



THE שבוע MATTERS

שבת קודש פרשת נח | מסכת יבמות דף ע"ג

INSIGHTS FROM OUR CHABUROS

Why No Lashes for Misappropriating מעשר שני?

ואסור לבער מהן בטומא, ואוכלין בטומאת עצן לוקה

Rambam writes (Hilchos Maaser Sheni 3:10): "Maaser Sheni produce must be eaten...it may not be used to buy other items. If someone uses maaser sheni produce to procure other items, even if they are mitzvah items, for example a coffin or shrouds for the dead, he must take money equal to the value of the fruit he misappropriated and take the money to Yerushalayim and buy food there and eat it as he would maaser sheni."

Earlier, in Halacha 2, Rambam writes a similar rule regarding igniting oil of maaser that became impure. Although maaser that has become impure should be ignited, this is not allowed until the value of the oil has been redeemed upon other oil that is pure, as the verse states (Devarim 26:14): "I did not burn from it while it was still impure." We see, however, that Rambam does not mention anything about lashes for someone who improperly uses maaser to buy non-food items, nor for igniting maaser oil that was burned before being redeemed.

Minchas Chinuch (Mitzvah 610) explains that there are no lashes in these cases because the sages determined that if someone uses maaser improperly, he must designate money to repay what he has taken. The rule is that a person cannot be penalized by having to make payment and to also receive lashes.

Minchas Chinuch notes that in all such cases where we cannot administer two punishments, the one response we have is to give the lashes, rather than to have the person pay the money and to remain exempt from lashes (see Mishnah, Makkos 4a). Therefore, in this case where a person illegally expended maaser, we would expect that he would receive lashes, and be exempt from paying. He answers that it must be that our sages had a tradition that the proper response to this misuse of maaser requires that the person make financial restitution. Once this is determined, we then use the rule that he should not pay and also get lashes, and this is why the lashes are suspended.

PARSHA CONNECTION

In this week's daf we find a possuk from ספר דברים stating that all can eat a deer והטהור יחידיו. The first person who was granted permission to eat animals was נח. Prior to the טבול man was not allowed to eat animal meat. Why is it that אדם was restricted from eating meat and נח was permitted to do so? The Alshich Hakadosh explains that originally אדם was allowed to eat meat, but after he sinned and brought death to the world he was barred from eating meat. The fact that he caused death on the animals meant that he couldn't slaughter them for food. נח on the other hand brought life to the world by saving the world from extinction and he was therefore given permission to eat meat.

STORIES OFF THE DAF

"And the Pure Will Sprinkle the Impure..."

והזה הטהור על הטמא טהור מכלל שהוא טמא לימד על טבול יום שכשר בפרה

Someone once asked the Vilna Gaon, zt"l, "The Gemara in Yevamos 73a brings an idea that is somewhat difficult to understand. The verse says that, 'the pure will sprinkle on the impure.' This seems to clearly indicate that only one who is already ritually pure may sprinkle the ashes of the red heifer. Yet our Gemara states that from the very word 'pure' we learn that a טבול יום may also sprinkle the ashes of the heifer even though he hasn't yet completed his purification process. Where did the Gemara learn this from? As we know, a verse does not deviate from its simple meaning. How did Chazal derive this interpretation that appears to contradict the verse itself?"

The Vilna Gaon explained without hesitation, "The general rule is every time we find an exclusionary statement that directly follows another, it is meant to be inclusive. The obvious question that comes to mind is why should the Torah make use of a 'double negative' in order to indicate positive inclusion? Why not just use inclusive language at the outset? The Yerushalmi explains that we need two ניעוטים because the use of inclusive language after exclusionary language would simply uproot the first statement. In other words, it would be too inclusive. If, on the other hand, we use two ניעוטים, we achieve a more limited type of inclusion, which is the exact nuance needed in that particular situation.

The Gaon continued, "This is the explanation of our Gemara. In the verse it states, 'And the pure shall immerse in the water.' 'This is the first ניעוט—the pure, and not just anyone, will immerse. Then we find a second verse that also uses the term 'pure'—and that is the second ניעוט, which now opens a window of inclusion. It cannot come to include one who is completely defiled, since this would contradict the word 'pure' of the first verse entirely. For this reason, the Gemara concludes that the inclusion implied by the two exclusions is a טבול יום—someone who is somewhat, but not completely, pure!"

HALACHA HIGHLIGHT

Non-Kosher Medication

טומאת עצמו מניין

What is the source that it is prohibited to eat maaser sheni that is impure?

Tosafos¹ questions the necessity for the Torah to prohibit an impure person from eating teruma. Once the Torah prohibited consuming teruma that is impure it would seem impossible to have a case where the person is impure but the teruma remains tahor. Tosafos answers that one case where this is relevant is where another person puts teruma into the mouth of another who is impure so that the teruma does not become impure. A second suggestion is where the teruma never became susceptible to tumah, e.g. it never came in contact with one of the seven liquids.

Rav Yehudah Rosanes², the Mishneh Lamelech, expresses uncertainty whether swallowing a non-kosher food wrapped in another substance violates the prohibition of eating a non-kosher food. His conclusion is that it depends on whether the wrapping material is edible or not. If the wrapping material is edible the prohibition is violated, but if the wrapping material is not edible the prohibition has not been violated. Dayan Yitzchok Yaakov Weiss³, the Minchas Yitzchok, cites our Tosafos as proof to this conclusion. When Tosafos was searching for a case of where the person is impure and the teruma remains tahor, the case of wrapping the teruma in an inedible substance was not suggested. The reason, explains Minchas Yitzchok, is because wrapping the teruma in an inedible substance does constitute an act of eating and thus obviously does not violate the prohibition of eating teruma while impure.

Rav Shalom Mordechai Schwadron⁴, the Maharsham, suggests that one who must take medication that contains non-kosher ingredients can utilize the position of Mishneh Lamelech, namely to wrap the medication in an inedible substance before swallowing. Rav Nosson Gestetner⁵, the L'horos Nosson, makes the same suggestion for a person who must take medication on Pesach that contains chometz. If the chometz medication is wrapped in paper or a capsule it is not considered eating and thus permitted. Rav Shlomo Zalman Auerbach⁶, however, writes that although the capsule is an inedible substance, nevertheless, since that is the normal way the medication is swallowed it is considered eating. Therefore, this is not a valid method of taking medication that contains a prohibited substance.

1. ד"ה טומאת עצמן
2. משנה למלך פי"ד מהל' מאכלות אסורות הי"ב
3. שו"ת מנחת יצחק ח"ט סי' ע"ט
4. שו"ת מהרש"ם ח"ד סי' קל"ז
5. שו"ת להורות נתן ח"א יו"ד סי' פ"ו
6. שו"ת מנחת שלמה תנינא סי' ס"ה וז"ב סי' ס"ג

POINT TO PONDER

The Gemara discusses whether an ערל can eat מעשר. According to רבי עקיבא (דף עב) who says that an ערל is like a טמא, shouldn't an ערל be similarly barred from eating מעשר since a טמא cannot eat מעשר?

Response to last week's Point to Ponder:

The ספרי says that the fact that בני ישראל only brought one קרבן פסח during the 40 years in the מדבר reflected badly on them. If the reason why there was no wind is because the wind would interfere with the ענני הכבוד why is not bringing a קרבן פסח by בני ישראל their fault?

Although it was not their fault that the רוח צפונית did not blow, lest it disturb the ענני הכבוד, it was their fault that it took them 40 years to get into ישראל. If everything would have worked out based on the original plan they would have been in ישראל for the second פסח and would not have had a problem with the רוח צפונית. The delay of 40 years was caused by the spies and it is therefore their collective fault. (See ערוך לנר)

REVIEW AND REMEMBER

1. What is the source that a טבול יום is permitted to do the service of the parah adumah?
2. Who is the owner of teruma and bikkurim?
3. What is the source that an אונן is prohibited to eat bikkurim?
4. Is one permitted to derive personal benefit from teruma that is burning?

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The shavua matters is published by the Daf a week program under the rabbinical guidance of Harav Meir Stern shlita and Harav Shmuel Kamenetsky shlita

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