could draw down an authentic mishnah. "The baalei ha'mishnah explain how the oral Torah emerges from the written Torah. They could only draw down a genuine mishnah by completely nullifying all of their physical senses and immersing themselves absolutely in learning Torah. Once they reached this state they touched the inner essence of Torah and could determine the halachah and set down various mishnayos. When the sages perceived that a certain statement was not reached through this arduous process they declared it incorrect with a pithy statement: **זו אינה משנה!**" ■

1. ריטב"א, עירובין, דף י"ג
2. אילנא דחיי, פרשת בשלח ■