Little Gambling Lamb

To fulfill the mitzvah of redeeming the first-born male donkey one must do one of two things. Either give the kohen a live lamb or kid, even if it is worth much less than the donkey, or give him money or anything else equivalent to the full value of the animal.

In order to use the first option he can give only a live lamb or kid — not a calf or any other live animal, and not a slaughtered lamb or kid.

This raises an interesting question. What about a ben pakuah — a live lamb found in the womb of its slaughtered mother? We rule that such an animal does not require slaughtering because the slaughtering of its mother in its prenatal state is considered as shechita for it as well (Chullin 74a).

We can therefore consider this ben pakuah as being a chunk of meat on the hoof rather than a live lamb, and thus invalid for use in redemption. On the other hand, this lamb is running around like any live animal, so it should be considered a bona fide lamb for the purpose of redemption.

The Sages were split on this issue with Rabbi Ashi ruling that a ben pakuah can be used for redemption and Mar Zutra that it cannot. The latter opinion draws its support from the fact that the same designation of lamb or kid is used in regard to the animal to be used for the Korban Pesach. A ben pakuah is disqualified for use as a Korban Pesach because only animals born in natural fashion are eligible for sacrifice. Mar Zutra’s conclusion, therefore, is that just as the ben pakuah is ruled out for Korban Pesach so is it ruled out as redemption material.

Rabbi Ashi challenges this conclusion because a comparison with Korban Pesach would also require it to be male and unblemished, requirements which do not apply to this mitzvah. Rambam and Shulchan Aruch rule like the opinion of Rabbi Ashi.

Mitzvah or Penalty?

If a Jew does not wish to redeem his first-born male donkey by giving a lamb to a kohen as commanded by the Torah he is obligated to behead that animal. This is explicitly stated in the Torah (Shmos 13:13) and detailed in the mishnah of the first perek.

The mishnah refers to this act of beheading as a mitzvah, but reminds us that the mitzvah of redeeming is preferable to the mitzvah of beheading. Rambam, accordingly, lists the beheading as one of the 613 mitzvos.

A problem arises, however, from the statement of the Sage Levi (Bechoros 10b) explaining the Torah’s command to behead the unredeemed first-born donkey: “He caused a loss to the kohen (by not giving him a lamb as redemption) so he must also suffer a loss.” This seems to indicate that the beheading is a penalty for not complying with the mitzvah of redemption, and should therefore not be considered a mitzvah as well. It was this problem which moved Ravid to challenge Rambam (Laws of Bikurim 12:1) in his description of beheading as a mitzvah.

A solution to this problem is suggested, however, by the author of Minchas Chinuch (mitzvah 23). Beheading the unredeemed first-born donkey is indeed a penalty as Levi declares, but there is a mitzvah to comply with this penalty.

The author cites an interesting parallel. The same aforementioned mishnah states that the mitzvah of Yibum — marrying the widow of a childless brother — is preferable to the mitzvah of Chalitzah — the ritual performed by the brother who refuses to marry her. The author of the Hicchos Gedolos — one of the earliest Halachic authorities whose words are quoted by the Beis Shmuel in his commentary on Shulchan Aruch Even HaEzer (169:82) — writes that the reason a shoe is removed from the foot of the man in the Chalitzah ritual is to communicate to him that because he refused to do what was expected of him, he must remove his shoe like a mourner or one who has been excommunicated for rebelling against a mitzvah. Even though Chalitzah is thus viewed as a penalty it does not prevent a consensus that it is counted as a mitzvah.

This last point is a little difficult to understand in our own day when Yibum is never done, even when the brother wishes to do so. The proper perspective on this is already suggested in our mishnah, which states that with the decline of the generations and the fear that Yibum will not be performed with the proper motivation, the mitzvah of Chalitzah is now preferable. It is perhaps this decline which requires this symbolic act of mourning involved in removing the shoe.)

Bechoros 12a

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