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שו"ת
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כרך א

תשובות א–נב

Volume 1 — Teshuvos 1–52

Phrase-by-Phrase English Translation
Explanations and Summaries
Indexes of Sources & Subjects

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Dedication

This volume is dedicated to the enduring legacy of Rabbi Akiva Eiger (1761–1837), one of the foremost *gedolei ha'acharonim*, whose penetrating brilliance in Torah was matched by extraordinary humility, purity of character, and unwavering devotion to *Klal Yisrael*.

Born into a distinguished family of Torah and shaped in the great centers of learning of his time, Rabbi Akiva Eiger rose to become a preeminent authority in *halachah*, serving as *Rav* and *Rosh Yeshivah* in the illustrious community of Posen. His *Teshuvos* and *Chiddushim*, marked by precision, depth, and clarity, remain foundational to the study of Gemara and *psak*, guiding generations of *talmidei chachamim*.

Yet alongside his unparalleled greatness stood profound modesty and simplicity. As recorded by the Mitteler Rebbe, who met him in Posen, he was "a genuine person... humble and unpretentious with all people," embodying a life of complete dedication to Torah and to the needs of his community.

This Kornitzer Edition of *Shailos u'Teshuvos Rabbi Akiva Eiger*, presenting the original Hebrew text with faithful elucidation, is dedicated by the Kornitzer family, descendants of Rabbi Akiva Eiger, as an expression of gratitude to Hashem for the privilege of transmitting his Torah and ensuring that his voice continues to illuminate future generations.

May the merit of learning this *sefer* bring blessing to all who engage with it, and may we soon merit, with the coming of *Moshiach*, to hear new *chiddushim* in Torah from Rabbi Akiva Eiger himself. And may this effort serve toward fulfilling the longing so often expressed by the Lubavitcher Rebbe—that through the dissemination of Torah, illuminated for our generation, we hasten the true and complete *Geulah*. May *Moshiach* come speedily in our days, ממש.

תשובה א

Ya'aleh VeYavo and Women's Obligation on Yom Tov

Laws of Divine Service > *General Rules of Blessings*

Summary

Correspondent and Context: This teshuvah is addressed to Rabbi Leib of Nayavadil, whom Rabbi Akiva Eiger calls his dear friend and a distinguished leader.
The Question (Sha'ila): Rabbi Leib's household omitted *Ya'aleh VeYavo* from Birkas HaMazon on Yom Tov and repeated Birkas HaMazon. Rabbi Tevil, a *shochet u'bodek*, objected. He recalled that the rabbi of Brod had once ruled that he should not repeat Birkas HaMazon in a similar case.
The Ruling (Teshuvah): Rabbi Akiva Eiger says the household acted correctly. Rabbi Tevil must have confused this case with one on Rosh Chodesh. One need not repeat Birkas HaMazon on Rosh Chodesh because bread is not required. On Yom Tov, bread is required, so one must repeat it. This distinction appears in Berachos 49b.
However, Rabbi Akiva Eiger then introduces a remarkable novel distinction: had he himself been consulted, he would have ruled that only the *men* of the household should repeat Birkas HaMazon, while the *women and girls* should not. His reasoning is that women are potentially exempt from the mitzvah of *oneg* (enjoyment) on Yom Tov, since it is a *mitzvas aseh she'hazman grama* (time-bound positive commandment) from which women are generally exempt. If women are not obligated in *oneg Yom Tov*, they are permitted to fast on Yom Tov. And if they may fast, then their forgetting *Ya'aleh VeYavo* in Birkas HaMazon is equivalent, for them, to the case of Rosh Chodesh for men — where no repetition is required. He identifies two exceptions: (1) on the first night of Pesach, women are obligated to eat matzah via a *hekesh* (analogical derivation), and therefore if they forgot the Yom Tov insertion they must repeat; and (2) on Shabbos, women are obligated in all positive commandments through the *hekesh* of *zachor* and *shamor*, which equates women and men in all Shabbos observances.
Shulchan Aruch Background: Shulchan Aruch, Orach Chaim 188:7, rules that one repeats Birkas HaMazon after omitting the required insertion on Shabbos or Yom Tov, when bread is required. One does not repeat it on Rosh Chodesh or Chol HaMoed. The addendum also discusses the Levush, Orach Chaim 497, about fasting on Rosh Hashanah.
Key Disputes (Machlokes): Tosfos and the Ran disagree about women's positive obligations on Yom Tov. Tosfos limits their obligation to the ban on labor. The Ran also obligates them to cease from labor because that positive commandment always accompanies the ban. In the addendum, Rabbi Akiva Eiger discusses whether women have their own obligation of *simchah*. He argues that the bread requirement comes from *kavod*, not *simchah*. Since this bread requirement is time-bound, he argues that women are exempt from it on Yom Tov.

לִידִידִי הָאַלּוּף הַקָּצִין רַבִּי לֵיב בַּנְיָיאוָואדִיל.

To my dear friend, the distinguished leader Rabbi Leib of Nayavadil.

עַל אוֹדוֹת בְּנֵי בֵּיתוֹ שֶׁשָּׁכְחוּ לְהַזְכִּיר שֶׁל חַג בְּבִרְכַּת הַמָּזוֹן וְחָזְרוּ וּבֵרְכוּ, וְטָעַן עַל זֶה

Regarding the members of his household who forgot to include the mention of the festival. That is, they omitted *Ya'aleh VeYavo*, the in-

sertion for Yom Tov. **in Birkas HaMazon, and they went back and recited it again. And the esteemed Rabbi Tevil, the shochet u'bodek (ritual slaughterer and inspector), protested against this, and said that a similar incident once occurred to him in his youth, in the house of the rabbi of the holy community of Brod, and [the rabbi] ruled that he should not go back and recite [Birkas HaMazon] again.**

הַמְּרוֹמָם רַבִּי טֶעבִּיל שׁוֹחֵט וּבוֹדֵק וְאָמַר שֶׁפַּעַם אֵירַע לוֹ כֵּן בְּבַחֲרוּתוֹ, בְּבֵית הָרַב דִּקְהִלָּה קְדוֹשָׁה בְּרָאד, וְהוֹרָה לוֹ שֶׁלֹּא לַחֲזוֹר וּלְבָרֵךְ:

They acted correctly in going back and reciting [Birkas HaMazon] again. And there is no doubt that this Rabbi Tevil has forgotten, due to the passage of many years, the details of what actually occurred. What happened to him was on Rosh Chodesh, not on Yom Tov. On Rosh Chodesh, one does not repeat Birkas HaMazon because bread is not required. On Yom Tov, bread is required, so one must repeat it. **And this distinction between Yom Tov and Rosh Chodesh is explicitly stated in the chapter "Shelosha She'achlu" (folio 49).**[1] **And this requires no further elaboration.**

יָפָה עָשׂוּ בְּמַה שֶׁחָזְרוּ וּבֵרְכוּ, וְאֵין סָפֵק שֶׁזֶּה רַבִּי טֶעבִּיל שָׁכַח מֵרֹב הַיָּמִים עוֹבְדָא הֵיכִי הֲוֵי, וּמַה שֶּׁאֵירַע לוֹ הָיָה בְּרֹאשׁ חֹדֶשׁ וְלֹא בְּיוֹם טוֹב, וְחִלּוּק זֶה בֵּין יוֹם טוֹב לְרֹאשׁ חֹדֶשׁ מְבֹאָר בְּפֶרֶק ג' שֶׁאָכְלוּ (דף מ"ט) וְאֵין צָרִיךְ לְפָנִים:

Nevertheless, had I myself been asked about this matter, I believe I would have ruled as follows: that all the men of his household should go back and recite [Birkas HaMazon] again, but not the women and girls.

וְעִם כָּל זֶה אִלּוּ נִשְׁאַלְתִּי אֲנִכִי עַל כָּכָה, כְּמִדּוּמֶה הָיִיתִי מוֹרֶה וּבָא, דְּכָל מַרְבִּית בֵּיתוֹ אֲנָשִׁים יַחְזְרוּ לְבָרֵךְ, אֲבָל לֹא הַנָּשִׁים וְהַבָּנוֹת:

My reasoning is that I have grounds to argue that a woman is permitted to fast on Yom Tov. For the prohibition of fasting on Yom Tov appears to derive from the obligation of oneg (enjoyment). And so it is [stated] in the Rambam.[2] **Now, the mitzvah of oneg is subsumed under the positive commandment of "the assembly shall be for you" (atzeres tihyeh lachem).** The word "lachem" ("for you") implies physical enjoyment. **for we expound from it [the principle of] "half for Hashem and half for you."** The Gemara derives from this verse that one must dedicate part of Yom Tov to spiritual pursuits and part to physical pleasure. **If so, this mitzvah should not be superior to any other time-bound positive commandment from which women are exempt. And as for what a woman is obligated in regarding the mitzvah of Yom Tov — it is only in the negative commandment of "you shall not do any labor." But not in the positive commandments of Yom Tov. As Tosfos write in Kiddushin (folio 34a, s.v. "ma'akeh").**[3] Tosfos say women are exempt when the *aseh* can apply without the related *lo sa'aseh*. Rabbi Akiva Eiger applies this to *oneg*. The *oneg* obligation has

וְטַעֲמָא דִּידִי מִשּׁוּם דְּיֵשׁ לִי לָדוּן דְּאִשָּׁה מֻתֶּרֶת לְהִתְעַנּוֹת בְּיוֹם טוֹב, דְּאִיסּוּר תַּעֲנִית בְּיוֹם טוֹב נִרְאֶה שֶׁהוּא מִדִּין עֹנֶג, וְכֵן הוּא בְּרַמְבַּ"ם, וְהֵרֵי מִצְוַת עֹנֶג הוּא בִּכְלַל מִצְוַת עֲשֵׂה דְּעַצֶּרֶת תִּהְיֶה לָכֶם, דְּדָרְשִׁינַן מִנֵּיהּ חֶצְיוֹ לַה' וְחֶצְיוֹ לָכֶם, וְאִם כֵּן לֹא תֵּהֵא מִצְוָה זוֹ עֲדִיפָא מִכָּל מִצְוַת עֲשֵׂה שֶׁהַזְּמַן גְּרָמָא שֶׁנָּשִׁים פְּטוּרוֹת, וּמַה דְּאִשָּׁה מְחוּיֶבֶת בְּמִצְוָה דְּיוֹם טוֹב הוּא רַק בְּלֹא תַעֲשֶׂה דְּלֹא תַעֲשֶׂה כָּל מְלָאכָה, אֲבָל לֹא בְּמִצְוַת עֲשֵׂה דְּיוֹם טוֹב, וּכְמוֹ שֶׁכָּתְבוּ תּוֹסָפוֹת בְּקִדּוּשִׁין (דף ל"ד עמוד א' דיבור המתחיל מעקה) וְאַף לְהָרַ"ן שָׁם דְּחַיָּבוֹת גַּם בַּעֲשֵׂה דְּיוֹם טוֹב מִכָּל מָקוֹם זֶה רַק בַּעֲשֵׂה דִּשְׁבִיתַת מְלָאכָה מִשּׁוּם דְּתָמִיד אִיתָא גַּם לָאו בַּהֲדֵי הָעֲשֵׂה,

[1] Berachos 49b — In the chapter *Shelosha She'achlu* (the seventh chapter of Masechta Berachos), the Gemara establishes the distinction between Shabbos and Yom Tov — where one who forgot the appropriate insertion in Birkas HaMazon must go back and repeat — and Rosh Chodesh, where one does not repeat.

[2] Rambam, Hilchos Shvisas Yom Tov, Chapter 6 — The Rambam there discusses the obligations of *kavod* (honor) and *oneg* (enjoyment) on Yom Tov, paralleling those of Shabbos.

[3] Tosfos on Kiddushin 34a, s.v. *Ma'akeh* — Tosfos ask: «תימה לרבי בכל הני כתיב לאו» — in all these mitzvos (ma'akeh, aveida, and shiluach haken), a negative commandment is written alongside the positive one. If so, how could women be exempt even if they are time-bound, given that the Torah equates women and men for all punishments? The Ri answers: «דבכולהו משכחת בהו עשה בלא לאו» — in all of them one can find the positive commandment without the negative. Rabbi Akiva Eiger applies this reasoning to Yom Tov: the *aseh* of *oneg* exists independently of any *lo sa'aseh*, so women are exempt from it.

no related negative commandment. **And even according to the Ran there, who holds that women are obligated even in the positive commandment of Yom Tov,[4] nevertheless, this applies only to the positive commandment of cessation from labor, because there is always a negative commandment accompanying the positive one. But regarding a positive commandment that has no accompanying negative commandment, they are exempt. See there. Since she is not subject to the mitzvah of enjoyment (oneg), she is permitted to fast. It follows automatically that if she forgot to include the mention of Yom Tov in Birkas HaMazon, she does not need to go back and recite it again. For Yom Tov is, in their case [i.e., for women], equivalent to Rosh Chodesh in our case [i.e., for men].** Men do not repeat Birkas HaMazon on Rosh Chodesh because bread is not required. By this reasoning, women likewise need not repeat it on Yom Tov because bread is not required of them.

אֲבָל בַּעֲשֵׂה דְּאֵין בָּהּ לָאו פְּטוּרוֹת וְעַיֵּין שָׁם, וְכֵיוָן דְּאֵינָהּ בִּמְצַוַת תַּעֲנוּג מֻתֶּרֶת לְהִתְעַנּוֹת, וּמִמֵּילָא אִם שָׁכְחָה לְהַזְכִּיר שֶׁל יוֹם טוֹב בְּבִרְכַּת הַמָּזוֹן אֵין צָרִיךְ לַחֲזוֹר וּלְבָרֵךְ, דְּהָוֵי יוֹם טוֹב גַּבֵּי דִידְהוּ כְּמוֹ רֹאשׁ חֹדֶשׁ לְגַבֵּי דִידָן:

*The following section is from the Addendum (Hashmatos) to this teshuvah, elaborating on the principle stated above: **[Addendum: On the statement "Since she is not subject to the mitzvah of enjoyment, she is permitted to fast":] This is certainly true according to the Ra'avad in his Glosses on the beginning of Chapter 1 of [Hilchos] Chagigah, for we rule in accordance with Abaye that a woman — her husband causes her to rejoice. It is upon the husband that the obligation of making her joyful is placed, but she herself is not subject to this obligation. And the Kesef Mishneh and the Lechem Mishneh there write[5] that the Rambam too holds this view. Rather, even according to the view of the Lechem Mishneh in Chapter 14, Halacha 14 of [Hilchos] Ma'aseh HaKorbanos, [who understands] the Rambam's view[6] as ruling in accordance with Rabbi Zeira, that she herself is obligated in simchah (joy), nevertheless, this only means that she is prohibited from eulogizing and fasting, and [she is required] to experience joy through the drinking of wine and [the eating of] meat. But nevertheless, it appears that she is not obligated in the eating of bread. For it appears that the obligation to eat bread does not stem from the obligation of simchah. For on Shabbos there is no obligation of simchah.** Shabbos has *oneg* and *kavod*, but not *simchah*. Its bread obligation must therefore have another source. **Rather, it appears that it is from [the obligation of] kavod Shabbos (honoring Shabbos) to establish a meal with bread. And kavod/oneg (honor/enjoyment) and simchah (joy) are two separate matters. See the Rambam, Chap-**

[הַשְׁמָטוֹת: וְכֵיוָן דְּאֵינָהּ בִּמְצַוַת תַּעֲנוּג מֻתֶּרֶת לְהִתְעַנּוֹת: לֹא מִבָּעְיָא לְדַעַת הָרָאָב"ד בְּהַשָּׂגוֹת רֵישׁ פֶּרֶק א' מֵחֲגִיגָה דְּקַיְימָא לַן כְּאַבַּיֵי דְּאִשָּׁה בַּעְלָהּ מְשַׂמְּחָהּ, שֶׁעַל הַבַּעַל מוּטָל הַחִיּוּב לְשַׂמְּחָהּ, אֲבָל הִיא אֵינָהּ בְּחִיּוּב זֶה, וְהַכֶּסֶף מְשֻׁנֶּה וְהַלֶּחֶם מְשֻׁנֶּה שָׁם כָּתְבוּ דְּגַם הָרַמְבַּ"ם סְבִירָא לֵיהּ כֵּן, אֶלָּא אַף לְדַעַת הַלֶּחֶם מִשְׁנֶה פֶּרֶק י"ד הֲלָכָה י"ד מֵהַמַּעֲשֶׂה הַקָּרְבָּנוֹת בְּדַעַת הָרַמְבַּ"ם דְּהֲלָכָה כְּרַבִּי זֵירָא דְּהִיא מְחוּיֶבֶת בְּשִׂמְחָה, מִכָּל מָקוֹם הַיְינוּ דַּאֲסוּרָה בְּהֶסְפֵּד וְתַעֲנִית, וְלִהְיוֹת לָהּ שִׂמְחָה בִּשְׁתִיַּת יַיִן וּבָשָׂר, אֲבָל מִכָּל מָקוֹם נִרְאֶה דְּאֵינָהּ מְחוּיֶבֶת בַּאֲכִילַת פַּת, דְּנִרְאֶה דַּאֲכִילַת פַּת אֵינוֹ מִצַּד חִיּוּב שִׂמְחָה, דְּהָא בְּשַׁבָּת לֵיכָא חִיּוּב שִׂמְחָה, אֶלָּא דְּנִרְאֶה דְּמִן כְּבוֹד שַׁבָּת לִקְבּוֹעַ סְעוּדָה עַל הַלֶּחֶם, וְהַכִּיבּוּד וְעֹנֶג עִם שִׂמְחָה תְּרֵי מִילֵי נִינְהוּ, עַיֵּין בְּרַמְבַּ"ם פֶּרֶק ו' הֲלָכָה ו' מֵהִלְכוֹת יוֹם טוֹב, שֶׁכָּתַב כְּשֵׁם שֶׁמִּצְוָה לְכַבֵּד שַׁבָּת וּלְעַנְּגָהּ, כָּךְ כָּל יָמִים טוֹבִים, שֶׁנֶּאֱמַר לִקְדוֹשׁ ה' מְכֻבָּד, וְכָל יוֹם טוֹב נֶאֱמַר בָּהֶם מִקְרָא קֹדֶשׁ,

[4]Ran on Kiddushin 34a — The Ran's commentary on this sugya, discussing women's obligation in the positive commandments of Yom Tov.

[5]Kesef Mishneh and Lechem Mishneh on Rambam, Hilchos Chagigah, Chapter 1 — The "שם" (there) refers to the same location as the Ra'avad's Glosses just cited, i.e., the Rambam's discussion of the *simchah* obligation in the opening of Hilchos Chagigah.

[6]Lechem Mishneh on Rambam, Hilchos Ma'aseh HaKorbanos 14:14.

ter 6, Halacha 6 of Hilchos Yom Tov,[7] who writes: "Just as it is a mitzvah to honor Shabbos and to enjoy it, so too [with regard to] all Yamim Tovim, as it is stated (Yeshayahu 58:13): 'to the holy one of Hashem, honored,' and regarding every Yom Tov it is said [that they are called] 'a holy convocation.'" And afterward, in Halacha 17,[8] "The seven days of Pesach and the eight days of the Festival [Sukkos], together with the other Yamim Tovim — all of them are prohibited for eulogizing and fasting, and one is obligated to be joyful and glad of heart in them," etc. This implies that they are two separate matters: the obligation of kavod (honor) and oneg (enjoyment), and the obligation of simchah (joy). The Rambam treats them in separate halachos, showing that they are distinct obligations. **And for this reason, in Halacha [6], he uses the term "Yamim Tovim," which implies [the obligation applies] on Yom Tov itself but not on Chol HaMoed. But in Halacha [7], regarding the obligation of simchah, he uses "the seven days of Pesach and the eight days of the Festival," because Chol HaMoed is included in them as well. If so, it appears that since on Shabbos the entire obligation to eat bread does not stem from simchah but rather from kavod Shabbos (honoring Shabbos) — [i.e.,] to establish a meal with bread. [And perhaps the reason is that since Hashem blessed and sanctified Shabbos through the manna, which Scripture calls "bread" (lechem), they [the Sages] established an obligation to eat a meal of bread. And similarly on Yom Tov, as they write that for this reason one must establish two meals of bread.] If so, one can argue that also on Yom Tov, from the perspective of the obligation of simchah, it would suffice [to fulfill it] with meat, wine, and colorful garments. Rather, his obligation [to eat bread on Yom Tov] derives from the same source as on Shabbos And proof [for this]: on Chol HaMoed, even though there is an obligation of simchah, nevertheless there is no obligation to eat bread. As we rule in the Shulchan Aruch, Orach Chaim (Siman 188, Se'if 7).[9] And since the eating of bread is not dependent on the obligation of simchah, one can argue that women are not obligated in the mitzvah of eating bread on Yom Tov, since it is a time-bound positive commandment. [And there is room to investigate the words of the Rambam in the aforementioned Halacha of [Hilchos] Yom Tov,** The reference is to the earlier-cited passage about *kavod*

וְאַחַר כָּךְ בַּהֲלָכָה י"ז, שִׁבְעַת יְמֵי הַפֶּסַח וּשְׁמוֹנַת יְמֵי הֶחָג עִם שְׁאָרֵי יוֹם טוֹב כֻּלָּם אֲסוּרִים בְּהֶסְפֵּד וְתַעֲנִית, וְחַיָּיב לִהְיוֹת בָּהֶן שָׂמֵחַ וְטוֹב לֵב וְכוּ', מַשְׁמַע דְּהֵם תְּרֵי מִילֵּי, חִיּוּב כִּיבּוּד וְעֹנֶג וְחִיּוּב שִׂמְחָה, וּמִטַּעַם זֶה בַּהֲלָכָה ו' נָקִיט יָמִים טוֹבִים, דְּמַשְׁמַע בְּיוֹם טוֹב וְלֹא בְּחוֹל הַמּוֹעֵד, וּבַהֲלָכָה ז' בְּחִיּוּב שִׂמְחָה נָקַט שִׁבְעַת יְמֵי פֶּסַח וּשְׁמוֹנַת יְמֵי הֶחָג, דְּגַם חוֹל הַמּוֹעֵד בִּכְלָלָם, וְאִם כֵּן נִרְאֶה כֵּיוָן דְּבִשַּׂבָּת כָּל הַחִיּוּב לֶאֱכֹל פַּת אֵינוֹ מִטַּעַם שִׂמְחָה אֶלָּא מִטַּעַם כִּיבּוּד שַׂבָּת לִקְבּוֹעַ סְעוּדָה עַל הַלֶּחֶם, [וְאֶפְשָׁר מִטַּעַם כֵּיוָן דְּבֵרְכוֹ וְקִדְּשׁוֹ ה' לְשַׂבָּת בַּמָּן, דְּקָרְאוֹ הַכָּתוּב לֶחֶם, קָבְעוּ חִיּוּב לֶאֱכֹל סְעוּדַת לֶחֶם, וְכֵן בְּיוֹם טוֹב, כִּדְכָתְבוּ דְּמִטַּעַם זֶה צָרִיךְ לִקְבּוֹעַ שְׁתֵּי סְעוּדוֹת לֶחֶם], וְאִם כֵּן יֵשׁ לוֹמַר דְּגַם בְּיוֹם טוֹב מִדִּין שִׂמְחָה הָיָה סַגִּי בְּבָשָׂר וְיַיִן וּבִגְדֵי צִבְעוֹנִים, אֶלָּא דְּחִיּוּבוֹ כְּמוֹ בְּשַׂבָּת, וּרְאָיָה דַּהֲרֵי בְּחוֹל הַמּוֹעֵד אַף דְּאֵיכָא חִיּוּב שִׂמְחָה, מִכָּל מָקוֹם אֵין חִיּוּב לֶאֱכוֹל פַּת, כִּדְקַיְימָא לַן בְּשֻׁלְחָן עָרוּךְ אוֹרַח חַיִּים (סִימָן קפ"ח סָעִיף ז') וְכֵיוָן דְּאֵין אֲכִילַת פַּת תָּלוּי בְּחִיּוּב שִׂמְחָה, יֵשׁ לוֹמַר דְּאֵין נָשִׂים חַיָּבוֹת בְּמִצְוַת אֲכִילַת פַּת בְּיוֹם טוֹב דְּהָוֵי מִצְוָה שֶׁהַזְּמַן גְּרָמָא, [וְיֵשׁ לְעַיֵּין בִּדְבְרֵי הָרַמְבַּ"ם הֲלָכָה כ"ו מִיּוֹם טוֹב הַנִּזְכָּר לְעֵיל, וְכָל יוֹם טוֹב נֶאֱמַר בָּהֶם מִקְרָא קֹדֶשׁ, מִטַּעַם זֶה יְהֵא הַחִיּוּב גַּם כֵּן בְּחוֹל הַמּוֹעֵד דְּאִיקְרֵי גַּם כֵּן מִקְרָא קֹדֶשׁ, כְּמוֹ שֶׁכָּתַב הָרַמְבַּ"ם (רֵישׁ פֶּרֶק ז' מֵהִלְכוֹת יוֹם טוֹב) וְיֵשׁ לוֹמַר] וְאִם כֵּן הַדָּרָן לְדִינָא דְּבִשְׂכְחָה לְהַזְכִּיר מֵעֵין יוֹם טוֹב בְּבִרְכַּת הַמָּזוֹן דְּאֵין צָרִיךְ לַחֲזוֹר וּלְבָרֵךְ, וּמִטַּעַם זֶה יֵשׁ לְעַיֵּין עַל דִּבְרֵי הַלְּבוּשׁ אוֹרַח חַיִּים (סִימָן תצ"ז)

[7] Rambam, Hilchos Shvisas Yom Tov 6:6 — Rabbi Akiva Eiger cites this as the location of the passage «כשם שמצוה לכבד שבת ולענגה». However, in the standard Frankel edition, 6:6 discusses the laws of eruv tavshilin: «הַמְּנִיחַ עֵרוּבֵי תַּבְשִׁילִין כְּדֵי שֶׁיִּסְמֹךְ עֲלֵיהֶם הוּא וַאֲחֵרִים...». The passage about *kavod* and *oneg* that Rabbi Akiva Eiger quotes appears in Halacha 16 of the Frankel edition, reflecting a difference in halacha numbering between editions.

[8] Rambam, Hilchos Shvisas Yom Tov 6:17 — The Rambam states: «שִׁבְעַת יְמֵי הַפֶּסַח וּשְׁמוֹנַת יְמֵי הֶחָג עִם שְׁאָר יָמִים טוֹבִים כֻּלָּם אֲסוּרִים בְּהֶסְפֵּד וְתַעֲנִית. וְחַיָּב אָדָם לִהְיוֹת בָּהֶן שָׂמֵחַ וְטוֹב לֵב הוּא וּבָנָיו וְאִשְׁתּוֹ וּבְנֵי בֵיתוֹ וְכָל הַנִּלְוִים עָלָיו שֶׁנֶּאֱמַר וְשָׂמַחְתָּ בְּחַגֶּךָ». Rabbi Akiva Eiger's point is that this halacha addresses *simchah* using language that includes Chol HaMoed ("seven days of Pesach"), whereas the prior halacha about *kavod/oneg* uses "Yamim Tovim" — which excludes Chol HaMoed.

[9] SA, Orach Chaim 188:7.

וְהַמִּתְעַנֶּה בְּרֹאשׁ הַשָּׁנָה אָסוּר לוֹ לַעֲשׂוֹת מְלָאכָה, כְּגוֹן לֶאֱפוֹת וּלְבַשֵּׁל לַאֲחֵרִים, אֶלָּא כָּל הַיּוֹם עוֹסֵק בִּתְפִלָּה וּבְתַחֲנוּנִים, אוֹ יִלְמֹד כָּל הַיּוֹם, דְּכֵיוָן דְּאֵינוֹ מְקַיֵּים חֶצְיוֹ לַה' וְחֶצְיוֹ לָכֶם, צָרִיךְ לְקַיֵּים כּוּלוֹ לַה', וְיֵשׁ אוֹמְרִים דְּאִשָּׁה שֶׁיֵּשׁ לָהּ בַּעַל אוֹ הִיא מְשֻׁעְבֶּדֶת לְאַחֵר, דְּיֵכוֹלָה לֶאֱפוֹת וּלְבַשֵּׁל, כֵּיוָן דְּמְשֻׁעְבֶּדֶת לְכָךְ עַד כָּאן לְשׁוֹנוֹ, וּלְפִי דְּבָרֵינוּ אֵין נָשִׁים בְּחִיּוּב כּוּלוֹ לַה' דְּהָוֵי זְמַן גְּרָמָא, וְנִרְאֶה דַּאֲדַרְבָּה מִשָּׁם סַיְיעְתָּא לְדִידִי,

and *oneg*. [where he writes:] "and regarding every Yom Tov it is said [that they are called] 'a holy convocation."' For this reason, the obligation [of kavod] should also apply on Chol HaMoed, since it too is called "a holy convocation," as the Rambam writes (at the beginning of Chapter 7 of Hilchos Yom Tov).[10] And one can answer this.] If so, we return to the practical ruling: that if she forgot to mention the Yom Tov insertion in Birkas HaMazon, she does not need to go back and recite it again. And for this reason, there is room to examine the words of the Levush, Orach Chaim (Siman 497),[11] [who writes that] one who fasts on Rosh Hashanah is forbidden to do labor, such as baking or cooking for others, but rather must spend the entire day engaged in prayer and supplications, or study the entire day. For since he is not fulfilling "half for Hashem and half for you," he must fulfill "all of it for Hashem." And some say that a woman who has a husband, or who is subordinated to another, may bake and cook, since she is subordinated to that [task]. End quote. According to our reasoning, women are not subject to the obligation of "all of it for Hashem," since it is [part of] a time-bound [positive commandment]. And it appears that on the contrary, from there [i.e., the Levush] there is support for my position.

דִּבְפִשׁוּטוֹ דִּבְרֵי הַלְּבוּשׁ מוּקְשִׁים, דְּאַטוּ מִפְּנֵי שֶׁהִיא מְשֻׁעְבֶּדֶת לְבַעַל אוֹ לְאַחֵר פָּקַע מִמֶּנָּה חִיּוּב הַמִּצְוָה, וְלוֹמַר דְּמִשּׁוּם הָכִי בֶּאֱמֶת לֹא תִתְעַנֶּה וּתְקַיֵּים חֶצְיוֹ לָכֶם וְחֶצְיוֹ לַה', וְזֶה אֵינוֹ בְּמַשְׁמַע מִלְּשׁוֹן הַלְּבוּשׁ, וְלָזֶה נִרְאֶה דְּבֶאֱמֶת אֵינָן בְּחִיּוּב הַמִּצְוָה זוֹ, כֵּיוָן דְּהָוֵי זְמַן גְּרָמָא, אֶלָּא דְּמִכָּל מָקוֹם רֹב נָשֵׁי דִּידָן מַחְמִירִין לְעַצְמָן וּזְהִירוֹת וּזְרִיזוֹת לְקַיֵּים רֹב מִצְוֹת עֲשֵׂה שֶׁהַזְּמַן גְּרָמָא, כְּגוֹן שׁוֹפָר סֻכָּה לוּלָב, וְכֵן בְּקִדּוּשׁ יוֹם טוֹב, וְהָוֵי כְּקִבְּלוּ עֲלֵיהוּ, וְלָזֶה רוֹצִים לְקַיֵּים כּוּלוֹ לַה', לָזֶה כָּתַב הַלְּבוּשׁ כֵּיוָן דְּמְשֻׁעְבֶּדֶת לַאֲחֵרִים אֵין בְּכֹחָן לְהַחְמִיר עַל עַצְמָן, בְּדָבָר שֶׁאֵינָן מְחוּיָבוֹת מֵהַדִּין לְהַפְקִיעַ בָּזֶה זְכוּת דַּאֲחֵרִים:]

For at face value, the words of the Levush are difficult: Is it because she is subordinated to her husband or to another that the obligation of the mitzvah is removed from her? Domestic duties would not remove a Torah obligation. **And to say that for this reason she should indeed not fast and should [instead] fulfill "half for you and half for Hashem" — this is not implied by the language of the Levush.** The Levush allows her to cook even if she fasts. He does not say that she must refrain from fasting. **Therefore, it appears that in truth they [women] are not subject to this obligation at all, since it is a time-bound [positive commandment]. However, most of the women of our community are stringent upon themselves and are careful and diligent to fulfill most time-bound positive commandments, such as shofar, sukkah, and lulav, and similarly regarding kiddush of Yom Tov. And it is as if they have accepted [these obligations] upon themselves. Therefore, they wish to fulfill "all of it for Hashem"** This refers to women who choose to fast on Rosh Hashanah. **For this reason, the Levush writes that since she is subordinated to others, she does not have the ability to be stringent upon herself in a matter in which she is not obligated by law, so as to thereby abrogate the rights of**

[10]Rambam, Hilchos Shvisas Yom Tov 7:1 — The Rambam states: «חֻלּוֹ שֶׁל מוֹעֵד אַף עַל פִּי שֶׁלֹּא נֶאֱמַר בּוֹ שַׁבָּתוֹן הוֹאִיל וְנִקְרָא מִקְרָא קֹדֶשׁ» — Chol HaMoed, although it is not called *Shabbason*, since it is called *mikra kodesh*. Rabbi Akiva Eiger raises the difficulty: if the *kavod* obligation is based on *mikra kodesh*, it should extend to Chol HaMoed as well.

[11]Levush, Orach Chaim 497.

others.] This practice is voluntary, not required. A woman cannot adopt it at the expense of duties owed to others.

The exception is on the first night of Pesach, when [women] are obligated in [eating] matzah from the hekesh (analogical derivation): whoever is included in "you shall not eat chametz" [is included in the obligation to eat matzah]. Therefore, a woman who forgot *Ya'aleh VeYavo* on the first night of Pesach must repeat Birkas HaMazon. **And similarly on Shabbos, if she forgot to say Retzei, since she is obligated in the positive commandment of kiddush from the hekesh of "zachor" (remember; Shemos 20:8) and "shamor" (guard; Devarim 5:12), she is also obligated in all the positive commandments of Shabbos. As the Ran writes in Perek Kol Kisvei, and these are his words there:**[12]

"Rabbeinu Tam wrote that women are obligated in three meals [on Shabbos] and similarly to break bread over two loaves (lechem mishneh), for they too were part of the miracle of the manna. But there is no need [for this reasoning], for in all matters of Shabbos, man and woman are equal, as we derive from [the hekesh of] zachor and shamor: whoever is included in shamor (guarding) is included in zachor (remembering), and all obligations of Shabbos are included in this." End quote. It follows automatically that she is also obligated in the mitzvah of oneg (enjoyment) of Shabbos and is forbidden to fast. Therefore, she must go back and recite [Birkas HaMazon again]. So it appears to my humble opinion.

Akiva Güns

זוּלַת בְּלֵיל אֶחָד דְּפֶסַח דִּמְחוּיָבוֹת בְּמַצָּה מֵהֶקֵּישָׁא דְּכָל שֶׁיֵּשְׁנוֹ בְּבַל תֹּאכַל חָמֵץ, וְכֵן בְּשַׁבָּת אִם שָׁכְחָה לוֹמַר רְצֵה, דְּכֵיוָן דִּמְחוּיֶבֶת בְּמִצְוַת עֲשֵׂה דְּקִדּוּשׁ מֵהֶקֵּישָׁא דְּזָכוֹר וְשָׁמוֹר מְחוּיֶבֶת גַּם כֵּן בְּכָל מִצְוֹת עֲשֵׂה דְּשַׁבָּת, כְּמוֹ שֶׁכָּתַב הָרַ"ן פֶּרֶק כָּל כִּתְבֵי וְזֶה לְשׁוֹנוֹ שָׁם, כָּתַב ר"ת דְּנָשִׁים חַיָּבוֹת בְּשָׁלוֹשׁ סְעוּדוֹת וְכֵן לִבְצוֹעַ עַל שְׁתֵּי כִכָּרוֹת שֶׁאַף הֵן הָיוּ בְּנֵס הַמָּן, וְאֵין צוֹרֶךְ שֶׁבְּכָל מַעֲשֵׂה שַׁבָּת אִישׁ וְאִשָּׁה שָׁוִין כִּדְיַלְפִינַן מִזָּכוֹר וְשָׁמוֹר אֶת שֶׁיֵּשְׁנוֹ בִּשְׁמִירָה יֶשְׁנוֹ בִּזְכִירָה, וּבְכְלָל זֶה הָוֵי כָּל חִיּוּבֵי דְּשַׁבָּת עַד כָּאן לְשׁוֹנוֹ, וּמִמֵּילָא מְחוּיֶבֶת גַּם כֵּן בְּמִצְוַת עֹנֶג דְּשַׁבָּת וַאֲסוּרָה לְהִתְעַנּוֹת, עַל כָּרְחֵךְ צְרִיכָה לַחֲזוֹר וּלְבָרֵךְ כַּנִּרְאֶה לַעֲנִיּוּת דַּעְתִּי:

עֲקִיבָא גִּינְז מֵא"ש

[12] Ran on Masechta Shabbos, Perek Kol Kisvei (Chapter 16).

תשובה ב

Parchment Processing and the Principle of Breirah

Laws of STAM > Laws of Writing STAM • *Laws of STAM > Laws of Tefillin*

Summary

Correspondent and Context: This teshuvah is addressed to Rabbi Avraham of Vilna. He asked on behalf of an expert scribe (*sofer mumcheh*) from Slonim. The scribe had heard that Rabbi Akiva Eiger objected to the common method of preparing parchment and wanted to know his view.

The Question (Sha'ila): The scribes processed hides with a declaration covering Sifrei Torah, tefillin, mezuzos, and gittin. They decided each parchment's use only later. Rabbi Akiva Eiger was asked to explain his objection and the correct method.

The Ruling (Teshuvah): Rabbi Akiva Eiger rejects the scribes' general declaration. Their later choice would retroactively determine which parchments were processed for sacred use. This depends on *breirah* (retroactive clarification). In matters of Torah law, *ein breirah* applies, so the sacred parchments lack a valid *lishmah* designation. He instructs scribes to process every parchment for a Sefer Torah, the highest level of sanctity. At the same time, they should make a *tenai* allowing later use for profane purposes, including gittin. Unlike *breirah*, this gives the parchment a definite sacred status during processing and separately reserves the right to change its use later.

Shulchan Aruch Background: Shulchan Aruch, Yoreh Deah 271:1, requires a Jew to process Sefer Torah parchment *lishmah*. When placing the hides in lime, he must say that he is processing them for a Sefer Torah. The scribes' general declaration does not meet this requirement. Even HaEzer 123 discusses the materials and procedures for writing a get.

Key Disputes (Machlokes): The teshuvah first discusses *hazmanah milsa hi*: whether designation creates sanctity. Sanhedrin 48 teaches that all opinions treat designation as effective for *guf ha-kedushah*, the sacred object itself. Therefore, parchment processed for a Sefer Torah cannot be used for a get. Rabbi Akiva Eiger then asks why Menachos 34b speaks only "according to the one who holds designation is significant." He suggests that designation of *guf ha-kedushah* forbids a change from sacred to profane. However, it may not forbid a change from higher to lower sanctity, such as from Sefer Torah parchment to tefillin. He leaves this point unresolved. In the addendum, he applies *ein breirah* to the *shalish*, a third party holding a get. He questions Tosfos and the Ran and says that even a *me'achshav* condition would not solve the problem.

לִידִידִי הָרַב רַבִּי אַבְרָהָם בִּקְהִלָּה קְדוֹשָׁה וִוילְנָא.

To my dear friend, the Rabbi, Rabbi Avraham, in the holy community of Vilna.

אֲשֶׁר דָּרַשׁ כְּבוֹדוֹ בְּעַד הַסּוֹפֵר מֻמְחֶה דִּקְהִלָּה קְדוֹשָׁה סְלָאנִימָא לְהוֹדִיעוֹ מַהוּ הַשְּׁמוּעָה שֶׁשָּׁמַע בִּשְׁמִי שֶׁאֵין דַּעְתִּי נוֹחָה בְּמִנְהַג הַסּוֹפְרִים בְּעִבּוּד הַקְּלָפִים לְשֵׁם סֵפֶר תּוֹרָה וּתְפִלִּין וּמְזוּזוֹת:

Whereas his honor inquired on behalf of the expert scribe of the holy community of Slonim, to inform him what is the report that he heard in my name — that I am not satisfied with the practice of the scribes regarding the processing of parchment for the sake of a Sefer Torah, tefillin, and mezuzos.

לְמַלּוֹת רְצוֹנוֹ וְגַם שֶׁלְּדַעְתִּי מִצְוָה רַבָּה הִיא לְפַרְסֵם הַדָּבָר, אוֹמֵר לוֹ שֶׁשָּׁאַלְתִּי לְהַסּוֹפְרִים בִּמְדִינָתִי וּבִמְדִינוֹת הַקְּרוֹבוֹת אֵלַי, אֵיךְ נוֹהֲגִים לִיקַּח לִכְתִיבַת גִּיטִּין מֵהַקְלָפִים הַמְעוּבָּדִים לְסֵפֶר תּוֹרָה, דַּהֲוֵי הוֹרָדָה מִקְּדוּשָּׁה לְחוֹל, וְזֶהוּ אָסוּר אֲפִלּוּ בְּהַזְמָנָה דִּבְגוּף הַקְּדוּשָּׁה הַזְמָנָה מִילְתָא הִיא כִּדְאִיתָא סוֹף פֶּרֶק נִגְמַר הַדִּין (דף מ"ח):

To fulfill his request — and also because in my opinion it is a great mitzvah to publicize this matter — I tell him that I asked the scribes in my region and in the regions close to me: How is it that they take for the writing of gittin from parchments that were processed for the sake of a Sefer Torah? For this constitutes a descent from sanctity to profane use. And this is prohibited even through mere designation (hazmanah). The prohibition applies even before any sacred text has been written. **For regarding the body of the sacred object itself, designation is significant —** The Talmud disputes whether designation creates sanctity for *tashmishei kedushah*, accessories of sacred objects. All opinions agree that it does for *guf ha-kedushah*, the sacred object itself. [1] **as stated at the end of the chapter Nigmar HaDin (folio 48).**

הֵן לִכְתּוֹב תְּפִלִּין עַל קְלָף הַמְעוּבָּד לְשֵׁם סֵפֶר תּוֹרָה אַף דַּהֲוֵי הוֹרָדָה מִקְּדוּשָּׁה חֲמוּרָה לִקְדוּשָּׁה קַלָּה, נִרְאֶה לְכָאוֹרָה דְּשָׁרֵי, מִדְּקָאָמַר בִּמְנָחוֹת (דף ל"ד עמוד ב') וּלְמַאן דְּאָמַר הַזְמָנָה מִלְתָא דְּאַתְנוּ עֲלֵיהּ מֵעִיקָּרָא, וְקַשְׁיָא לִי בְּגַוּהּ, הָא בְּגוּף הַקְּדוּשָּׁה לְכוּלֵי עָלְמָא הַזְמָנָה מִלְתָא וְאֵיךְ שַׁיָּךְ לְשׁוֹן וּלְמַאן דְּאָמַר הַזְמָנָה מִלְתָא הָא כּוּלֵי עָלְמָא מוֹדוּ בָּזֶה, וְצָרִיךְ לוֹמַר דְּמִכָּל מָקוֹם לְדִידַן דְּקַיְימָא לַן בְּעָלְמָא לָאו מִלְתָא, גַּם בְּגוּף הַקְּדוּשָּׁה דְּמִלְתָא הִיא לֹא חָמִיר כָּל כָּךְ לֶאֱסוֹר לְהוֹרִידוֹ לִקְדוּשָּׁה קַלָּה, וּפְרָט זֶה עֲדַיִן צָרִיךְ עִיּוּן, [אָמַר בֶּן הַמְחַבֵּר עַיֵּין בַּסָּמוּךְ סִימָן ג'.] אֲבָל לִכְתּוֹב גֵּט שֶׁהוּא הוֹרָדָה לְחוֹל וֶזֶהוּ וַדַּאי אָסוּר:

Now, regarding writing tefillin on parchment that was processed for the sake of a Sefer Torah — even though this constitutes a descent from a higher level of sanctity to a lower level of sanctity — it appears at first glance that it is permitted. This is based on what the Gemara says in Menachos (folio 34b): "And according to the one who holds that designation is significant —"[2] "they stipulated regarding it from the outset." The Gemara says that a prior stipulation can prevent the problem of demotion. **But I have a difficulty with this passage. For regarding the body of a sacred object, according to all opinions designation is significant! So how is it fitting to use the conditional language "according to the one who holds that designation is significant" — when everyone agrees on this point? We must therefore say that nevertheless, since we hold that in general designation is not significant —** *Tashmishei kedushah* are sacred accessories. For them, the law follows *hazmanah lav milsa*: designation alone does not create sanctity. **even regarding the body of a sacred object, where designation is indeed significant, it is not so stringent as to prohibit lowering it to a lesser level of sanctity.** This explains the Gemara's conditional wording: it concerns demotion between levels of sanctity. **And this particular point still requires further investigation. [The son of the author says: See the adjacent Siman 3.]** This note directs the reader to the next teshuvah, which discusses this point further. **But to write a get, which constitutes a descent to profane use — this is certainly prohibited.**

[1] Sanhedrin 48a — At the end of Perek Nigmar HaDin, the Gemara discusses whether *hazmanah milsa hi* (designation creates sanctity). The Gemara distinguishes between accessories (*tashmishei kedushah*) and the body of the sacred object itself (*guf ha-kedushah*), stating: מְשַׁמְּשִׁין מִמְּשַׁמְּשִׁין גָּמְרִינַן, לְאַפּוֹקֵי עֶגְלָה עֲרוּפָה דְּהִיא גּוּפַהּ קְדוֹשָׁה — "We derive [the law of] accessories from [other] accessories, excluding the *eglah arufah* which is itself sacred." This distinction establishes that regarding *guf ha-kedushah*, designation is binding even according to the view that generally *hazmanah lav milsa*.

[2] Menachos 34b — The Gemara there discusses the parchment of tefillin. The Talmud teaches: תָּנוּ רַבָּנָן: יָכוֹל יִכְתְּבֵם עַל אַרְבָּעָה עוֹרוֹת, וְיַנִּיחֵם בְּאַרְבָּעָה בָּתִּים — "The Rabbis taught: Could one write [the four passages of the head tefillin] on four hides and place them in four compartments?" In this broader *sugya*, the Gemara discusses the principle of *hazmanah* in the context of whether parchment designated for one type of tefillin may be reassigned to another, using the phrase "according to the one who holds *hazmanah milsa*" that Rabbi Akiva Eiger analyzes.

וְהִגִּידוּ לִי שֶׁבְּשָׁעָה שֶׁמַּנִּיחִין הָעוֹרוֹת בַּסִּיד אוֹמְרִים שֶׁיִּהֵא מְעוּבָּד לְשֵׁם סֵפֶר תּוֹרָה אוֹ תְּפִלִּין וּמְזוּזוֹת וְגִיטִּין כְּפִי מַה שֶּׁיִּבְחֲרוּ אַחֲרֵי כֵן, וְאָמַרְתִּי לָהֶם שֶׁמַּה שֶּׁהֵם חוֹשְׁבִים לְתַקֵּן בִּתְנָאָם לְמַעַן שֶׁאוֹתוֹ קֶלֶף שֶׁיִּקְחוּ לְגִיטִּין, לֹא יְהֵא נִתְעַבֵּד מֵעוֹלָם לְשֵׁם סֵפֶר תּוֹרָה תְּפִלִּין וּמְזוּזוֹת אֵינוֹ נָכוֹן בְּעֵינַי כְּלָל, דְּהָא אִם נֵימָא דַּהֲוֵי כְּמַתְנֶה בִּשְׁעַת עִיבּוּד דְּאוֹתוֹ שֶׁאֶקַּח לִכְתּוֹב עָלָיו סֵפֶר תּוֹרָה יִהְיֶה עִבּוּדוֹ לְשֵׁם סֵפֶר תּוֹרָה, וּמַה שֶּׁאֶקַּח לִכְתּוֹב עָלָיו גֵּט יִהְיֶה חוֹל, אִם כֵּן מַה שֶּׁכּוֹתְבִים עַל קְלָפִים אֵלּוּ סֵפֶר תּוֹרָה וּתְפִלִּין וּמְזוּזוֹת לֹא הֲוֵי מְעוּבָּד לִשְׁמוֹ, דְּנִצְטָרֵךְ לוֹמַר דְּזֶהוּ שֶׁכּוֹתֵב עָלָיו סֵפֶר תּוֹרָה הוּבְרַר הַדָּבָר שֶׁנֶּעֱבַד לְשֵׁם סֵפֶר תּוֹרָה, וַהֲרֵי אֲנַן קַיְימָא לַן בְּדְאוֹרַיְיתָא אֵין בְּרֵירָה.

And they told me that at the time they place the hides in lime — The *lishmah* declaration must be made when the hides are placed in lime. **they declare that the processing should be for the sake of a Sefer Torah, or tefillin, and mezuzos, and gittin — according to what they will choose afterward. And I told them that what they think they are correcting through their stipulation — namely, that the particular parchment they will take for gittin should never have been processed for the sake of Sifrei Torah, tefillin, and mezuzos — is not correct in my eyes at all. For if we say that this operates as a stipulation made at the time of processing — "Whichever one I take to write a Sefer Torah upon — its processing shall have been for the sake of a Sefer Torah," "and whichever one I take to write a get upon shall be profane" — then these parchments, on which they write Sifrei Torah, tefillin, and mezuzos, were not processed for their [sacred] purpose (lishmah).** The processing had no definite sacred purpose when it occurred. That fails the *lishmah* requirement. **For we would need to say that when one writes a Sefer Torah on a given parchment, it is retroactively clarified that it was processed for the sake of a Sefer Torah.** *Breirah* means that a later event retroactively determines the status of an earlier act. **But we hold that in matters of Torah law, there is no retroactive clarification (breirah).** The *lishmah* requirement is Torah law, so the scribes cannot rely on *breirah*.

וְלָזֶה הוֹרֵיתִי לָהֶם לַעֲשׂוֹת כָּךְ, שֶׁיְּעַבְּדוּ הַכֹּל לְשֵׁם סֵפֶר תּוֹרָה וְיִתְּנוּ בַּתְּחִלָּה שֶׁיִּהֵא בְּיָדָם לְשַׁנּוֹת לִכְתּוֹב עָלָיו דִּבְרֵי חוֹל, דְּתְנַאי מְהַנֵּי בָּזֶה:

Therefore, I instructed them to do as follows: They should process all the parchment for the sake of a Sefer Torah — and stipulate at the outset that it should remain in their power to change [the designation] and write profane matters upon it. For a stipulation (tenai) is effective in this matter. The parchment is processed with a definite sacred purpose. The *tenai* separately allows the scribe to change its use later.

מִמֶּנִּי עֲקִיבָא בֶּן מוֹרֵנוּ וְרַבֵּנוּ הָרַב רַבִּי מֹשֶׁה גִּינְז:

From me, Akiva, son of our teacher and master, the Rabbi, Rabbi Moshe Güns.

[הַשְׁמָטוֹת: סִימָן ב אַחַר חֲתִימַת הַתְּשׁוּבָה: וּבְהַאי עִנְיָנָא דִּבְרֵירָה קָשֶׁה לִי בַּסּוּגְיָא דִּשְׁלִישׁ בְּמַה שֶּׁכָּתְבוּ בְּתוֹסָפוֹת דְּהֵימְנֵיהּ הַיְינוּ אַף אִם יְשַׁקֵּר מִכָּל מָקוֹם כְּשֶׁיֹּאמַר לְגֵירוּשִׁין יִהְיֶה לְגֵרוּשִׁין, וְעַל כָּרְחֲךָ הַכַּוָּנָה שֶׁיִּהְיֶה לְמַפְרֵעַ לְגֵרוּשִׁין דְּאִלּוּ מֵאוֹתוֹ זְמַן שֶׁיֹּאמַר הַשָּׁלִישׁ לְגֵרוּשִׁין הָא כֵּיוָן דְּהַבַּעַל אָמַר תְּחִלָּה לְפִקָּדוֹן הֲוֵי חֲזָרָה, וּבְהָרָ"ן כָּתַב מִשָּׁעָה שֶׁהָיָה הַשָּׁלִישׁ אֵצֶל הָאִשָּׁה, וְהַיְינוּ גַּם כֵּן לְכְשֶׁיֹּאמַר אַחַר

[Addenda: Siman 2, after the signature of the teshuvah:] And on this matter of breirah, I have a difficulty in the sugya of the shalish (the third-party custodian of a get). The husband entrusted the get to the *shalish* with instructions about its delivery. **Regarding what Tosfos wrote that "he trusted him" —**[3] **meaning that even if the shalish lies, nevertheless, when he declares "for divorce," it shall be for divorce. And necessarily the intent is that it shall be retroactively effective for divorce. For if the divorce takes effect only from the time the shalish declares "for divorce" — since the husband already said it was given "as a deposit," that constitutes a retraction.** The husband's

[3] Tosfos, Gittin, in the *sugya* of the *shalish*.

כַּמָּה שָׁנִים שֶׁיִּהְיֶה לְגֵרוּשִׁין יִהְיֶה הַגֵּרוּשִׁין לְמַפְרֵעַ מִשָּׁעָה שֶׁהָיָה אַתָּה בְּמָקוֹם אֶחָד, וְקָשֶׁה לִי הָא קַיְימָא לַן בְּדְאוֹרַיְיתָא אֵין בְּרֵירָה, וְלוּ יְהָא דְּאָמַר לְהַשָּׁלִישׁ בְּמִפּוֹרָשׁ אִם תִּרְצֶה אַחַר הַזְּמַן שֶׁיִּהְיֶה לְגֵרוּשִׁין יְהָא מֵעַכְשָׁיו לְגֵרוּשִׁין גַּם כֵּן לֹא מְהַנֵּי וְעַיֵּין רַשְׁ"י גִּיטִּין (דף כ"ה עמוד ב') דְּבַתְנַאי עַל מְנָת שֶׁתִּתְּנִי לִי מָאתַיִם זוּז, דְּבִידָהּ וְדַעְתָּהּ לְקַיֵּים וְזֶה לֹא שַׁיָּךְ בִּתְנַאי זֶה דְּמֵהֵיכָן יָדְעִינַן דְּדַעַת הַשָּׁלִישׁ לְכָךְ לְשַׁקֵּר וּלְשַׁוּיָהּ לְגִיטּוֹ גֵּט לְמַפְרֵעַ, וְצָרִיךְ עִיּוּן.]

statement was a retraction. So the later declaration cannot create a divorce from that point onward. **And the Ran wrote: from the time the shalish was in the presence of the wife.**[4] **And this also means: when the shalish declares after several years that the get should be for divorce, the divorce takes effect retroactively from the time they were in one place. And my difficulty is: we hold that in Torah law there is no breirah!** The later declaration would retroactively decide whether the get was a deposit or a divorce. **And even if the husband explicitly told the shalish: "If you wish after some time for it to be for divorce, let it be for divorce from now (me'achshav)"** — *Me'achshav* often avoids *breirah* by making an act take effect now, subject to a future condition. **this also would not help. And see Rashi on Gittin (folio 25b),**[5] **that regarding a condition of "on the condition that you give me two hundred zuz" — it works because it is in her power and her intent to fulfill the condition.** Rashi says *me'achshav* avoids *breirah* only when the person can and intends to fulfill the condition. **And this does not apply in this type of condition. For how do we know that the shalish intends this — to lie and thereby retroactively make the husband's get into a valid get?** We cannot assume that the *shalish* intends to contradict the husband. So Rashi's rule does not apply. **This requires further investigation.]**

[4] Ran, Gittin, in the *sugya* of the *shalish*.

[5] Rashi, Gittin 25b. The broader Talmudic *sugya* there discusses *breirah* in the context of divorce. The Gemara states: וְאַוְּדָא רַבִּי יוֹחָנָן לְטַעְמֵיהּ – דְּאָמַר רַבִּי אַסִּי, אָמַר רַבִּי יוֹחָנָן: הָאַחִין שֶׁחָלְקוּ – לָקוֹחוֹת הֵן — "And Rabbi Yochanan follows his own reasoning, for Rabbi Assi said in the name of Rabbi Yochanan: Brothers who divided [an inheritance] are considered purchasers." Rabbi Yochanan holds *ein breirah*, which forms the background for Rashi's discussion of conditions in gittin.

תשובה ג

Sefer Torah Parchment for Tefillin and Lowering Sanctity

Property Law > Laws of the Eglah Arufah • *Laws of Divine Service > Laws of Misuse of Temple Maintenance Funds*

Summary

Correspondent and Context: This teshuvah has no salutation or named recipient. It seems to continue the discussion in Siman 2 about using parchment prepared for a Sefer Torah to write tefillin. Rabbi Akiva Eiger later found support in the Avodas HaGershuni and examines the Talmudic basis.

The Question (Sha'ila): The question is whether parchment prepared for a Sefer Torah may be used for tefillin without an advance *tenai*. The issue turns on *hazmanah milsa hi*: designation has legal force. Does this rule for *guf ha-kedushah*, the sacred object itself, also forbid lowering it to a lesser sanctity? Menachos 34b speaks of "the one who holds" this view, suggesting a dispute. But Sanhedrin seems to say everyone accepts it for *guf ha-kedushah*.

The Ruling (Teshuvah): Rabbi Akiva Eiger accepts the Avodas HaGershuni's ruling. For us, designation of *guf ha-kedushah* forbids lowering an item even to a lesser sanctity. One must therefore stipulate in advance before using Sefer Torah parchment for tefillin. He explains why Menachos can still describe the underlying principle as disputed.

Shulchan Aruch Background: The discussion relates to Orach Chaim 32 and 42 and Yoreh Deah 271, though it cites none of these simanim. Its central rule is *ma'alin ba-kodesh v'lo moridin*: sacred items may be raised, but not lowered, in sanctity.

Key Disputes (Machlokes): Three disputes shape the answer. First, Abaye says designation matters, while Rava says it does not for sacred accessories. Second, authorities dispute whether an *eglah arufah* is prohibited when brought into the valley or only when its neck is broken. Third, R. Akiva says a non-Jew's idol is prohibited upon designation, while R. Yishmael requires worship. If R. Yishmael is combined with the view that only *arifah* prohibits the heifer, neither source proves that designation matters for *guf ha-kedushah*. Menachos can therefore speak of the rule as disputed.

אַחֲרֵי הַיָּמִים מָצָאתִי כְּדְבָרַי, בִּתְשׁוּבַת עֲבוֹדַת הַגֵּרְשׁוּנִי (סִימָן ס"ה) וְעַיֵּין שָׁם שֶׁכָּתַב דַּאֲפִלּוּ מִשּׁוּם כְּתִיבַת תְּפִלִּין צָרִיךְ לְהַתְנוֹת, דְּבָלְאו הָכִי אֵינוֹ רַשַּׁאי לְכוֹתְבָן עַל עוֹר הַמְעוּבָּד לְסֵפֶר תּוֹרָה דַּהֲוֵי הוֹרָדָה, וְכֵיוָן דְּקַיְימָא לַן (סוֹף פֶּרֶק נִגְמַר הַדִּין) דִּבְגוּף הַקְּדוּשָּׁה הַזְּמָנָה מִלְּתָא הִיא וְאָסוּר לְהוֹרִידוֹ לְחוֹל, הָכִי נָמֵי אָסוּר לְהוֹרִידוֹ לִקְדוּשָּׁה קַלָּה וְהֵבִיא רְאָיָה מִמַּסֶּכֶת מְנָחוֹת (דַּף ל"ד עַמּוּד ב')

After some time, I found [support] for my words. This likely continues the discussion in Siman 2. **in the responsa of the Avodas HaGershuni (Siman 65).** This is a collection of responsa by R. Gershon Ashkenazi. **And see there that he wrote that even for the purpose of writing tefillin, one must make a stipulation [in advance].** Parchment prepared for a Sefer Torah may be used for tefillin only if this was stipulated in advance. **For otherwise, one is not permitted to write them on parchment that was processed for a Sefer Torah. since this would constitute a lowering [of sanctity].** Tefillin have less sanctity than a Sefer Torah. This change is called *horadah*. **And since we hold (at the end of chapter Nigmar HaDin),** This refers to the end of Sanhedrin's sixth chap-

וּלְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא הִיא דְּאַתְנֵי עֲלֵיהּ מֵעִיקָּרָא, הֲרֵי דְּלְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא גַּם לְהוֹרִידוֹ לִקְדוּשָּׁה קַלָּה אָסוּר, וְהוּא הַדִּין לְדִידַן בְּגוּף קְדוּשָּׁה עַיֵּין שָׁם:

ter.[1] **that regarding guf ha-kedushah, hazmanah milsa hi.** In *guf ha-kedushah*, the object itself is sacred, not merely an accessory. Designation alone gives it a binding status. **and it is forbidden to lower it to secular [use]. similarly, it is forbidden to lower it to a lesser sanctity. And he brought proof from Masechta Menachos (daf 34b).**[2] The proof is from the sugya there dealing with tefillin compartments. **"And according to the one who holds hazmanah milsa hi — [the answer is] that he stipulated regarding it from the outset."** Menachos discusses reusing tefillin compartments. Under the stricter view, reuse requires an advance stipulation. **This demonstrates that according to the view that hazmanah milsa, it is also forbidden to lower [an item] to a lesser sanctity.** Both tefillin compartments are sacred, but one has greater sanctity. Requiring a stipulation shows that even this demotion is forbidden. **And the same applies for us regarding guf kedushah; see there.**

וּלְדִידִי הָיָה נִרְאֶה מִמָּקוֹם זֶה עַצְמוֹ רְאָיָה לְהֵיפוּךְ מִדְּאָמְרִינַן וּלְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא הִיא וְהָא בְּגוּף הַקְּדוּשָּׁה לְכוּלֵּי עָלְמָא הַזְּמָנָה מִלְּתָא הִיא, אֶלָּא וַדַּאי דִּלְדִידַן דְּקַיְימָא לַן הַזְּמָנָה לָאו מִלְּתָא, אַף דְּבְגוּף הַקְּדוּשָּׁה מִלְּתָא הִיא מִכָּל מָקוֹם לָא חָמִיר כָּל כָּךְ שֶׁיְּהֵא אָסוּר אֲפִלּוּ לְהוֹרִידוֹ לִקְדוּשָּׁה קַלָּה, וְכִנְזָכָר לְעֵיל:

But to me, it appeared that from this very source one could bring proof to the contrary. From the fact that [the Gemara] says: "And according to the one who holds hazmanah milsa hi..." The Gemara frames this as a position held by one particular opinion — as though it were disputed. **But in guf ha-kedushah, everyone agrees that hazmanah milsa hi!** Sanhedrin presents this principle as universal. Why does Menachos present it as one opinion? **Rather, it must be that for us — who hold hazmanah lav milsa [regarding accessories]** — We rule that designation is not significant when it comes to accessories (*tashmishei kedushah*), following Rava's position. **even though regarding guf ha-kedushah, it IS milsa — nevertheless, [the prohibition] is not so severe as to forbid even lowering it to a lesser sanctity, as mentioned above.** This reading would distinguish two levels. Designation of *guf ha-kedushah* would bar secular use, but not a lesser sanctity. That would contradict the Avodas HaGershuni.

אֲבָל בֶּאֱמֶת זֶהוּ דּוֹחַק גָּדוֹל, דִּלְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא הִיא אָסוּר לְהוֹרִידוֹ גַּם לִקְדוּשָּׁה קַלָּה וּלְמַאן דְּאָמַר לָאו מִלְּתָא אַף דְּבְגוּף הַקְּדוּשָּׁה מִלְּתָא הִיא מִכָּל מָקוֹם מוּתָּר לְהוֹרִידוֹ לִקְדוּשָּׁה קַלָּה, דְּמָה הֶפְרֵשׁ בֵּין זֶה לָזֶה:

But in truth, this [interpretation] is very forced. [It would mean] that according to the one who holds hazmanah milsa hi, it is forbidden to lower it even to a lesser sanctity — but according to the one who holds it is lav milsa, even though in guf ha-kedushah it IS milsa — nevertheless, it is permitted to lower it to a lesser sanctity. For what is the difference between the two? There is no reason for designation of *guf ha-kedushah* to be weaker than designation of accessories.

וְנִרְאֶה לַעֲנִיּוּת דַּעְתִּי דְּאַף דַּאֲנַן קַיְימָא לַן דְּבְגוּף הַקְּדוּשָּׁה הַזְּמָנָה מִלְּתָא הִיא

And it appears to my humble opinion that even though we hold that in guf ha-kedushah, hazmanah milsa hi — this is [only] according to

[1] Sanhedrin 47b–48a — The Gemara states: "מְשַׁמְשִׁין מִמְּשַׁמְשִׁין גָּמְרִינַן, לְאַפּוֹקֵי עֶגְלָה עֲרוּפָה דְּהִיא גּוּפַהּ קְדוּשָּׁה" — "We derive [the law of] accessories from accessories, excluding *eglah arufah*, which is itself sacred" (48a). This passage establishes the distinction between *guf ha-kedushah* and *tashmishei kedushah* with respect to *hazmanah*.

[2] Menachos 34b — The Gemara discusses tefillin compartments and whether compartments designated for one section may be reused for another. The passage cited is: "ולמאן דאמר הזמנה מלתא היא דאתני עליה מעיקרא" — "according to the one who holds *hazmanah milsa hi*, he stipulated regarding it from the outset." This demonstrates that according to this view, reuse between different levels of sanctity requires advance stipulation.

הַיְינוּ לְמָה דְּקַיְימָא לַן בְּעֶגְלָה עֲרוּפָה יְרִידָתָהּ לְנַחַל אֵיתָן אוֹסַרְתָּהּ יַלְפִינַן מִינָּהּ דִּבְגוּף הַקְּדוּשָּׁה הַזְמָנָה מִלְתָא הִיא, אֲבָל לְמַאן דְּאָמַר דַּעֲרִיפָתָהּ אוֹסַרְתָּהּ מִמֵּילָא גַּם בְּגוּף הַקְּדוּשָּׁה הַזְמָנָה לָאו מִלְתָא הִיא, וּמִשּׁוּם הָכִי שַׁפִּיר אָמְרִינַן וּלְמַאן דְּאָמַר מִלְתָא דְּהָא גַּם בְּגוּף הַקְּדוּשָּׁה לָאו לְכוּלֵי עָלְמָא מִלְתָא הִיא.

what we hold regarding eglah arufah: that its descent to the nachal eisan [rough valley] creates the prohibition. The law of *eglah arufah* is the source. Bringing the heifer down before any act shows that designation alone can prohibit the sacred object. **From this we derive that in guf ha-kedushah, hazmanah milsa hi. But according to the one who holds that the arifah [breaking of the neck] creates the prohibition** — Under this view, descent into the valley does not prohibit the heifer. The prohibition begins only with *arifah*. **it follows that even in guf ha-kedushah, hazmanah lav milsa hi. And therefore, the Gemara can properly say: "And according to the one who holds milsa..."** On this reading, the dispute extends to *guf ha-kedushah* itself, not only to accessories. **since even in guf ha-kedushah, it is not universally [agreed] that it is milsa.**

וּבְיוֹתֵר דְּמָרָא דִּשְׁמַעְתָּא שָׁם בִּמְנָחוֹת מַה דְּפָרְכִינַן מִינֵּיהּ הוּא ר"י וְעָלֵיהּ מְשַׁנֵּי הָא בְּעַתִּיקְתָּא הָא בְּחַדְתָּא, וְר"י סוֹבֵר בְּחוּלִּין (דַּף פ"ב) דַּעֲרִיפָתָהּ אוֹסַרְתָּהּ, וּלְדִידֵיהּ גַּם בְּגוּף הַקְּדוּשָּׁה הַזְמָנָה לָאו מִלְתָא וַעֲלֵיהּ אָמְרִינַן וּלְמַאן דְּאָמַר הַזְמָנָה מִלְתָא, הַיְינוּ לְאַבַּיֵי וְכֵן לְמַאן דְּסָבִירָא עֶגְלָה עֲרוּפָה יְרִידָתָהּ אוֹסַרְתָּהּ וּמִמֵּילָא בְּגוּף הַקְּדוּשָּׁה הַזְמָנָה מִלְתָא, מַשְׁכַּחַת לָהּ בְּאַתְנֵי מֵעִיקָּרָא:

Moreover, the master of the teaching there in Menachos — from whom the objection is raised — is R. Yochanan. And upon it, [the Gemara] answers: "This [refers to] old ones, this [to] new ones." And R. Yochanan holds in Chullin (daf 82)[3] that the arifah creates the prohibition. And according to his view, even in guf ha-kedushah, hazmanah is not milsa. Since R. Yochanan holds *arifasah osrastah*, he cannot derive from *eglah arufah* that *hazmanah milsa hi* in *guf ha-kedushah*. **And regarding this, [the Gemara] says: "According to the one who holds hazmanah milsa..."** The Gemara in Menachos frames the principle as the view of only one opinion — because R. Yochanan himself does not hold it. **This refers to Abaye, and similarly to the one who holds [that regarding] eglah arufah, its descent creates the prohibition.** Those who hold *yeridah osrastah* can derive from *eglah arufah* that in *guf ha-kedushah*, *hazmanah milsa hi*. **And consequently, in guf ha-kedushah, hazmanah milsa. [The resolution] is found through [one who] stipulated from the outset.** They can permit reusing the compartments only through an advance stipulation.

וְאוּלָם הָא בֶּאֱמֶת סוּגְיָא דְּסַנְהֶדְרִין, דְּאָמְרִינַן רָבָא מַאי טַעְמָא לָא גָּמַר מֵעֶגְלָה עֲרוּפָה, הוּא תָּמוּהַּ דְּהָא רָבָא סְבִירָא לֵיהּ בִּכְרִיתוֹת דַּעֲרִיפָתָהּ אוֹסַרְתָּהּ וְאִם כֵּן גַּם בְּעֶגְלָה עֲרוּפָה הַזְמָנָה לָאו מִלְתָא, וּבְתוֹסָפוֹת שָׁם הִקְשׁוּ כֵּן, [אֲבָל לֹא יָדַעְתִּי לָמָּה צוֹרֵךְ הִקְדִּימוּ דְּרָבָא סְבִירָא

However, the sugya in Sanhedrin This raises a problem for his proposed answer. **where it says: "Rava — what is the reason he does not derive from eglah arufah?"[4] is puzzling. since Rava holds in Kerisus that the arifah creates the prohibition.[5]** If so, *eglah arufah* cannot serve as evidence for *hazmanah milsa hi* according to Rava's own view. **And if so, regarding eglah arufah too, hazmanah is not milsa.** The question seems pointless because Rava would have nothing to derive from *eglah arufah*. **And Tosfos there raised this same difficulty.[6] [But I do not**

[3] Chullin 82a — The Gemara records: "עֶגְלָה עֲרוּפָה, לָאו שְׁחִיטָה רְאוּיָה הִיא? וְהָתְנַן: נִמְצָא הַהוֹרֵג עַד שֶׁלֹּא תֵּעָרֵף הֶעָגְלָה – תֵּצֵא וְתִרְעֶה בָּעֵדֶר." R. Yochanan's position, that the *arifah* (breaking of the neck) is what creates the prohibition — as opposed to the descent to the *nachal eisan* — is discussed in this sugya.

[4] See footnote 1 above. The question "Rava — why does he not derive from *eglah arufah*?" appears in the same sugya on Sanhedrin 48a.

[5] Kerisus — Rava explicitly holds that regarding *eglah arufah*, *arifasah osrastah* (the breaking of the neck creates the prohibition).

[6] Tosfos, Sanhedrin 48a — Tosfos raise the difficulty that since Rava holds *arifasah osrastah* in Kerisus, the Gemara's question about why Rava doesn't derive from *eglah arufah* seems pointless. They reinterpret the question as asking why Rava doesn't derive from *eglah arufah* that *hazmanah lav milsa*.

לֵיהּ דַּהֲלָכָה כְּר"י בַּר מֵהָנֵי תְּלָת, הָא בִּמְפוֹרָשׁ סְבִירָא לֵיהּ לְרָבָא בִּכְרִיתוֹת דַּעֲרִיפָה אוֹסֶרֶת] וְתֵרְצוּ דְּהָכִי פָּרְכִינַן מַאי טַעְמָא לָא גָּמַר מֵעֶגְלָה עֲרוּפָה דְּהַזְמָנָה לָאו מִלְּתָא, וְלִכְאוֹרָה תָּמוּהַּ דְּאִם כֵּן מַה מְּשַׁנֵּי שָׁם מְשַׁמְּשִׁים מִמְּשַׁמְּשִׁים גָּמַר לְאַפּוֹקֵי עֶגְלָה עֲרוּפָה דְּגוּפָהּ קְדוּשָּׁה הָא מִכָּל מָקוֹם אִיכָּא לְמֵילַף וּבְמִכָּל שֶׁכֵּן כֵּיוָן דַּאֲפִלּוּ בְּגוּף הַקְּדוּשָּׁה הַזְמָנָה לָאו מִלְּתָא כָּל שֶׁכֵּן בְּתַשְׁמִישִׁים:

understand why they [Tosfos] needed to preface that Rava holds the halacha follows R. Yochanan except in these three [cases]. since Rava explicitly holds in Kerisus that the arifah creates the prohibition.] There is no need to derive Rava's position indirectly when he states it explicitly. **And they [Tosfos] answered that the question is asked thus: what is the reason he does not derive from eglah arufah — that hazmanah is not milsa?** Tosfos read the question in reverse: why not learn that designation is ineffective from *eglah arufah*? Under Rava's view, the heifer is not prohibited until *arifah*. **At first glance, this is puzzling: if so, what does the Gemara answer there? "[He derives] meshamshim from meshamshim, excluding eglah arufah which is itself guf kedushah." But nevertheless, one could still derive [from it] through a kal va-chomer! Since even in guf ha-kedushah, hazmanah is not milsa, all the more so regarding accessories!** If designation fails even for the sacred object itself, it must fail for mere accessories. The Gemara's distinction would not answer the question.

וְלָזֶה הָיָה נִרְאֶה דְּמַה דְּמְשַׁנֵּינַן מְשַׁמְּשִׁים מִמְּשַׁמְּשִׁים גָּמַר הַיְינוּ דְּבֶאֱמֶת סְבִירָא לֵיהּ דְּרַק בְּמְשַׁמְּשִׁים לָאו מִלְּתָא לְאַפּוֹקֵי עֶגְלָה עֲרוּפָה דְּגוּפָהּ קְדוּשָּׁה, וְאִם כֵּן אִי הֲוֵי אָמַר רָבָא דִּילְפִינַן מֵעֶגְלָה עֲרוּפָה הָיָה בְּמַשְׁמַע דַּאֲפִלּוּ בְּגוּף קְדוּשָּׁה הַזְמָנָה לָאו מִלְּתָא, וּבֶאֱמֶת זֶה אֵינוֹ, דִּלְעִנְיַן גּוּף קְדוּשָּׁה יַלְפִינַן לְחוּמְרָא מֵעֲבוֹדָה זָרָה עַצְמָהּ דְּבַעֲבוֹדָה זָרָה הַזְמָנָה מִלְּתָא, מְשׁוּם הָכִי אָמַר דְּגָמַר מֵעֲבוֹדָה זָרָה דְּיֵהֶיהּ כִּי הָתָם, דְּבְמְשַׁמְּשִׁים לָאו מִלְּתָא וּבְגוּפָהּ מִלְּתָא, וְהוּא נָכוֹן לִכְאוֹרָה.

Therefore, it would appear that when the Gemara answers: "[He derives] meshamshim from meshamshim" — this means that in truth, [Rava] holds that only regarding meshamshim [accessories], it is not milsa — excluding eglah arufah, which is guf kedushah. The heifer is excluded because the rule for a sacred object differs from the rule for accessories. **And if so, had Rava said that we derive from eglah arufah — it would imply that even in guf kedushah, hazmanah is not milsa. But in truth, this is not so. For regarding guf kedushah, we derive stringently from avodah zarah itself** — There is an independent derivation from the laws of idolatry. **since regarding avodah zarah, hazmanah milsa. Therefore, he [Rava] said that he derives from avodah zarah, so that [the law] should be like there — that regarding meshamshim it is not milsa, but regarding the guf [itself] it is milsa.** An idol's accessories are not prohibited by designation alone, but the idol itself is. Rava applies this distinction to other sacred objects. **And this appears correct at first glance.**

[וַעֲדַיִין קָשֶׁה עַל מַה שֶּׁכָּתְבוּ הַתּוֹסָפוֹת שָׁם הָכִי נָמֵי בְּאִידָךְ פִּירְכָא אַבָּיֵי מַאי טַעְמָא לֹא גָּמַר מֵעוֹבֵד כּוֹכָבִים וּמַזָּלוֹת הַיְינוּ שֶׁנִּלְמַד מֵעוֹבֵד כּוֹכָבִים וּמַזָּלוֹת עַצְמוֹ דְּהַזְמָנָה מִלְּתָא. וּבָזֶה יִקָּשֶׁה מַה מְּשַׁנֵּי, יָלִיף מִידִּי דְּאוֹרְחָא מִמִּידִי דְּאוֹרְחָא הָא מִכָּל מָקוֹם נֵילַף בְּקַל וָחוֹמֶר כֵּיוָן דַּאֲפִילּוּ בְּלָאו אוֹרְחָא הַזְמָנָה מִלְּתָא מִכָּל שֶׁכֵּן בְּאוֹרְחָא, אַךְ בֶּאֱמֶת בְּלָאו הָכִי קָשֶׁה דְּאֵיהּ שַׁיְיהּ לוֹמַר דְּגָמַר מֵעֲבוֹדָה זָרָה

[Still, there is a difficulty regarding what Tosfos wrote there. Similarly, regarding the other question: "Abaye — what is the reason he does not derive from idolatry?" Tosfos apply the same reading to the Gemara's question about Abaye. **That is, that we should derive from idolatry itself that hazmanah milsa.** This reading asks why Abaye does not use idolatry to prove that designation is effective for the idol itself. **But with this [interpretation], it becomes difficult what the Gemara answers: "He derives something that is the norm from something that is the norm."** The answer prefers a normal case over the abnormal case of idolatry. **But nevertheless, we should still derive through a kal va-chomer! Since even when it is not the norm, hazmanah milsa, all**

לְעִנְיַן מְשַׁמְּשִׁים, הָא שָׁם גּוּפָא מְשַׁמְּשִׁים לָאו מִלְּתָא וְלָזֶה יָלִיף מֵעֶגְלָה עֲרוּפָה דְּשָׁם לֹא מָצִינוּ דִּמְשַׁמְּשִׁים לָאו מִלְּתָא.

the more so when it IS the norm! If designation matters even in the abnormal case, it should certainly matter in normal cases. The Gemara's distinction would not answer the question. **But actually, even without this, there is a [more fundamental] difficulty. For how is it possible to say that he [Abaye] derives from avodah zarah regarding meshamshim?** Abaye holds that *hazmanah milsa hi* even for accessories. But AZ cannot be his source for this. **Since there — in avodah zarah itself — regarding meshamshim, it is not milsa!** So idolatry cannot prove that designation is effective for accessories. **And therefore, he derives from eglah arufah, where we do not find that meshamshim is not milsa.]** Unlike idolatry, *eglah arufah* gives no contrary rule for accessories. Abaye can therefore use it for his broader position.

וְלָזֶה הָיָה נִרְאֶה, דְּזֶהוּ בֶּאֱמֶת פִּרְכַּת הש"ס שֶׁאַמַּאי לֹא גָּמַר מֵעֲבוֹדָה זָרָה דִּמְשַׁמְּשִׁין לָאו מִלְּתָא, אֲבָל מִכָּל מָקוֹם בְּפִרְכָא רִאשׁוֹנָה, וְרָבָא מַאי טַעְמָא לֹא גָּמַר מֵעֶגְלָה עֲרוּפָה הַיְינוּ עַל כָּרְחָךְ כְּפֵירוּשׁ הַתּוֹסָפוֹת שֶׁאַמַּאי לֹא גָּמַר מֵעֶגְלָה עֲרוּפָה דְּהַזְמָנָה לָאו מִלְּתָא לְשִׁיטָתֵיהּ דַּעֲרִיפָתָהּ אוֹסַרְתָּהּ]:

Therefore, it would appear — that this is indeed the Gemara's question: why does he [Abaye] not derive from avodah zarah that meshamshim is not milsa? On this reading, the answer works: Abaye prefers the normal case of *eglah arufah* to the abnormal case of idolatry. **But nevertheless, regarding the first question — "And Rava — what is the reason he does not derive from eglah arufah?" — it must necessarily be as Tosfos explain: why does he not derive from eglah arufah that hazmanah is not milsa, according to his view that the arifah creates the prohibition.]** The heifer would make designation ineffective even for *guf ha-kedushah*, while idolatry supports the opposite rule.

וְאִם כֵּן לְכוּלֵּי עָלְמָא אַף לְמַאן דְּאָמַר דַּעֲרִיפָתָהּ אוֹסַרְתָּהּ מִכָּל מָקוֹם בְּגוּף הַקְּדֻשָּׁה הַזְמָנָה מִלְּתָא, דְּגָמְרִינַן מֵעֲבוֹדָה זָרָה וְיִקָּשֶׁה כַּנַּזְכָּר לְעֵיל אֵיךְ אָמְרִינַן וּלְמַאן דְּאָמַר הַזְמָנָה כּוּלֵּי הָא בְּגוּף קְדוּשָּׁה לְכוּלֵּי עָלְמָא מִלְּתָא הִיא:

And if so, according to all views — even according to the one who holds that the arifah creates the prohibition — nevertheless, in guf ha-kedushah, hazmanah milsa — since we derive from avodah zarah. And the difficulty returns as mentioned above: how can [the Gemara] say "according to the one who holds hazmanah [milsa]..." — when in guf kedushah, everyone agrees it is milsa?

וְנִרְאֶה דְּהַהִיא דִּבְגוּף הַקְּדֻשָּׁה הַזְמָנָה מִלְּתָא לָאו דְּכוּלֵּי עָלְמָא הִיא וְתַלְיָא בִּפְלוּגְתָּא דר"י וְרַבִּי עֲקִיבָא, בַּעֲבוֹדָה זָרָה (דף נ"א) דְּלר"ע דְּבַעֲבוֹדָה זָרָה דְּנָכְרִי מִיָּד נֶאֱסָר וְלֹא בָּעִינַן עַד שֶׁתֵּעָבֵד בָּזֶה שַׁפִּיר יֵשׁ לוֹמַר דְּאַף אִם עֶגְלָה עֲרוּפָה עֲרִיפָתָהּ אוֹסַרְתָּהּ מִכָּל מָקוֹם יַלְפִינַן שָׁם שָׁם מֵעֲבוֹדָה זָרָה, וְשָׁם בִּקְרָא דַּעֲבוֹדָה זָרָה דַּאֲשֶׁר עָבְדוּ שָׁם שֶׁמְּדַבֵּר בַּעֲבוֹדָה זָרָה שֶׁל נָכְרִי שָׁם הַדִּין דְּבִגוּף קְדוּשָּׁה מִלְּתָא, אֲבָל לר"י דִּבְקִרָא וְעָבְדוּ שָׁם קָאֵי גַּם עַל עֲבוֹדָה

And it appears that the [principle] that in guf ha-kedushah hazmanah milsa is not universally [accepted]. And it depends on the dispute between R. Yishmael and R. Akiva, in Avodah Zarah (daf 51).[7] The dispute concerns when a non-Jew's idol becomes prohibited. **According to R. Akiva, who holds that a non-Jew's [object of] idolatry is forbidden immediately — and we do not require [that it be] actually worshipped — with this, one can properly say that even if regarding eglah arufah, the arifah creates the prohibition** — Even if the *eglah arufah* source fails (because we hold *arifasah osrastah*), we have AZ as an alternative source. **nevertheless, we derive [through the gezeirah shavah of] "sham" — "sham" from avodah zarah.** The word *sham* appears in verses about idolatry (Devarim 12:2) and *eglah arufah* (Devarim

[7] Avodah Zarah 51a — The Gemara records the Tannaitic dispute about when a non-Jew's idol becomes prohibited. R. Akiva holds it is forbidden immediately upon designation, while R. Yishmael holds it requires actual worship. The Gemara discusses: "שָׁחַט לָהּ חָגָב — רַבִּי יְהוּדָה מְחַיֵּב, וַחֲכָמִים פּוֹטְרִים" and the related analysis of "כְּעֵין זְבִיחָה" versus "כְּעֵין פָּנִים."

21:4). This *gezeirah shavah* links the two laws. **And there, in the verse regarding avodah zarah, "where they worshipped there" — which discusses the idolatry of a non-Jew — there the law is that in guf kedushah, [hazmanah] milsa.** Under R. Akiva, designation alone prohibits the idol itself. The *gezeirah shavah* extends this rule to other cases of *guf ha-kedushah*. **But according to R. Yishmael, [who holds] that in the verse "and they worshipped there," [it] applies even to the idolatry itself — since regarding a non-Jew, even the idol itself requires [that it be] actually worshipped [before becoming forbidden] — if so, one cannot derive from there that in guf kedushah, [hazmanah] milsa.** Under R. Yishmael, idolatry does not show that designation matters for *guf ha-kedushah*. The *gezeirah shavah* cannot supply that rule. **And if so, if also regarding eglah arufah, the arifah creates the prohibition** — If both potential sources fail — AZ (per R. Yishmael) and *eglah arufah* (per the view of *arifasah osrastah*) — **then it follows that everywhere regarding guf ha-kedushah, it is also not milsa.** No source remains for treating designation as effective in *guf ha-kedushah*. **And the Gemara can properly say: "According to the one who holds hazmanah milsa..."** The dispute is real. Under R. Yishmael's view, if *arifah* creates the heifer's prohibition, neither source proves that designation matters for *guf ha-kedushah*.

זָרָה עַצְמָהּ דְּהָא בְּנָכְרִי גַּם עֲבוֹדָה זָרָה צְרִיכָה עַד שֶׁתֵּעָבֵד אִם כֵּן לֹא יָכוֹל לְמֵילַף מִשָּׁם דִּבְגוּף קְדוּשָּׁה מִלְּתָא, וְאִם כֵּן אִם גַּם עֲגְלָה עֲרוּפָּה עֲרִיפָתָהּ אוֹסֶרֶת מִמֵּילָא בְּכָל מָקוֹם בְּגוּף הַקְּדֻשָּׁה גַּם כֵּן לָאו מִלְּתָא וְשַׁפִּיר אָמְרִינַן וּלְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא:

And we maintain the straightforward understanding — as written in the Teshuvah of the Avodas HaGershuni — that in guf ha-kedushah, for us, it is as if [we hold like] the one who says hazmanah milsa generally — such that it is forbidden to lower [an item] to a lesser sanctity. Therefore, parchment prepared for a Sefer Torah needs an advance stipulation before use for tefillin.

וְקִימִינַן כִּסְבָרָה הַפְּשׁוּטָה כְּמוֹ שֶׁכָּתַב בִּתְשׁוּבַת הָעֲבוֹדַת הַגֵּרְשׁוּנִי דִּבְגוּף הַקְּדֻשָּׁה לְדִידַן הֲוֵי כְּמוֹ לְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא בְּעָלְמָא דְּאָסוּר לְהוֹרִיד לִקְדוּשָּׁה קַלָּה.

I subsequently found in the Teshuvos of the P.M.A. (Part 3, Siman 11)[8] **that he was asked about this [very question]: how can [the Gemara] say "according to the one who holds hazmanah milsa" — just as I raised [the difficulty], and he was greatly strained to resolve it. And what appeared to my humble opinion, I have written.**

שׁוּב מָצָאתִי בִּתְשׁוּבַת פמ"א (חֵלֶק ג' סִימָן י"א) שֶׁנִּשְׁאַל עַל זֶה אֵיךְ אָמְרִינַן וּלְמַאן דְּאָמַר הַזְּמָנָה מִלְּתָא וּכְמוֹ שֶׁהִקְשֵׁיתִי וְנִדְחַק מְאֹד לְיַיֵּשֵׁב וּמַה שֶּׁנִּרְאֶה לַעֲנִיּוּת דַּעְתִּי כָּתַבְנוּ:

Akiva.

עֲקִיבָא

[Addenda: Siman 3, s.v. "Ve'ulam" — between the two half-brackets, "But I do not know etc." — Now, in preparing the index, I found that [this difficulty] was already raised as a puzzlement The difficulty concerns why Tosfos first cited Rava's usual agreement with R. Yochanan. **by my master, my grandfather, the Gaon of blessed memory, in his work Mishnas D'R.A.K., on Masechta Kerisus.]**

[הַשְּׁמָטוֹת: סִימָן ג' דִּיבּוּר הַמַּתְחִיל וְאוּלָם בֵּין ב' חֲצָאֵי אָרִיחַ "אֲבָל לֹא יָדַעְתִּי וְכוּ'", כָּעֵת בַּעֲשׂוֹתִי הַמַּפְתֵּחוֹת מָצָאתִי שֶׁכְּבָר עָמַד לִתְמֹהַּ בָּזֶה מָרִי זְקֵנִי הַגָּאוֹן זצ"ל בְּסִפְרוֹ מִשְׁנַת דרע"ק בְּמַסֶּכֶת כְּרִיתוֹת.]

[8] Teshuvos P.M.A., Part 3, Siman 11.