

Daf Hashvuah Gemara and Tosfos Beitza Daf 36
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Daf 36a

Over there (by Shabbos), we learned that “but not a storehouse,” and Shmuel says that it means that you can’t remove all the straw in the storehouse, since (by revealing the dirt floor) you might come to fill up holes in the ground (which is building). What’s the Halacha over here on Yom Tov (could you empty all the fruit to lower into the skylight)? Do we say that they were more stringent by Shabbos, which is a stringent prohibition? However, since Yom Tov is a more lenient prohibition, it would be permitted. Or do we say; if we were stringent by Shabbos where there will be a stoppage of learning in the Beis Medrish, of course we should be stringent here where there is no stoppage of learning.

Over here it says that you may lower the fruits on Yom Tov through a skylight. R’ Nachman says that you can only lower it through a skylight on the roof that it’s on, but you can’t move them from roof to roof. We have a Braisa like that; you can’t carry them from one roof to another, even if they’re both on the same level. What’s the Halacha by Shabbos? Do we say that we only forbid here since it’s Yom Tov, which is more lenient, so you might come to totally disgrace it (by being too lenient by it). However, by Shabbos, since it’s more stringent and people won’t come to disgrace it (to be too lenient) it’s permitted. Or do we say, here we don’t allow it despite that it will ruin your fruit, so, of course, they wouldn’t allow it by Shabbos where there is no loss of fruits.

On our Mishna, it’s taught that you can’t (lift them to) lower them with a rope through a window. (We only allow through a skylight that you don’t need to bother to lift them to get the fruit through). You also can’t carry them down stairs. What’s the Halacha there by Shabbos? Perhaps they only forbade this here where there is no stoppage of learning in the Beis Medrish, but it will be permitted by Shabbos where the case is that there would be stoppage of learning in the Beis Medrish. Or, perhaps, since we say you can’t do it here where there is a loss of fruit, of course we wouldn’t permit there since there is no loss of fruit. The Gemara concludes that these inquiries remain unsolved.

New Sugya

The Mishna says that you may cover fruit (to protect from rain. Ulla says that you may even cover piled up bricks. R’ Yitzchok says that we only allow it by fruit that is fit to eat. This is R’ Yitzchok being consistent to his opinion that you may not move utensils unless it’s to facilitate objects that may be moved on Shabbos (non-Muktza).

The Gemara asks: our Mishna says that you may cover fruits with utensils. This implies that we only allow it to cover fruit but not a pile of bricks.

The Gemara answers: really, we permit covering a pile of bricks. (We only mentioned fruit) since that’s the subject we wrote about in the beginning of the Mishna, that you may lower fruit. Therefore, they also wrote in the second part of the Mishna about covering fruits.

The Gemara asks: the next items listed is jugs of wine and oil (which are also permitted items). The Gemara answers; we refer to a case where they're still Tevel.

Tosfos asks: didn't we already say earlier that we consider Tevel as not Muktzta, since, if you transgress and take off Maasar, the fruit is fixed. We see similarly in Shabbos that we don't consider it as if you (transgressed) removing a utensil from its prepared state (by allowing Muktzta to fall into it), by having Tevel fall into it, since it's fit (if someone would take off Maasar). Therefore, we can make the same implication: you may only cover Tevel but not a pile of bricks.

Tosfos answers: Ulla can still say that it's considered as something that's not allowed to be moved on Shabbos, since you can't move it before you take off the Maasar. As we see in Shabbos, that you can't remove Tevel from the storehouse, as the Mishna says "but you may not (take out) Tevel."

The Gemara brings a proof: this also makes sense, because if you think that they refer to permitted jugs of wine and oil, (why would you need to add these cases?) After all, we already listed fruit. The Gemara rejects this as a proof: we need the cases of jugs of wine and oil. After all, (if only from the case of fruits) I might think we only allow this in the case where it will lead to a great loss (where the fruit will rot). However, I might think that we're not concerned by a small loss (where the rain will only dilute the wine and oil), so we're taught otherwise.

The Gemara asks: the Mishna says that you may put a utensil under a drip, (assuming, even if the water is unusable). The Gemara answers: we only refer to a drip of usable water.

The Gemara brings a proof: you may spread a mat on bricks on Shabbos (though they're Muktzta). The Gemara answers: we refer to bricks leftover from building which are designated to sit on (and is fit to sit on).

The Gemara brings a proof: you may spread a mat over stones on Shabbos (although they're Muktzta). The Gemara answers: we refer to pointy rocks (that are not Muktzta) since they're fit to use in a bathroom (like we use toilet paper).

Another proof: you may spread a mat over a bee-hive on Shabbos, during the sun, to protect from the sun, during the rain, to protect from the rain, as long as you don't intend to capture (the bees). (So, you can move mats to cover the Muktzta bee-hive.) The Gemara answers: it refers to a hive with honey (which is not Muktzta). R' Ukva b. Mishna asked R' Ashi: (assuming that it means during the sunny days and rainy days, i.e., the summer and winter), I can understand this answer in the summer, since there is honey there, but what could you say for the winter? R' Ashi answers: we refer to those two honeycombs (that are always left for the bees' nutrition). The Gemara asks: those two honeycombs are Muktzta (since they're designated for the bees). The Gemara answers: we refer to a case where you had in mind to designate them for humans to eat. The Gemara asks: therefore, the implications are that if you didn't have in mind, it would be prohibited. If so, why does it need to differentiate that this is only permitted if you didn't intend to capture the bees? You should have differentiated within the original subject, that it's only permitted if you had in mind to designate it, but not if he didn't have in mind. The Gemara answers: what it's saying is; even if you had in mind, it's only permitted if you didn't intend to capture.

The Gemara asks: who did you establish the author of the Braisa to be? You established it's like R' Yehuda who holds of Muktzta.

Tosfos brings Rashi: we don't see that they explicitly said that it's R' Yehuda, but rather, the fact that they pushed themselves, after they were asked "but aren't the (honeycombs) Muktzah?", by not answering simply that it's R' Shimon. Therefore, they must have assumed (for some reason) that it's like R' Yehuda.

Let's see the end of the Braisa; as long as you didn't intend to capture, which must be according to R' Shimon who permits unintended Melachos.

The Gemara counters: does it make sense that this could be R' Shimon's opinion? After all, Abaya and Rava both say that R' Shimon admits that it's prohibited if you say "I'll cut off its (i.e., a chicken's) head and let it not die." (I.e., if the Melacha will definitely happen, although it's not your intention.)

The Gemara answers: really it's R' Yehuda, and we refer to a case where there is a window. Don't say by R' Yehuda "as long as you didn't intend to capture," but, "as long as you don't make it a trap."

Daf 36b

Tosfos quotes Rashi: as long as you don't close all the openings, because if you do, R' Yehuda forbids and R' Shimon would permit. Even when we originally wanted to establish the Braisa like R' Shimon, it implied that it would be permitted in all cases, even when you close off all the openings.

Tosfos asks: but doesn't R' Shimon admit that, if it will be a Psik Reisha (if the Melacha would definitely happen) that it's forbidden? After all, here you're definitely capturing the bees.

Rather, R' Moshe from Ibra explains: R' Shimon only allows when there is a small hole for the bees to escape, but it's not so noticeable. (So, although the bees probably won't escape), it's not a Psik Reisha, so R' Shimon permits. However, R' Yehuda who forbids unintended Melachos needs the hole to be big and noticeable to the bees for them to be able to exit their hive.

The Gemara asks: this is simple (so why say it?) The Gemara answers; I might have thought that we can't trap it if it's from a species that people normally trap, however, you don't need to worry about trapping species that are not normal to trap, (like bees), so we're taught otherwise.

R' Ashi answered: does it write in the Braisa "during the days of sun and days of rain?" It's written "because of the sun and rain." So, we refer to the equinox (the days of Nissan and Tishrei) where there is both sun and rain and plenty of honey.

New Sugya

The Mishna says that you may place a utensil under a drip. We learned that if the utensil gets filled with water, you may spill it out and replace the utensil there to catch the drip (and he doesn't need to refrain).

Tosfos asks: according to our original understanding that this refers to unusable drips, how can you move this utensil? After all, it should be similar to a case of a stone inside a basket that, in Mesechtas Shabbos, we forbid to move it if it didn't also have fruit in it.

Tosfos answers: we permit it since it's like a chamber pot (which is disgusting which we permit moving Muktzah) and this is also the implication of our Gemara since it's brought here (in the Sugya of moving chamber pots).

There was a leak dripping on Abaya's mill (and was dissolving the mortar). He asked Rabbah what to do. He answered that he should put his bed there, and it will be (something disgusting like) a chamber pot (by your bed) so you'll be able to remove it from that spot. Abaya sat there asking: is one allowed to make a situation L'chatchila to have a chamber pot? (After all, they only permitted if the situation came up, but you're not allowed to create it.) While he was pondering it, his mill collapsed (from the drip). He says: this punishment is coming to me for not following my master's ruling (i.e., Rabbah).

Tosfos points out: Although we already said earlier in the Mesachta that you can't L'chatchila make a situation of a chamber pot, Rabbah held to allow it here because of the potential loss of the mill. Alternatively, this is not considered much of making the situation L'chatchila since you already have dripping in the house. This is not similar (to the case earlier) inviting a non-Jew (so that his leftover wine would become a chamber pot, which you could have avoided everything by not inviting him).

Shmuel says: you're allowed to carry out a chamber pot or the urine bowl to the garbage heap. When you return it, you should place water in it (so you shouldn't carry the utensils by themselves, since they're Muktzah since they're so disgusting).

They thought they only permitted carrying disgusting items like a chamber pot, since you're carrying it with a utensil. However, they brought a proof not like that from the story of a mouse found in R' Ashi's spices, that R' Ashi told someone to carry it out by its tail.

New Sugya

All those actions that are a regular rabbinical prohibition for Shabbos (that's totally voluntary to do anyhow), or (those prohibitions) that involve things 'voluntary' (i.e., things that are somewhat a Mitzvah, but not completely, and is called voluntary in comparison to real Mitzvos) and (those prohibitions) that are a Mitzvah, are forbidden on Yom Tov.

The following are regular rabbinical prohibitions: you can't climb a tree, you can't float (swim) on water, you can't clap, clap your thigh or dance.

The following are 'voluntary': you can't judge, you can't give Kiddushin, you can't do Chalitzah and you can't do Yibum.

The following are Mitzvos: you can't make items Hekdesh, you can't pledge an Erech or pledge a Cherem. You can't separate Trumah and Maasar. All these are forbidden on Yom Tov, and of course, prohibited on Shabbos. There is no difference between Shabbos and Yom Tov but those things needed to prepare food.

They forbade climbing trees, for perhaps you might detach an item from the tree. You can't ride an animal, since you might ride out of the T'chum (since you can't notice the boundaries well as when you approach it by foot). The Gemara asks: could we prove from here that T'chumim are forbidden from the Torah?

(After all, we wouldn't make a Gezeira to keep a rabbinical prohibition.) The Gemara answers: really, the reason is that he might break off a branch (to prod it).

You can't swim since you might end up making a floating barrel.

Tosfos quotes Rashi; you take reeds and form them into a barrel-(like device). Tosfos asks: we learned in a Mishna; these are earthenware utensils that are Tahor (not susceptible to Tumah); a tablet without a rim and a floating barrel. So, we see it's made from earthenware.

Rather, Tosfos explains: it's an earthenware utensil (that's hollow) without an opening. Therefore, it can't sink into the water, since the water can't enter inside. Thus it floats on the water.

You can't clap, clap on your thigh or dance since you'll might end up fixing a musical instrument.

New Sugya

The Mishna list the voluntary items; the first one is to judge. The Gemara asks: this is a true Mitzvah (so why call it voluntary?) The Gemara answers: we refer to a case where there is someone available that is greater than you (that you could have deferred to).

Tosfos quotes Rashi: the question is; why doesn't the Mishna count it with the Mitzva list? And we answer: because there is someone greater than him; therefore, it's not as much as a Mitzva like the ones quoted later. However, it's possible that it's still forbidden even if no one is greater than him. He explained the same way by Kiddushin why it's not a Mitzvah and answers that he already had a wife and kids. It infers that, even if he didn't have a wife and kids, it will still be forbidden.

Tosfos asks: in Sanhedrin, it says that you can't judge capital cases on Erev Shabbos and Yom Tov. After all, what can you do? If you judge him on Erev Shabbos and then (when you finish the judgement on the second day) you'll kill him on Shabbos, but execution doesn't supersede Shabbos. Why doesn't the Gemara say the problem is that you can't judge on Shabbos? It must be because, if they're in the Sanhedrin, there is nobody greater than them, and you're allowed to judge in that case.

Tosfos answers: the Gemara would rather give a reason to forbid from the Torah and not only to forbid rabbinically.

However, R' Tam explains: the question is; aren't you doing a Mitzvah, so why did they forbid it? To that, they answer that he already had a wife and kids, but if he didn't have a wife and kids, you're allowed to make Kiddushin since it's a real Mitzvah.

Tosfos asks: the Yerushalmi in Yuma, regarding designating another wife for the Kohain Gadol (on Yom Kippur for perhaps his first wife might die) asks; (how can he marry her after the death of the first wife on Yom Kippur) if you're acquiring something on Shabbos? The Yerushalmi answers: they didn't decree rabbinical prohibitions in the Beis Hamikdash. (According to R' Tam), why don't they answer because he's doing a Mitzva. After all, once his wife is dead, there is a Mitzva to marry someone else. Also, (it's needed in order to bring the Korbon) since the Pasuk says that you need it to atone for him and his wife (so he needs to have a wife).

Tosfos answers: of course, we must say like Rashi (that they're always forbidden). The Gemara in Sanhedrin is not difficult, since we'll say the reason we forbid judging on Shabbos because you'll come to write. Therefore, in that case where you judged Erev Shabbos and you already recorded all the reasons to vindicate and to make him guilty, therefore, there is no longer a reason to decree not to judge on the second day.

Tosfos also answers R' Tam by Kohain Gadol (why the Yerushalmi didn't allow marrying for a Mitzva): perhaps the Yerushalmi gave one out of two possible answers.

The Yerushalmi there concludes: R' Mona says; someone who is marrying a widow must marry (Nesuin) her while it's still day (on Friday) so that he wouldn't be acquiring on Shabbos. This is also recorded in the Yerushalmi in Kesuvos and explains the reason; since, before you marry her, you don't receive what she finds and not her salary or to null her vows. Once he marries her, he gets all of them. It comes out that you're making an acquisition on Shabbos (to acquire all those abilities).

Tosfos concludes: for the same reason that one can't make Kiddushin since it appears that he's acquiring on Shabbos, he can't give a Get either.

Also, Kiddushin is voluntary: the Gemara asks: isn't it a Mitzvah? The Gemara answers: we refer to someone who already has a wife and kids.