

Daf Hashvuah Gemara and Tosfos Beitza Daf 5
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New Sugya

An egg laid on the first day of Rosh Hashana, Rav and Shmuel say it's still prohibited on the second day, (since they're definitely one day). As we learned in a Mishna: originally, the Bais Din accepted witnesses testifying about the new moon the whole day (of the thirtieth of Elul, perhaps they'll turn it into Rosh Hashana). Once, witnesses delayed coming (until after they brought the afternoon Tamid) and they ruined the Leviyam's song (that they sang the weekday Shir, and not the one for Rosh Hashana).

Daf 5a

Tosfos explains: they sang the weekday Shir by the afternoon Tamid, since they didn't expect witnesses to show up afterwards and they treated it as a weekday. However, after they showed up, they found out that it was really a holy day (and they sang the wrong Shir).

However, Tosfos explains: don't say that this refers to the song of the morning Tamid, since, even if the witnesses came before the morning Tamid, they would sing the weekday Shir. (They enacted to always sing the weekday Shir in the morning), as the Gemara in Rosh Hashana says, since witnesses usually didn't come so fast.

R' Peretz asks: since it would also ruin bringing the Korbon Musaf, why are we only concerned that it ruins (an aspect of the) the afternoon Tamid? After all, when the witnesses came, they already brought the afternoon Tamid, so you can no longer bring the Musaf. As we have the Drasha "you should offer on it (i.e., the afternoon Tamid) the fats of the Shlomim," to mean that it is the end {'Hishlim,' from the root of 'Shlomim'} of all the Korbonos, (i.e., the afternoon Tamid is the last Korbon brought). So, you can't bring any Korbon (including this Musaf) after the afternoon Tamid.

R' Peretz answers: they could bring the Musaf even if the witnesses only came after the afternoon Tamid, because we make an exception for Korbonos that you can't leave for the next day. As we see this concept by someone who didn't bring his Korbonos to make himself Tahor, and it's Erev Pesach after the afternoon Tamid. (He can't bring his Korbon Pesach without bringing his Korbonos to make him Tahor), so we bring his Tahor-making Korbonos after the Tamid so that he can eat his Pesach at night.

Alternatively, we can answer: that the Asei (positive command) that applies to the community (like bringing the Musaf), is so great that it supersedes the Asei of not bringing Korbonos after the Tamid. We find

similarly that we bring the Korbon Pesach after the Tamid. Since it's such a strong Asei that it carries the punishment Kareis (for not bringing it), it supersedes the Asei of not bringing Korbonos after the Tamid.

There are those who answer: when they brought the Tamid, they brought it on condition that, if witnesses come to make it Rosh Hashana, it would be the Musaf. After that, you can bring the other Korbonos of Musaf and the real Tamid. (Therefore, the only problem is the Shir said with that Korbon.)

However, Tosfos rejects this, since it says explicitly that the weekday Shir was sung with the afternoon Tamid, (and according to this, it was sung with the Musaf).

So, they enacted not to accept testimony only until Mincha time, (the time they brought the afternoon Tamid). In the case when they came afterwards (it's too late, and the first day of Tishrei will be tomorrow. However, they can't do Melacha for the rest of the day, so not to make light of keeping the first day as Yom Tov.) Rather, they kept both days as Rosh Hashana. (This shows that they didn't only keep two days because of the Safeik, since the end of the first day is no longer a Safeik, but they kept it from a rabbinic enactment to keep two days. Therefore, we consider it as one long Rosh Hashana, and an egg laid on the first day is forbidden on the second day.)

Rabbah says: from after the destruction of the Beis Hamikdash, when R' Yochanan b. Zacai enacted to accept testimony after Mincha (since there is no more service in the Beis Hamikdash that a late testimony would ruin), eggs laid on the first day would again be permitted on the second day. (After all, this enactment [to keep the latter part of a day even if we know that it can't be Rosh Hashana, and by that making it into one day], is no longer applicable. Therefore, the reason we keep both days is because of the Safeik, so the egg laid one day is permitted no matter which day is the real Rosh Hashana.)

Abaya asked Rabbah the following: doesn't Rav and Shmuel both say that the egg is prohibited (on the second day? So, how can you argue with them?)

Rabbah said back: I mentioned that R' Yochanan b. Zacai permitted it (who is an early Tanna) and you're bringing me a proof from Rav and Shmuel (Amaraim)?

The Gemara asks: how does Rav and Shmuel explain that Mishna (that R. Yochanan b. Zacai returned it back to its original status of being two Safeik days)?

The Gemara answers: he only reverted it for people living in Israel. However, the people of the Diaspora still keep Rosh Hashana as one long day.

Tosfos quotes Rashi: the people from Israel, who make Rosh Chodesh based on witnesses seeing (the new moon) and (originally) made only one day Yom Tov (if witnesses came before Mincha), and

sometimes two days if the witnesses came after Mincha. So, their situation changed after R' Yochanan b. Zacai's enactment, since now they only keep one day even if the witnesses come after Mincha. Therefore, we'll say that, even when witnesses don't come at all and they make two days, (it changes) that they only keep those days as a Safeik, and they're two separate days, since they're not doing according to the original custom (of keeping two days if witnesses come after Mincha). Therefore, the eggs are permitted to them.

However, they're prohibited to those who live in the Diaspora, since they keep the same two days just as they did originally, and nothing changed because of R' Yochanan's b. Zacai's enactment. Therefore, since they kept two days (when they made them into one day) and they never stopped in-between to make a one day Yom Tov, therefore, the original enactment is still upon them to treat it as one day. We don't say that it's only a Safeik, since they don't know whether witnesses came on the first day or not, but rather they're keeping two days as the original custom (to treat it as one day) since their custom of keeping two days never changed (from when they started keeping two days).

Tosfos asks: R' Yossi in Eirubin says that an egg laid on the first day of Rosh Hashana is forbidden on the second day. Why should he forbid it? After all, he lived in Israel after the destruction of the Beis Hamikdash, therefore, they should have the status of two separate days. Don't answer that he's only saying what the Halacha was before the destruction, (since it doesn't have any implications to us, why should we mention it?) After all, what happened, happened. Also, don't answer that he's only saying the Halacha to the people of Babylonia. After all, since he lived in Israel, why should he say the Halacha for those in Babylonia?

Tosfos answers: R' Yossi is saying what the Halacha was (in his region) before the destruction. However, we can't ask that, what happened, happened (so who cares), since there is still implications nowadays for the people of Babylonia.

R' Yosef says: even after R' Yochanon b. Zacai's enactment, an egg that was laid on the first day is forbidden on the second day. After all, the rabbi committee took vote to prohibit it, (so, it's now law), and you need a specific count (i.e., vote) by another rabbinic committee to permit it. Where do I know this from? We see a Pasuk that (after the Torah giving, where Hashem forbade relations), Hashem needed to say "return to your tents" to allow it again, (although I would assume that after the Torah giving, the reason not to have relations doesn't apply, and yet you still need permission to resume.)

Also, the Torah needed to say (after the Torah giving) that you'll be permitted on Mount Sanai after the Shofar blow (and we just don't say that it should be permitted, since the reason not to ascend is not applicable anymore).

Tosfos quotes those who say, if they make an excommunication on

someone until Pesach (or some other time), that, when it reaches that time, they need to convene again to remove the excommunication although the allotted time had passed. After all, Hashem only prohibited relations for them (for those three days until) the Torah giving, and we should assume that, after the three days which is after the Torah giving, they could resume relations, yet we see they needed Him to specifically permit it.

However, Tosfos rejects this. After all, there was no time limits given to this prohibition. (Although it says to prepare for three days) it means “prepare yourself for an event that will happen in three days.” (This is because it’s written with a ‘Lamed’ to say “for three days”), however, if it would be written “prepare three days” (which connotes that it’s only forbidden for those three days), then we would say, the same way the Torah needed to allow it after the three days, you would need to convene to permit (this time-limited) excommunication. However, since it doesn’t say this, so saying “don’t touch your wife” implies that it’s forbidden forever, and that’s why you need the Torah to specifically permit it afterwards. However, when you set a time limit for an excommunication, as soon as the time is up, it’s automatically permitted and doesn’t need another convening to permit it.

We also see a Mishna that says that they enacted to bring to Yerushalayim all the produce of a vineyard’s fourth year that’s grown within a day’s travel, (although the Torah allows one to just redeem it and buy food with the money in Yerushalayaim). The boundaries of a day’s travel to Yerushalayim is the city Eylis on the South and Akravas on the North. Lud to the West and the Jordan River on the East. R’ Yochanan said the reason for this is in order to have the marketplaces of Yerushalayim surrounded in fruit.

On that, we have a Braisa that says that, (after the Beis Hamikdash’s destruction), R’ Eliezer had fourth-year grapes that grew in the town of Tabi, which was more East than Lud (which is within the above boundaries).

Daf 5b

(Since it was too difficult for him to bring it to Yerushalayim), he wanted to make them Hefker for the poor (so they can take the fruit to Yerushalayim).

Tosfos asks: (there is an argument whether the first Kedusha placed on Yerushalayim was only temporary [until the destruction of its walls] or was it forever.) According to those who hold that the Kedusha was temporary and wasn’t forever, what did the poor gain by bringing it to Yerushalayim? After all, it had no walls, so they can’t eat them anyplace without redeeming them first.

Tosfos answers: it fits well to Rashi who holds that R’ Eliezer’s personal opinion is that the Kedusha of Yerushalayim is forever, therefore, this Hefker is consistent to his opinion, since he holds that

they may bring the fruit to Yerushalayim and eat the fruit there without redeeming them.

Alternatively, even if he held that its Kedusha is not forever, still the poor gained. After all, you can technically redeem holy items worth a hundred Zuz for a single Prutah. (Although it was originally prohibited to take advantage of Hekdesh in this way), but nowadays, (where Hekdesh doesn't gain by the redemption), we are allowed to redeem it so.

However, his students said that his colleague, R' Yochanan b. Zacai, already convened a Beis Din to permit (redeeming it anywhere). This proves that it's only permitted if there was another convention of rabbis to permit it. Without that convening, it would remain prohibited (even though the reason for beautifying the marketplaces of Yerushalayim doesn't apply after its capture, since it will only benefit the non-Jewish captors.)

The Gemara asks: why do we need these three proofs? (why not just bring the first proof?)

The Gemara answers: (if it was only for the first proof that) it says "be prepared for three days, don't touch your wife" (which shouldn't apply after the Torah was given). Why does it say "tell them to return to their tents?" to teach us that all prohibitions made with a convention need another convening to permit it (then I would say it is not a strong proof. For, perhaps you'll explain "returning to their tents" as a commandment, not as permission), that they must go back to their wives and keep their commitment to have relations with them in the proper times. Therefore, we need the next proof.

It says "at the blow of the Shofar, you may ascend Mount Sinai." Why do we need it if it already says "that the sheep and cattle shouldn't graze on that mountain," which connotes only when the Shchina is there (as we'll explain later)? It must teach us that, to permit an official prohibition, you need another proclamation to permit it.

Tosfos explains the implication "that the sheep and cattle shouldn't graze on that mountain," means only when the Shchina is there: since it says "that mountain," it implies only as is, with its holiness, i.e., while the Shchina is upon it, but not after the Shchina left. If so, why do we need a specific Heter through the Shofar blowing? (It must teach us that you always need a second proclamation to permit it.)

Tosfos asks: the Pasuk "that the sheep and cattle shouldn't graze on that mountain" was said by the second Luchos (after the sin of the golden calf), and the Pasuk of permitting through the Shofar blowing was said by the first Luchos. (So, at that time, we didn't yet have the condition that the prohibition of ascending is dependent on whether the Kedusha is still on "that mountain.") Therefore, we need the Heter of the Shofar blowing, since by the first Luchos we have no other implications to permit the ascent.

Rashi answers: the Shchina didn't leave the mountain the whole time until after the building of the Mishkan, until the twentieth of Iyar, when the holy cloud lifted. Therefore, the permission that came from the Shofar blowing didn't come until the second year, and by that time, we already had the condition of "that mountain," that it's only forbidden while the mountain had the Shchina on it.

However, Tosfos rejects this answer. First of all, the Pasuk implies that the Shofar-blowing Heter happened on the day of the Torah giving. After all, there was only blowing by the first Luchos during Sivan, therefore, it's impossible to say that the Heter of the Shofar blowing happened a year later, in the second year.

Secondly, (if the implications of "that mountain" means "as long as the Shchina is there"), then it's as if there is a built in end to the prohibition, and we already explained by the timed excommunication, it automatically ends by that time, and doesn't need another convening to permit it.

Rather, Tosfos explains: it's logical to say that the Torah only prohibited going up on the mountain because of the Shechina, therefore we don't need a Shofar blow to permit it (unless you'll always need a specific Heter to permit an established prohibition).

Tosfos is bothered: why do we need to bring the Pasuk "that the sheep and cattle shouldn't graze on that mountain" to explain the prohibition? After all, we refer to the prohibition of the first Luchos.

Tosfos answers: we bring it so we shouldn't say that the Shofar blow will permit even while the Shchina was there, which we wouldn't know from logic, and then we don't have a proof to need another convening for a prohibition even when it's logical that it shouldn't apply anymore. Therefore they bring the Pasuk by the second Luchos, where there was no Shofar blowing, so the prohibition depended on when the Shchina was there. Therefore, we should assume the same by the first Luchos, that ascending was forbidden as long as the Shchina was there, even after the Shofar blowing stopped. Therefore, the Heter of the Shofar blowing is only after the Shchina left, which we should permit from logic. Therefore, we say that the Pasuk needed to permit it to teach us that regularly you need an explicit Heter to permit an established prohibition.

If it only said the P'sukim, I might say that this rule only applies to Torah laws, but for rabbinical laws, perhaps it's permitted when logic dictates that it should be permitted. So, we bring a proof from the rabbinic enactment of bringing the grapes to Yerushalayim, that he only was allowed to redeem it after his colleague convened to permit it.

(So, therefore, R' Yosef says that an egg laid on the first day of Rosh Hashana remains prohibited on the second day, since they never convened to permit it.) If you suggest that R' Yochanan b. Zacai also convened to permit the egg too, that isn't true. Rather, he only convened to accept the testimony later, and not to permit the egg.

However, Abaya argued. He reasoned: did they ever officially prohibit the egg? No, it was just the outcome of the enactment of not accepting the testimony. Therefore, when they didn't accept the testimony, the egg was prohibited. Once they eliminated the enactment of not accepting testimony, the egg would become permitted too.

R' Ada and R' Salmon say that the egg is still prohibited after R' Yochanan b. Zacai's enactment (to accept witnesses all day. Although there is no reason now to forbid the egg), perhaps the Beis Hamikdash will be rebuilt (and we'll go back to not accepting testimony after the afternoon Tamid) and people will think that eggs would still be permitted, since they ate them in years past, and they wouldn't understand the difference that, in the past, it had the status of two separate days, and now it has the status as one long day.

The Gemara asks: if so, we should not allow testimony all day too. After all, perhaps the Beis Hamikdash will be built and Beis Din will accept testimony all day, and after all, they accepted it last year.

The Gemara answers: we can't compare the two. After all, testimony is in the hands of Beis Din, (who are learned and know the reasons, therefore, they won't make such a mistake.) The egg case happens to everyone, even to commoners who won't understand the difference, so they'll end up making such a mistake.)

Rava says that the egg is still prohibited after R' Yochanan b. Zacai's enactment (to accept witnesses all day. Although there is no reason now to forbid the egg). After all R' Yochanan b. Zacai would agree if the witnesses show up after Mincha that both days are (one long day of being) holy.

Tosfos asks: didn't R' Yochanan accept testimony the whole day, (even after Mincha)?

Rashi answers: they only accepted the testimony regarding the count of the days of the month (that we'll consider the first day the first of Tishrei), so that the future Yomim Tovim of Tishrei will fall out according to that count. However, they never uprooted making a two-day Rosh Hashana (as one long day) the same way they made it when they didn't accept testimony after Mincha.

However, Tosfos disagrees with this. After all, why say that they only accepted the testimony regarding the other Yomim Tovim, but regarding Rosh Hashana, we consider the two days as one holy day to make the egg forbidden. Wouldn't it be more logical to say that, once

they accepted the testimony, they accepted it regarding everything, and that the two days are (separate days of holiness) and are only kept because of the Safeik, and an egg laid one day will be permitted on the second day?

So, it makes more sense like R' Chananal's text that reads, "he agrees that if witnesses don't come from after Mincha (i.e., doesn't show at all), then they made the two days one long holy day, that an egg laid on the first day is forbidden on the second day.)"

However, Tosfos asks: although witnesses didn't show up and we make two days, (but, once they would accept testimony the whole first day, why shouldn't it revert to a regular two day Yom Tov?) Then, we should only keep both days through a Safeik, where the egg laid the first day is permitted on the second day.

Tosfos answers: (it doesn't mean that witnesses never showed up at all, but) it means the witnesses didn't come right after Mincha, but right before nightfall. There is no time to properly accept the testimony (so you know at that point that they won't make the day into Rosh Hashana), yet there is time to do some Melachos. However, (in order not to make light of the first day), they forbade doing Melacha the whole first day. (So, we don't keep the days only for the Safeik, since you keep the end of the first day, even if it's sure not to be Rosh Hashana), So it's an enactment to make it one holy day. (Although it says that they accept the testimony the whole day, it wasn't exact), but only before Mincha, or a little after Mincha, (but not very close to nightfall).

However, Tosfos explains: once we have this explanation, we can use this explanation according to our original text "that he agrees that if they come after Mincha" (i.e., a long time after Mincha, like before nightfall), they make both days holy.

Tosfos concludes: perhaps we can answer R' Chananal's explanation (*see Maharam*) (that really, when witnesses don't show up at all and we make two days, they enacted as if they were one long day. This, that we asked, that it should revert to a regular two day Yom Tov which is only kept because of the Safeik, we'll answer that it's an extension of the original enactment.) Just as, when they made two days Rosh Hashana before the Beis Hamikdash's destruction, they made it to be one long day, they enacted the same way after the Beis Hamidash's destruction, when they keep two days, it's one long holy day.

The Gemara concludes: Rava Paskined like Rav in those three cases (of eggs laid on Yom Tov) whether he's lenient (like by the two days Yom Tov in the Diaspora) or whether he's stringent (like when Yom Tov is next to Shabbos, or by the two days of Rosh Hashana).