

**Daf Hashvuah Gemara and Tosfos Beitza Daf 37**  
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**Daf 37a**

The Mishna lists that you can't do Chalitza or Yibum (as 'voluntary'). The Gemara asks: are you not doing a Mitzvah? The Gemara answers: it's not needed but for the case where there is an older brother, since the main Mitzvah is for the oldest brother to make Yibum.

The Gemara concludes: the reason for all of these (judging, Kiddushin, Yibum and Chalitza) is because you'll come to write (the judge's conclusion, and documents of Kiddushin and documenting the Chalitza and Yibum).

The Gemara lists for Mitzvah: you can't make items Hekdesh, you can't pledge an Erech or pledge a Cherem. The Gemara says (they're forbidden) because (they're similar) to business.

**Tosfos quotes Rashi: that it's similar to business, since it goes out of your possession and goes into Hekdesh's possession. He explains that (the prohibition of) business is forbidden from a Pasuk, as it says "(refrain) from finding your wants and from speaking things"**

**Alternatively, business is only forbidden since it may lead you to write a sale document. If you'll ask (if the prohibition is only rabbinical in nature) forbidding making Hekdesh is making a decree for a decree (which we don't make), we can answer that we consider it all part of one decree. (I.e., Hekdesh was always part of the original decree of not doing business.)**

The Mishna lists that you can't take off Trumah and Maasar. The Gemara asks that this is simple (so why list it?) The Gemara answers: it's only needed for the case that you want to separate it in order to be able to give it to a Kohain that day. (I might say it's permitted because it doesn't look like you took it off to fix the Tevel, so we're taught otherwise.)

The Gemara says: this only applies to Tevel that was yesterday Tevel (and you should have separated them yesterday). However, produce that became Tevel today, like when you make dough (that becomes Tevel for Challah), you may separate the Challah and give it to a Kohain.

The Gemara asks: are those cases labeled 'voluntary' and 'Mitzvah' (and not listed as the first cases labeled as a Shvus [a rabbinic prohibition for Shabbos]) are only voluntary and a Mitzvah and not a Shvus too?

R' Yitzchok answered: it's listed as "we don't need to say" format. We don't need to say about a regular Shvus that it's forbidden, but even a Shvus that's voluntary (i.e., a quasi-Mitzvah) is also forbidden. And, we don't need to say that a 'voluntary' Shvus is forbidden, but even a Shvus that has a full fledge Mitzvah is forbidden.

**New Sugya**

The Mishna concludes that there is no difference between Shabbos and Yom Tov but what is necessary for food preparations. The Gemara asks: but, haven't we learned that you can only lower fruits through a skylight on Yom Tov (to save it from being rained on) and not on Shabbos? (So, we see that there are other differences.)

R' Yosef answers: it's not difficult, this is R' Eliezer (who is stringent not to have leniencies on Yom Tov to save items) and the other is R' Yehoshua (who's lenient). As we learned in a Braisa: if an animal and its offspring fell into a pit on Yom Tov (and it's forbidden to Shecht both of them on the same day) you can only lift out one of them in order to Shecht it, and then Shecht it. And for the second one (that's no longer fit to Shecht today) you must provide its necessities in its place (in the pit) so it shouldn't die. R' Yehoshua says that you may lift the first one in order to Shecht it, but don't Shecht it. Then you make a trick and lift the other one out (as to say; perhaps the second animal would be better). Then you have the choice which animal to Shecht.

Abaya rejects this. Perhaps R' Eliezer only was strict there since you could provide its necessities (where it is). However, in our case where you can't provide for it (i.e., save it) where it is, then he would not (forbid it). R' Yehoshua only said his opinion where you can make such a trick (where it looks like you did it for Yom Tov), but not when there is no such trick available to do.

Rather, R' Pappa answers: it's not difficult, one is Beis Shammai (who is stringent on Yom Tov) and one is Beis Hillel (who is lenient). As we taught: Beis Shammai says you can't carry out a child or a Lulav or a Sefer Torah on Yom Tov and Beis Hillel permits it.

The Gemara asks: perhaps they're not similar, for perhaps Beis Shammai only forbids carrying but not just moving items (that's only rabbinic).

The Gemara answers: isn't the whole reason to forbid moving certain objects is because it facilitates carrying (by being the first step of carrying).

**Tosfos asks: we say in a Mishna in Megila: there is no difference between Shabbos and Yom Tov but preparing for food. Why don't we ask the same question there from lowering fruits through a skylight etc.?**

**Another question: why didn't the Gemara ask right away from Beis Hillel's opinion who permits carrying on Yom Tov if it's not needed (for food preparation)?**

**Tosfos answers: The Gemara there didn't ask from our Mishna since they knew that we could easily answer that the Mishna that compares Yom Tov to Shabbos refers to Torah laws, but there may be many rabbinic laws that they differ. However, our Mishna refers to rabbinic laws, therefore, they didn't ask from Beis Hillel, since carrying is a Torah law. Even so, it still fits well our Gemara's conclusion that our Mishna is Beis Shammai (although they refer to carrying which is a Torah law) since they're stringent by carrying not for the need (of food), they'll also will be stringent regarding moving forbidden objects that are rabbinically prohibited, as the Gemara concludes, they forbade moving objects because it will lead to carrying.**

## **New Sugya**

Animals and utensils can be brought in the same area that they're owners may walk (within their T'chum). If you hand them over to your shepherd or son, they still have their owners T'chum. (Items from an estate) if a utensil is designated for one brother's use, it has the T'chum of that brother. If it's not designated to one brother, then you can only bring it to an area that's common to all of their T'chumim.

If someone borrows a utensil from his friend, if he borrowed it from Erev Yom Tov, it gets the borrower's T'chum. If he borrowed it on Yom Tov, it has the lender's T'chum. The same applies to a woman borrowing spices, salt or water for her dough, it needs to only be carried within the common area of the lender

and borrower's T'chum (since each one owns an ingredient in the dough). R' Yehuda says that you don't need to worry about the T'chum of the one who provided water, since they're no longer tangible in the dough (since they're completely absorbed in the flour).

### **Daf 37b**

The Gemara says: let's say our Mishna is not like R' Dosa. As R' Dosa, or Abba Shaul, said: if someone buys an animal from his friend on Erev Yom Tov, even if it wasn't given over until Yom Tov, it gets the T'chum of the buyer. If someone handed over his animal to a shepherd, even if it wasn't handed over until Yom Tov, it gets the T'chum of the Shepherd, (and our Mishna says that it still has the owner's T'chum).

The Gemara answers: it can also be like R' Dosa, and it's not a contradiction. (R' Dosa) refers to one shepherd (and you know that you must be giving it to him). (Our Mishna) refers to a case where you have two shepherds. (Since you didn't decide who you'll give it to, you can't assume either shepherd, so it falls on the default position, which is the owner's T'chum). This is also the implication of our Mishna (that it refers to having two shepherds) since it says that you give it to your son or shepherd, (which connotes that you had the choice to give it to either). This is a proof.

Rabbah b. Chana quotes R' Yochanan that the Halacha is like R' Dosa. The Gemara asks: but doesn't regularly R' Yochanan Paskins like an unnamed Mishna (and our Mishna disagrees with R' Dosa) and says that animals and utensils has the owner's T'chum. The Gemara answers: didn't we established R' Dosa is saying by one Shepherd and our Mishna is by two shepherds.

### **New Sugya**

Two people borrowed one shirt jointly. One wanted to wear it to the Beis Medrish in the morning, and the other wanted to wear it to a party in the evening. One of them put an Eiruv to the North and the other put an Eiruv to the South. (Since the shirt has the T'chum of both of them jointly, you can only wear it to where they can both walk.) Therefore, the one who made an Eiruv to the North can only wear it as far as the one who made an Eiruv to the South can walk. The one who made the Eiruv to the South can only wear it to the South as far as the one who put an Eiruv to the North can walk. (If they both put their Eiruv at the end of two thousand Amos, and neither can walk a step in the other direction) you may not move the shirt from its place.

### **New Sugya**

If two people bought a barrel (of wine) and an animal jointly, Rav allows the barrel (i.e., the wine, to be carried totally in one partner's T'chum after they split it) and forbids the animal. Shmuel forbade the barrel too (since he doesn't hold of Brieria, and some of the wine you hold originally belonged to your partner).

### **Tosfos explains that Shmuel doesn't hold of Brieria.**

**Tosfos asks: it says in Gitten that Shmuel enacted by a dying man's Get to write (a condition) that; if I die, it should be a Get, and if I don't die, it shouldn't be a Get. So, when he dies, it's a Get. So, we see he does hold of Breira (that we say it was a Get when it was given, even though we didn't know that it was at that time until it was verified later when he dies). After all, the Gemara there in the beginning of Perek Kol Haget implies this (that it's dependant on Breira).**

**Tosfos answers: that's only (he holds of Brieria) when the verification comes from something**

**that others choose, but when it's dependent on his own choice like here, (that he chooses which share he'll take), he doesn't hold of Breira.**

The Gemara asks: what's the reason of Rav? After all, if he holds of Breira, (and we consider all that he took was always destined to be his share) then he should permit the animal too. If he doesn't hold of Breira, he should forbid the barrel (of wine) too.

The Gemara answers: really, he holds of Breira, but the animal case is different since both shares (while the animal is alive) is nourishing from (the other share) that has a different T'chum, (so, we view your share has some of the other one's share mixed in). R' Kahana and R' Assi asked Rav: if you weren't worried that (because each share nourishes each other) that it should have a problem of Muktzta, why are you worried about it regarding T'chumim? Rav remained quiet and didn't answer.

**Tosfos brings Rashi who explains: (we assume so much as if) we can testify that each one sets asides from his mind from using his friend's share. So, if he wants to eat the animal here (without moving it so it wouldn't have any problem with T'chum) you don't forbid it because of Muktzta although each share takes nutrition from the other's share and there should be Muktzta. Yet, you forbid for each one to move their share through his whole T'chum because they take nutrition. If you're worried about this taking nutrition (for T'chum), you should also worry about it regarding Muktzta.**

**Tosfos asks: why do you consider this taking nutrition from Muktzta? After all, you're permitted to eat from your friend's share if he offers it to you. As we said earlier, you can send someone a gift of wild and domesticated animals and fowl, whether they're alive or Shechted.**

**So, R' Shmuel explains: the prohibition of Muktzta comes from the animal that continues to grow fatter on Yom Tov. So, since you didn't forbid it, despite holding of R' Yehuda who holds of Muktzta. Yet, for the prohibition of T'chum you're worried that each one's share takes nutrition from the other one's share to forbid (moving it).**

The Gemara asks: what's the conclusion (if there is Breira or not)? R' Hoshia says there is Breira and R' Yochanan holds there is no Breira. The Gemara asks: is it true that R' Hoshia doesn't hold of Breira? After all, we have a Braisa; if you have a corpse in a house and it has many openings (where it can be carried out) under all of them, it's Tamai. If you open up one of them (to carry out the corpse) then it's Tamai, and all the rest are Tahor. If you decided to remove it through one of them, or one was already the size of four T'fachim square, it saves the other openings for Tumah. Beis Shammai says that this is only so when you intended to remove the corpse through that opening before he died. Beis Hillel says that it helps even after he died and R' Hoshia explained it that it only helps from this point on in time but not retroactively. (So, we see R' Hoshia doesn't hold of Breira to consider that opening chosen from before his death). The Gemara answers: we must switch their opinions: R' Hoshia says there is no Breira and R' Yochanan holds there is Breira.

The Gemara asks: doesn't R' Yochanan say that brothers that split an estate, we consider them to be buyers of their shares (i.e., we really own everything jointly, but I'll sell you my share of what you take for your share in what I take) and therefore, it all comes back (as jointly owned) by Yovel (when all purchased lands go back to their original owner. So, we see that he doesn't hold of Breira and doesn't consider what each one took for his share was originally destined to be his inheritance.)