



לע"נ ברוך בענדיט וברכה גרוס ע"ה
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The Hakuk Edition **English Topics on the Daf**

Dedicated l'refuah sheleima for Yaakov ben Victoria

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Yevamos Daf 99

Our Mishnah lists the halachos pertaining to safek vlados, two children who got mixed up and we don't know who's who.

If one is a Kohen and one is the child of his shifcha, they may keep any terumah from their produce, sell it to Kohanim and keep the proceeds. Rashi explains that they need not give it away to a Kohen, since they each can claim that he is the Kohen. They cannot eat it, though, because each one may be not a Kohen. This seems to be a classic example of "hamotzi maichavero alav haraya," that one cannot extract money or other assets from another person unless he can prove it. So too, no Kohen in the world can prove unequivocally who the non-Kohen is here, so nobody can take the terumah away from them.

However, the Ritva is bothered by this. How can we permit them to keep the terumah; it's a safek dioraisa that they may have to give it away? "They may be stealing from Shevet [Levi their terumah], and neglecting the mitzvah of giving it to them." He answers that only a definite Yisroel has the obligation of giving it to

them, and it's not a problem of theft since it's not certain they must give it. He adds that some editions of the Gemara had the text, "they may not sell terumah, but if they did, they may keep the money."

The Acharonim are stymied by the Ritva's question. Why is this different from any other case of money in doubt? Furthermore, we have other sugyas about this exact topic – matnos Kehunah. If a safek bechor is born, one does not have to give it to a Kohen. Nor must he give the three "gifts" (zeroa, lechayayim, kaiva) from every animal to a Kohen in case of uncertainty. Why should terumah be different?

Rav Aharon Yaffin, in his annotations to the Ritva (Mossad Harav Kook, note 294) suggests that even though the two undetermined offspring do not have to give the terumah away, maybe they still can't actively sell it. Regarding the halachos of monetary rights, they do not have to forfeit it, but the possible obligation to dispense it may prohibit them from doing something contrary. It should stay status quo.

Still, why is terumah different from other matnos Kehunah, as he asked? He cites the Ri"t Algazi who applies the concept that if possible issurim stay around by a person, he might come to stumble and sin with them. In contrast to the other gifts to Kohanim mentioned, terumah is very prevalent, applicable to everything that grows. Plus, the doubt continues all their lives! Such a long-term setup, of holding on to their terumah in order to sell it, is not advisable. This explains the other girsa the Ritva cites, that they should not sell it.

Let's explore this some more. The Afikei Yam (Vol. 2:12) notes a fundamental difference between this safek and all other sefaikos. Usually, the doubt is in the item itself – is this a bechor or not; do these animal parts have the designation of matnos kehunah or not. In our case, the terumah aspect is certain. The two of them separate terumah from their produce and it is definitely terumah! The only question is, can they keep it or do they have to give it to another Kohen.

He prefaces it with another chakira. Kohanim are permitted to eat the terumah they separate from their own produce. Why? One way to understand this is that they are exempt from giving terumah; only Yisraelim are required to distribute it. Or, maybe they are equally obligated, just they give it – to themselves! They are not inferior to any other Kohen, so they simply keep it.

He ties these two options into the argument between Rambam and Ramban if terumah comprises one mitzvah or two.

Ramban maintains that there are two distinct mitzvos – separating terumah, and giving it to a Kohen. Only according to this view can we exclude Kohanim from giving it. If it's all one mitzvah, as Rambam says, it must be that Kohanim have the same parameters as everyone else.

Our Mishnah seems to side with the first option. Because if they are obligated to give terumah, in our case it would not fall into the regular rule of hamotzi maichavero alav haraya, but rather he would have to give it. It is similar to a person who tells someone that he borrowed money from him, but cannot remember if he paid back. He certainly owed him, and maybe paid back – so he must pay. So too, if the possible Kohanim here certainly must give terumah, and maybe can give it to themselves, they would have to give to other Kohanim. It must be, argues the Afikei Yam, that they have no obligation to give terumah, so they can just keep it misafek.

This would also explain the other text of the Gemara cited by Ritva, that they should not sell the terumah. That would follow the other way to look at it – Kohanim have the same obligation to distribute terumah as all Klal Yisroel, and since they are only possible Kohanim, they should not treat it as if their own. (Once they sold it, though, the money they receive may be kept because of hamotzi maichavero.)

Rav Shimon Shkop proposes another reason why our sugya does not fall under the regular rules of doubtful monetary ownership. Terumos and maasros are

different than other matnos Kehunah, like bechor and pidyon haben, since they have a chiyuv biyur. Every three years one must distribute all the accumulated matanos pertaining to produce. This shows that aside from the Choshen Mishpat monetary obligations of these matanos, there is a mitzvah to dispense it to the appropriate parties. And this mitzvah is “between us and Hashem.” So, no matter if it’s in doubt, the two sefaikim in our Gemara should be obligated to give it up, not just sell it and keep the profit.

That is why the Ritva couches his question in a twofold manner – “stealing” and “neglecting,” as there are two parts to the chiyuv of terumah, the monetary aspect and the mitzvas nesinah.

The Ritva answers, according to our text, that although this is true, there is no obligation for them to give it away since it’s only a safek. And theft is certainly not an issue, since hamotzi maichavero alav haraya (Shaarei Yoshor 5:7).