Bechoros – Simanim
פרק ט – מעשר בהמה

Daf 56 – דף נו

1. The exemption of מעשר בהמה from לקוח

The Mishnah on the previous Daf stated: או שניתן לו במתנה פטור ממעשר בהמה [הלקוח] – [an animal] *which is purchased or given to him as a gift is exempt from מעשר בהמה*. This is derived from the *passuk*: בבור בניך תתן לי כן תעשה לשורך לצאנך – *your firstborn sons you shall give to Me; so shall you do to your cattle and your flocks*. This היקש between a human *bechor* and animals teaches: מה בניך אין בלקוח ובמתנה – *just as your sons are not* obtained *through purchase or as a gift* (but are born in the family), so too the "flocks and cattle" discussed in the *passuk* are not obtained through purchase or as a gift. Therefore, any acquired animal is exempt from מעשר בהמה. Although the *passuk* is discussing <u>*bechor*</u> of animals, not מעשר בהמה, since it says "כן תעשה" – *so shall you do*, we say: אם אינו ענין לבכור – *if* [this phrase] *has no application for a bechor*, which is not sanctified through a person's action, דברחם קדוש – *because it is* automatically *sanctified through* [leaving] *the womb*, תנהו ענין למעשר בהמה – *give it an application for מעשר בהמה*, to exclude acquired animals.

2. An undivided inherited estate vs. a partnership regarding קלבון and מעשר בהמה

The next Mishnah states: האחין (ו)השותפין – regarding *brothers who are partners* (in their father's estate), the rule is: שחייבין בקלבון פטורין ממעשר בהמה – *those who are obligated* to pay *the kolbon* (which is Rabbinically required to add when giving a מחצית השקל) *are exempt from מעשר בהמה*, and those who are obligated in מעשר בהמה are exempt from paying the קלבון. The Mishnah illustrates: קנו מתפיסת הבית – if *they obtained* the animals *from the* [undivided] *estate*, it is not considered a partnership, but a single ownership; therefore, they would be obligated in מעשר בהמה (from which partners are exempt). When two heirs jointly give one *shekel* from the estate for their two obligations of מחצית השקל, they are exempt from giving the קלבון, as if the father had given a *shekel* for his two sons. If, however, they divided the estate and re-entered into partnership, they are obligated in two *kolbons* like any partners, and their animals are exempt from מעשר בהמה. Because the קלבון pertains to money and מעשר בהמה pertains to animals, the laws can be split: if they divided the money but not the animals, they are obligated in both the קלבון and מעשר בהמה; if they divided the animals but not the money, they are <u>exempt</u> from both.

3. Dividing גדיים כנגד גדיים (*machlokes* about ברירה)

Rav Anan said that the Mishnah's law, that יורשים who divided an estate and re-entered into partnership are exempt from מעשר בהמה, only applies שחלקו גדיים כנגד תיישים ותיישים כנגד גדיים – *when they divided kids against rams and rams against kids* (i.e., one heir took all the kids and one took all the rams), whereby each heir exchanged his share for his brother's, and the estate is dissolved. However, if they divided גדיים כנגד גדיים ותיישים כנגד תיישים – *kids against kids and rams against rams*, we say: זה חלקו המגיעו משעה ראשונה לכך – *this is his portion which was supposed to be his from the beginning*, i.e., it is retroactively considered to have always been his share, based on ברירה – *retroactive determination*. Because the estate was not dissolved through exchange, it becomes reestablished as an undivided estate when they recombine their assets (and the animals will be subject to מעשר). Rav Nachman disagrees, because he does not hold of ברירה, and even if they divide kids against kids, their rejoining is considered a new partnership. In a similar *machlokes*, Rebbe Elazar says the exemption from מעשר only applies if they divided nine [large] animals against ten [small] animals, but not where they divided the animals evenly by number. Rebbe Yochanan disagrees.

Siman – Shusher who says, "nu-nu"

The **shusher, who yelled "Nu, Nu!" to stop a man who bought a flock of animals from taking מעשר בהמה**, gladly **accepted the קלבון from the two brothers who were exempt from מעשר בהמה because they were partners**, **after they divided their father's flock sheep for sheep and goats for goats**.

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3 things to remember

1. **The exemption of לקוח from מעשר בהמה**
2. **An undivided inherited estate vs. a partnership regarding מעשר בהמה and קלבון**
3. **Dividing גדיים כנגד גדיים (*machlokes* about ברירה)**

