

Nedarim 13a

The Gemara on the previous daf had been discussing the question of **מִתְפִּיס** קָא מִתְפִּיס אוֹ בְהִיתְרָא קָא מִתְפִּיס. The Gemara brought a Mishna in which there was a machlokes with regard to a case that a person was **מִתְפִּיס** with a bechor. The Gemara had asked that if it is before zerika, then how do we understand the one who holds that the neder is not effective. And if it is after the zerika, how do we understand the one who says that the neder is effective.

The Gemara now says that the case must be:

That it is lying (there) **דְּמַחֲתִית**
 meat from the (korban) bechor **בְּשַׂר בְּכוֹר**
 and it was (also) lying there meat from a **וּמַחֲתִית בְּשַׂר דְּהַאֲנִד גְּבִיָּה**
 different (animal) **דְּמַחֲתִית**
 and he said **וְאָמַר**
 “This like this” **זֶה כְּזֶה**
 and it is a machlokes Tannaim **וְתַנְיָא הִיא**

The Gemara says that seemingly this machlokes if the **הַתְּפִסָּה** works or not, is the machlokes if **מִתְפִּיס** אוֹ **בְהִיתְרָא** קָא מִתְפִּיס. That is, right now the meat of the korban bechor is mutur and the person compares other meat to it. Does he mean to compare the meat to the way the korban bechor is now, and if so, the neder will not be effective? Or do we say that he means to compare this meat to the way the **עֵיקָר** – the defining characteristic of the korban bechor, and if so, the neder will be effective?

The Different Reasons Why One Could or Could Not Use a Bechor to be **מִתְפִּיס with – Is a Bechor Considered a **דְּבַר הַנְּדוּר** or a **דְּבַר הָאֲסוּר**?**

The Gemara now says that the machlokes if one can use a bechor for **הַתְּפִסָּה**, does not depend on the question of **מִתְפִּיס** אוֹ **בְהִיתְרָא** קָא מִתְפִּיס but rather the machlokes will be with regard to a different question.

No **לֹא**
 (really) everyone (holds) **דְּכֹלֵי עָלְמָא**
 (that the case is) before **לְפָנֵי**
 the zerika of the bloods **זְרִיקַת דְּמִים**
 and what is the reason **וּמַאי טַעְמָא**
 of the one **דְּמָאן**
 that permits it (i.e., the neder doesn't work) **דְּשַׂרִי**
 the posuk says **אָמַר קָרָא**

“When he will make a neder” **כִּי יַדַּר**
 until he makes a neder **עַד שְׂיַדוּר**
 with something **בְּדָבָר**
 that was made assur through a neder **הַנְּדוּר**
 (this comes) to exclude **לְאַפּוֹקֵי**
 a bechor **בְּכוֹר**
 as it is something **דְּדָבָר**
 that is assur (from the Torah) **הָאֲסוּר הוּא**

The posuk teaches us that one can only be **מִתְפִּיס** with something that is a **דְּבַר הַנְּדוּר** and not with a **דְּבַר הָאֲסוּר**. A **דְּבַר הַנְּדוּר** is defined as something that only became assur as a result of a person making it assur, and **דְּבַר הָאֲסוּר** is defined as something that does not need the person to make it assur.

If so, a bechor would seem to be a classic example of something that does not need a person to make it assur. After all, immediately upon its birth the bechor become assur, without the person doing anything. Therefore, this opinion holds that even if a person would be **מִתְפִּיס** with a bechor before the zerika, the neder will still not be effective.

And the one who says **וּמָאן**
 it is assur (i.e., the hatfasa with a bechor will work) **דְּאָסַר**
 (this is because) the posuk says **אָמַר קָרָא**
 “To Hashem” **לְה'**
 to (comes to) include something **לְרַבּוֹת דְּבַר**
 that is assur (i.e., it is assur without a neder) **הָאֲסוּר**

The opinion that holds that **הַתְּפִסָּה** works with a bechor, holds that when the posuk says **לְה'**, this comes to include a bechor, even though it is kadosh without the need for the person to make it kadosh. The Ran explains that the Gemara will tell us that although it is true that the animal is kadosh from birth, there is still a mitzvah for the person to say that it should be kadosh, and therefore it is considered a **דְּבַר הַנְּדוּר** and that is why the **הַתְּפִסָּה** works.

Both R' Yaakov and R' Yehuda have a drasha to back up their halacha. The Gemara will therefore ask what each one of them does with the other's drasha.

And the one **וּמָאן**
 who permits it (i.e., the one who holds the hatfasa does **דְּשַׂרִי**
 not work) **לֹא עֲבִיד לֵיהּ**
 (the drasha from the words) “To Hashem” **לְה'**
 what does he do with it **מַאי עֲבִיד לֵיהּ**
 he needs it **מִיבְעֵי לֵיהּ**
 (to teach us the halacha) that one can be **מִתְפִּיס**

with a (korban) chatas
(or with) a (korban) asham

בְּחֻטָּאת
וְאִשָּׁם

Although it is a person who has to decide which particular animal to bring as a korban chatas or a korban asham, he is obligated by the Torah to do so. That is, the chiyuv to bring this animal is not something he created with his own words but rather the chiyuv to bring this korban is one that the Torah placed on him. As such, one could have thought that this korban is not considered as a דָּבָר הַנְּדוּר . The posuk therefore comes to teach us otherwise. That since at the end of the day this particular animal only became kadosh as a result of this person making it kadosh, it is considered as a דָּבָר הַנְּדוּר .

But on this the Gemara asks:

And what did you (i.e., R' Yehuda) see
to include a chatas and asham
and to exclude a bechor

וַיִּמָּה רֵאִיתָ
לְרֵבּוֹת חֻטָּאת וְאִשָּׁם
וּלְהוֹצִיא אֶת הַבְּכוֹר

Once we have a drasha that tells us to include animals that we might have thought do not qualify as a דָּבָר הַנְּדוּר , why do we only include a chatas or asham and we exclude a bechor.

The Gemara answers that R' Yehuda would tell you:

“I include a chatas and asham
as they are matfis with a neder
and I exclude a bechor
as it is kadosh
from its mother’s womb”

מִרְבָּה אֲנִי חֻטָּאת וְאִשָּׁם
שֶׁהוּא מִתְּפִיס בְּנֶדֶר
וּמוֹצִיא אֲנִי אֶת הַבְּכוֹר
שֶׁהוּא קָדוֹשׁ
מִמְעֵי אִמּוֹ

Since it is only the bechor that is kadosh from its mother’s womb and not the korban chatas or asham, we say that only a chatas and asham are considered as a דָּבָר הַנְּדוּר and a bechor will be considered as a דָּבָר הָאֶסוּר .

Now that the Gemara has explained why R' Yehuda learned the drashos the way he did, the Gemara will explain the shita of R' Yaakov.

And the one who
says it is assur (i.e., the hatfasa works)
(holds) that a bechor is also
a (case) of being matfis with a neder
as we learned in a Baraisa
in the name of Rabbi
they said
how do we know
that with regard to a bechor that is born
in his house
that there is a mitzvah

וַיִּמָּאן
דְּאִסֵּר
בְּכוֹר נִמְי
מִתְּפִיסוֹ בְּנֶדֶר הוּא
דְּתַנְיָא
מִשׁוּם רַבִּי
אָמְרוּ
מִנֵּי
לְנוֹלַד בְּכוֹר
בְּתוֹךְ בֵּיתוֹ
שֶׁמִּצְוָה

to make it kadosh
as it says (Devarim 15:19)
”The male you should make kadosh”
and the one
who permits it (i.e., R' Yehuda)
if he would not be makdish it
would it not be kadosh

לְהַקְדִּישׁוֹ
שֶׁנֶּאֱמַר
הַזָּכָר תִּקְדִּישׁ
וַיִּמָּאן
דְּשָׂרִי
כִּי לֹא מִקְדִּישׁ לִיה
מִי לֹא מִקְדִּישׁ

The posuk says לה' . R' Yehuda says that this comes to include only a chatas and an asham but not a bechor. He holds that it does not include a bechor as a bechor is kadosh from the time it is born, and as such, it cannot be considered a דָּבָר הַנְּדוּר . R' Yaakov agrees with the premise that only something that is a דָּבָר הַנְּדוּר can be used for הַתְּפָסָה , but he holds that since there is a mitzvah to say that this bechor should be kadosh, this is enough to make it considered as a דָּבָר הַנְּדוּר . And on this R' Yehuda argues and says that since if the person would not say that it is kadosh, it would be kadosh anyway, this cannot be classified as a דָּבָר הַנְּדוּר , despite the fact that the person said that it should be kadosh.

From all of this, the Gemara has shown what it set out to do, to show that the machlokes between R' Yehuda and R' Yaakov does not have to be with regard to the question of בעיקרו קא מתפס או בהיתרא קא מתפס . Rather the machlokes between them could revolve around the question of how to classify a bechor. Is it classified as a דָּבָר הַנְּדוּר or as a דָּבָר הָאֶסוּר ?

But with regard to the question if בעיקרו קא מתפס או בהיתרא קא מתפס , we don't have a proof from this machlokes, and indeed the Gemara ends the sugya without an answer to this question (ועיי במה שכתב הר"ן בשם הרמב"ן).

Using a Korban for הַתְּפָסָה – The Difference Between Saying לא לאימרא and לאימרא According to R' Meir

The Mishna taught:
(If one says this should be like a lamb (i.e., like a lamb כְּאִמְרָא that is a korban) or like the (korbanos that are in the) corrals כְּדִירִים

The Mishna taught us that this is a good example of making a neder through הַתְּפָסָה . The Gemara now brings a Baraisa that discusses other examples of using objects that are kadosh for הַתְּפָסָה . And the Baraisa will say that in all of these cases it does not make a difference if you just say the name of the object you are using for הַתְּפָסָה , or if you say that it should be to that object,

of if you say it should be like that object. In all of these cases the הַתְּפָסָה will work.

We learned in a Baraisa	תָּנָא
(if one says either) 'a lamb'	אֵימְרָא
'to a lamb' or like a lamb	לְאֵימְרָא כְּאֵימְרָא
(or if he says either) 'corrals'	דִּירִים
'to corrals' or 'like corrals'	לְדִירִים כְּדִירִים
(or if he says either) 'wood' 'to wood'	עֵצִים לְעֵצִים
(or) 'like wood'	כְּעֵצִים
(or if he says either) 'fires' 'to fires'	אִשִּׁים לְאִשִּׁים
(or) 'like fires'	כְּאִשִּׁים
(or if he says either) 'mizbayach'	מִזְבֵּחַ
'to the mizbayach'	לְמִזְבֵּחַ
or 'like the mizbayach'	כְּמִזְבֵּחַ
(or if he says either) 'Haichel'	הֵיכַל
'to the Haichel' (or) 'like the Haichel'	לְהֵיכַל כְּהֵיכַל
(or if he says either) 'Yerusalayim'	יְרוּשָׁלַיִם
'to Yerusalayim'	לְיְרוּשָׁלַיִם
(or) 'like Yerusalayim'	כְּיְרוּשָׁלַיִם
(with regard to) all of them	כּוּלָן
(if he ends off with the words) "I will eat from you"	שֶׁאוֹכֵל לָךְ
it is assur (i.e., the neder is effective)	אֲסוּר
but if he ends off with the words "I will not eat from you"	לֹא אוֹכֵל לָךְ
it is mutur (i.e., the neder is not effective)	מוֹתֵר

The Mefaraish explains that when a person combines any of these objects that are Kadosh (and assur to benefit from) with the words "I will eat from you", the intent is understood to be that the person is saying that the foods that I will eat from you should be assur like this object, i.e., your food should be assur to me.

But if the person ends off with the words "I will not eat from you" then his intent is understood to be that he is saying that what he will not eat should be like this object, i.e., but what he will eat should be like chullin that is mutur to eat.

The Gemara will ask that seemingly the beginning and the end of the Baraisa contradict each other.

Who did we hear מאן שְׁמַעִינוּ לֵיהּ

that does not differentiate	דְּלֹא שְׁנֵי לֵיהּ
(between a person saying) 'A lamb'	אֵימְרָא
'to a lamb' (or) 'like a lamb'	לְאֵימְרָא כְּאֵימְרָא
it is R' Meir	רַבִּי מֵאִיר הִיא 77
(but) say the sayfa	אֵימָא סִיפָא
and all of them	וְכוּלָן
(if you finish off with the words) "I will not eat from you"	לֹא אוֹכֵל לָךְ
(they are) mutur	מוֹתֵר
but we learned in a Mishna	וְהִתְנִן
(if one says) "La'korban"	לְקֹרְבַן
I will not eat from you"	לֹא אוֹכֵל לָךְ
R' Meir forbids it	רַבִּי מֵאִיר אוֹסֵר
and R' Abba said (to explain R' Meir)	וְאָמַר רַבִּי אֲבָא
it is made to be	נַעֲשֶׂה
that it is as if he said	כְּאֹמֵר
"It should be a korban"	לְקֹרְבַן יֵהָא
(and) therefore	לְכִפְיָךְ
I will not eat from you"	לֹא אוֹכֵל לָךְ

According to R' Abba's explanation in the shita of R' Meir, when a person says 'La'korban' I will not eat from you, the intent of the second half of his statement is to explain what results from the first half of his statement. That is, he is saying that this should be a korban and therefore he will not eat from him.

If so, in our Mishna it should be the same. And yet the Mishna says that when the person ends off with the words "I will not eat from you" this is a case that it is mutur and not assur. But this is not in accordance with R' Meir who says that when you end off with the words "I will not eat it" this creates a neder.

If so, we are left with a contradiction in our Mishna. The raysha is in accordance with R' Meir and the sayfa is not.

The Gemara answers:

It is not a difficulty	לֹא קְשִׁינָא
(in) this case	הָא
he said "It should not be a lamb"	דְּאָמַר לֹא לְאֵימְרָא
(and) in this case	הָא
he said "to a lamb"	דְּאָמַר לְאֵימְרָא

⁷⁷ Why Does the Gemara Assume that this is the Shita of R' Meir?

The Rosh explains that although we never find that R' Meir actually said that there is no difference between these three expressions, it is assumed that he is the one that holds this way. This is because we find that the one who

does differentiate between these expressions is R' Yehuda, and the one who typically argues on R' Yehuda is R' Meir. Therefore, in this case as well, we as assume that it is R' Meir who holds not like R' Yehuda.

The Gemara at first thought that the reason the sayfa of this Baraisa said that the neder is not chal is because he ended off with the words “I will not eat it”, and according to R' Meir any time one ends off with those words, the neder is not chal.

And on this the Gemara asked that from a different Mishna we saw not this way. That Mishna had said that even if you end off with the words “I will not eat from you” the neder would be chal (as R' Abba explained).

The Gemara answers that the deciding factor in the sayfa of the Baraisa's case according to R' Meir will not be what he says in the end of his neder but rather it will be with regard to what he says in the beginning of his neder, as follows.

In the Mishna's case, the person said “La'korban” which R' Abba understood could mean that it should be a korban (as opposed to saying that he means it should not be a korban). Therefore, since there is a possibility that the word “La'korban” means it should be a korban, we say that the second half of his statement “I will not eat it” reveals to us that indeed this is his intent. That is, he means to say, “It should be a korban and therefore I will not eat from it.”

However, in the sayfa of this Baraisa's case he said, “It is not a lamb (korban)” and then he added the words “I will not eat from it”. Therefore, since he said it should not be a lamb (i.e., it should not be like hekdedsh), R' Meir holds that this cannot create a neder (even though he ended off with the words “I will not eat from it”).

משנה

Does One Need to Say יכו קרבן עולה or is it Good Enough to just say יכו קרבן עולה – The Machlokes Tanna Kamma (R' Meir) and R' Yehuda

The Mishna continues to list the different cases and halachos of התפסה.

One who says (any of these words)	האומר
'Korban' 'Olah'	קרבן עולה
'Mincha' 'Chatas'	מנחה חטאת
'Todah' (or) 'Shelamim'	תודה שלמים
(and then finishes off by saying) “that I will eat from yours”	שאני אוכל לך
it is assur	אסור

R' Yehuda (says) it is mutur

רבי יהודה מתיר

The Tanna Kamma holds that in all of these cases, the התפסה will work, and R' Yehuda disagrees and holds that it does not work. He holds that since the person did not use a “כ”, that is, he did not say that the food that he will eat should be 'like' one of these objects, the התפסה will not be effective.

The Ran explains that R' Yehuda holds that since the names of all of these objects are not defined as assur, they do not work for התפסה unless he explicitly says that the object that he is trying to make assur should be like them (that is, although it is true that a korban is assur, the word korban does not mean an assur).

This is opposed to the case in which he says 'pigul' or 'nossar'. In these two examples the names of these objects themselves connote assur, therefore R' Yehuda would hold that you do not need to use a “כ”, as by saying these words, it is clear that that the person means to make an assur.

The Three Different Possible Ways of Being מתפס According to R' Meir

The Mishna continues:

(If one says either) “The korban'	הקרבן
'like a korban'	כקרבן
(or just the word) 'korban'	קרבן
(and then he concludes by saying) “that I will eat from	שאוכל לך
you”	you”
it is assur (i.e., the neder is effective)	אסור

The Ran explains that with all these expressions he means to say, “That what I eat from you should be like a korban”, and as such, the food becomes assur (just like a korban is assur). The Ran continues and says that this is true only in the case that he ends off with “I will eat from you”.

If, however, he says “Korban, that I will not eat from you”, in this case, the food will stay mutur in accordance with the shita of R' Meir. The Ran explains that later on the Gemara will say that this is because when the person says “Korban (without a “כ”), I will not eat from you”, the connotation is that he is making a shevuah and saying that he swears by the life of this korban that he will not eat from this person, and such a shevuah is not effective (as will be explained later on).

The last case of the Mishna:

(If one says) “La'korban”	לקרבן
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I will not eat from you”

לא אוכל לך

R' Meir (says) it is assur

רבי מאיר אוסר

The Gemara will explain that R' Meir holds that this expression means to say that this food should be a korban and therefore you will not be able to eat from it.

It comes out that according to R' Meir there are three different cases.

- 1) If he says “Korban, I will eat from you”, this התפסה will be effective. The person is saying that the food that he will eat should be a korban, a regular case of התפסה.
- 2) If he says “Korban, I will not eat from you”, this התפסה will not be effective as he is understood to be making a shevuah.
- 3) And if he says “La’korban, I will not eat from you”, this will be effective. In this case, the person is understood to be saying that this should be a korban and therefore I will not be able to eat from it.

The Ran explains that in the case that he said “La’korban” the neder will be effective even if he ends off with the words “I will eat from you”. In this case, we understand him to be saying “What I will eat from you will be a korban and therefore it will be assur”.

In other words, if he starts by saying “La’korban” it does not make a difference if he ends off with the words “I will not eat from you” or if he ends off with the words “I will eat from you”. In either case the neder will be effective but for different reasons, as follows. If he says “La’korban, I will eat for from you”. This is understood to mean that what he will eat should be a korban. And if he says “La’korban, I will not eat from you”. This is understood to mean that since this is a korban he can’t eat from him. In both cases the neder will be effective.

This is different than the first case of the Mishna in which the person just said either “the korban”, “like the korban” or just the word “korban”. When the person says one of these words, the neder will work only if the person ends off by saying “I will eat from you” but not if he ends off by saying “I will not eat from you”. If he ends of one of these three example with “I will not eat from you”, this is understood to mean that what he will not eat should be a korban, and as such, this is obviously not a

neder. A neder is only chal when the person forbids what he would have eaten and not what he will not eat.

The Ran concludes by explaining that this is why the case of the person saying “La’korban” is not listed together with the first three cases of the Mishna. Since its halachos are different, it has to be listed separately.

גמרא

The Difference Between Saying **הא קרבן** and saying **הקרבן**

The Gemara starts off by quoting the first three cases of the Mishna:

The Mishna taught	קתני
(if a person says either) “Korban”	קרבן
(or) “The Korban”	הקרבן
(or) “like a Korban”	כקרבן
(and ends off by saying) “that I will eat from you”	שאוכל לך
it is assur (the hatfasa works)	אסור

The Gemara points out:

The stam (unspecified) Mishna	סתמא תנא
is like R' Meir ⁷⁸	כרבי מאיר
that does not differentiate	דלא שני ליה
between saying just “a lamb”	בין אימרא
and saying “to a lamb”	לאימרא
	[אי רבי מאיר]

but if it is R' Meir	[הא]
but we learned (in the sayfa)	דקתני
(if a person says) “The korban	הקרבן
I will eat from you”	שאוכל לך
it is assur (i.e., the hatfasa works)	אסור
And we learned in a Baraisa	והתניא
the Chachamim (i.e., R' Meir) admit	מודים חכמים
to	לרבי יהודה ר' Yehuda
in the case that one says (either)	באומר
“Hu Korban”	הא קרבן
(or) “Hu Olah”	והא עולה

⁷⁸ What Difference Does it Make if the Mishna is R' Meir or not?

The Ran points out that even if the Mishna would not be R' Meir, the Mishna would still be hard to understand as the Mishna seems to contradict

itself. The Ran says that this is true and the Gemara is just telling us a fact that this Mishna is R' Meir.

(or) “Hu Mincha”	וְהָא מִנְחָה
(or) “Hu Chatas”	וְהָא חֲטָאֵת
“that I will eat from you”	שְׂאוּכַל לָךְ
that it is mutur	שְׂמוּתָר
for he has not made a neder	שְׁלַא נָדַר זֶה
but with the life of this korban	אֶלֶּא בְּחַיֵּי קִרְבָּן

The Baraisa tells us that even the Chachamim (i.e., R' Meir) who argue on R' Yehuda check and hold that you can just say the word ‘korban’ (without a ‘כ’) and that would be enough to make a neder, agree that if one says “וְהָא קִרְבָּן” then this would

not be a good neder, as using the word “וְהָא”, indicates that one wants to make a shevuah.

But if this is really true, how do we understand the Mishna? The Mishna clearly says that if one says הַקִּרְבָּן, this is an effective neder (and the assumption is that saying “הַקִּרְבָּן” is the same as saying “וְהָא קִרְבָּן”). If so, there seems to be a clear contradiction between the Baraisa and the Mishna. That is, how can we say that the author of the Mishna is R' Meir, if according to what the Baraisa tells us, the sayfa of the Mishna cannot be like R' Meir.

Nedarim 13b

The Gemara answers:

There is no question	לא קשיא
this case (that the neder does not work)	הא
he said “Hu Korban”	דאמר הא קרבן
and in this case (that the neder does work)	והא
he said “Hakorban”	דאמר הקרבן

What is the reason (the saying ‘Hu Korban’ does not work
 (this is because) he is saying by the life of the
 work
 חיי קרבן קאמר
 korban

Tosefos explains that when a person uses the words “Hu Korban”, this implies the word הנהגה-‘Behold’, that is, he is saying “Behold with this korban I swear...”.

However, in the Mishna’s case, since he did not say two words but rather he used the singular word of “Hakorban”, this implies a neder and not a shevuah. That is, although initially the Gemara thought that there is no difference between saying “הקרבן” or “הא קרבן”, the Gemara now answers that there is, as explained.

The Meaning of the Word “La’korban According to R’ Meir

The Mishna taught	קתני
(If one says) “La’korban	לקרבן
I will not eat from you”	לא אוכל לך
R’ Meir (says) it is assur	רבי מאיר אוסר

The Gemara assumes that the reason that this is a neder is because the word La’korban means that it should not be a korban. And if so, he is saying that what he will not eat from him should not be a korban. This implies that what he does eat from him should be a korban, i.e., his words imply that the person is trying to make the other person’s food assur and that is why this is a valid neder.

But on this the Gemara asks:

But R’ Meir does not have	והא לית ליה לרבי מאיר
(the rule) that from a no	מקלל לאו
you imply a yes	אתה שומע הן

The assumption of the Gemara is that this neder is valid because we derive from what he said should not be a korban to understand what he wants to be a korban. That is, he is saying this (i.e., what he will not eat) should not be a korban, but the other thing (i.e., what he will eat) should be a korban.

But one can only make this deduction if one holds that מכלל מכלל, “That from the no you can derive the yes”. And as we previously learned, R’ Meir does not hold that מכלל לאו. If so, why does he hold that this case is assur?

The Gemara answers:

R’ Abba said	אמר רבי אבא
it is made to be	נעשה
that he said “It should be a korban	כאומר לקרבן יהא
(and) therefore I will not eat from you”	לפיכך לא אוכל לך

This Gemara was quoted earlier and there we explained that the work לקרבן could have two connotations. Either it could mean that this should not be a korban, as the ‘ל’ before the word could mean no (and this is what our Gemara thought initially when it asked its question). But now R’ Abba is explained that the “ל” can also indicate that he is saying that it should be. That is, he is saying that this should be a korban and that is why the other person will not be able to eat from it.

משנה

One says to his friend	האומר לחבירו
“Konam	קונם
my mouth from speaking with you”	פי מדבר עמך
(or he says “Konam) my hands	ידי
from working with you”	עושה עמך
(or he says “Konam) my feet	רגלי
from going with you”	מהלכת עמך
(in all these cases) it is assur	אסור

גמרא

The Difference Between Shevuos and Nedarim – The Difference Between One Saying that He Will Not Talk and One Making His Mouth Assur to Speak

Our Mishna taught us that if one says “קונם פי מדבר עמך”, this works to make it assur to speak to his friend. And on this the Gemara asks:

But we have a contradiction (the Baraisa says) there is chumrah (stringency) with regard with shevuos (more) than nedarim and (there is a chumrah) with regard to nedarim (more than) shevuos

ורמינהו חומר בשבועות מבנדריים ובנדריים מבשבועות

The Baraisa tells us that both nedarim and shevuos each have a chumrah that the other does not have. The Gemara now tells us what they are.

The chumrah with regard to nedarim that nedarim are ‘chal’ (take effect) on mitzvohs similar to something optional which is not the case with regard to shevuos

חומר בנדריים שהנדריים חלים על המצוה ככרשות מה שאין כן בשבועות

The Mefaraish explains that if one says “Konaim that I will sit in Sukkos” or “Konaim that I will put on tefillin”, the neder is effective and if one does one of these things, he will transgress of ‘bal yachel’ – ‘Do not disgrace your word’. But if one makes a shevuah to transgress a mitzvah, this shevuah does not take effect (כי כבר מושבע ועומד מהר סיני).

And the chumrah of shevuos for a shevuah is ‘chal’ on something that has in it “substance” (it is tangible) and (on) something that does not have (in it) “substance” which is not the case with regard to nedarim

וחומר בשבועות שהשבועות חלות על דבר שיש בו ממש ושאינו בו ממש מה שאין כן בנדריים

The Gemara later on tells us that if one says, “sleep should be konaim to me”, the neder will not work as sleep is considered something שיש בו ממש – something that does not have substance. If, however, he says that he is making a shevuah that he will not sleep, this shevuah will take effect.

But if this is true, that a neder cannot take effect on something that does not have substance, how do we understand our Mishna? The Mishna said that if a person makes a konaim on either a person talking, or on a person working, or on a

person going, these will take effect. But how could they? The Baraisa tells us that a neder on a non-tangible thing does not work.

The Gemara answers: R' Yehuda said (the Baraisa’s case is when) the person says “I am forbidding my mouth from my talking (with you)” (or) “my hands for their work (with you)” (or) “my feet for their walking” (with you)

אמר רב יהודה באומר יאסר פי לדבורי נדי למעשיהם ורגלי להילוכי

In all these cases, the neder takes effect on the person’s mouth, hands, or feet, and as such, they are considered tangible objects upon which a neder can take effect.

The Gemara proves this answer: It is also ‘seen like this (m’du’yik like this) for the Mishna says “My mouth from talking with you” and it does not say “that I talk to you”

דיקא נמי דקתני פי מדבר עמך ולא קתני שאני מדבר עמך

The Mishna clearly says that the neder is not saying that it will be assur for him to talk but rather he is saying that he is making his mouth assur (to talk to that person). Therefore, since his mouth is a tangible object the neder will take effect.

הדרן עלך כל פנויי

משנה

The Rule that התפסה Only Works with a הנדור and Not a האסור דבר and the Various Examples of this Rule

As we learned in the last perek, when using התפסה to make a neder, it must be done with a דבר הנדור (something a person made assur through a neder) and not a דבר האסור (something the Torah made assur). The Mishna will now list various examples of being מתפס with a דבר האסור, and as a result, the neder will not be effective, and the item that the person is making the neder on will remain mutur.

And these (cases) are mutur ואלו מותרין

(One who says) “Chullin I will eat of yours” ⁷⁹	חולין שְׂאוּכַל לָךְ
(or) “it should be like the meat of a pig”	כַּבֶּשֶׂר חֲזִיר
(or) “like avodah zora”	כַּעֲבוֹדַת זָרָה
(or) “like heart-skins (used for avodah zorah) or “like nevaylos”	כַּעֲוֵרוֹת לְבוּבִין כַּנְבִּילוֹת
(or) “like trayfos”	וּטְרִיפוֹת
(or) “like shekatzim and remasim”	כַּשְׂקָצִים וְרִמְסִים
(or) “like the challos of Ahron”	כַּחֲלֵת אַהֲרֹן
(or) like his terumah	וְכִתְרוֹמָתוֹ
(all of these cases are) mutur	מוֹתֵר

All of these cases are cases in which the person was מתפייס in a דְּבַר הָאֲסוּר, and as such, the הַתְּפִסָּה is not effective. See the footnote where each of these cases are explained⁸⁰

The Unique Halacha of Being מתפייס with One’s Mother

The Mishna continues:

One who says to his wife “You are to me like (my) mother” ‘we open for him’ with a ‘pesach’ from a different place so that he should not be lightheaded in this regard	הַאֹמֵר לְאִשְׁתּוֹ הֲרִי אַתְּ עָלַי כְּאִמָּא פּוֹתְחִין לוֹ פֶּתַח מִמְקוֹם אַחֵר שֶׁלֹּא יִקַּל רֹאשׁוֹ לְכַד
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This person is saying that the same way that his mother is assur to him, so too his wife should be assur as well. This is another case of being מתפייס in a דְּבַר הָאֲסוּר, and as such, the הַתְּפִסָּה will not be effective.

⁷⁹ Why is the Case of Saying “Chullin I Will Eat of Yours” Listed in the Mishna? The Gemara will explain why this case is listed in the Mishna even though it seems obvious that this is not a neder (after all, he is being מתפייס in something that is mutur).

⁸⁰ The Cases of the Mishna
 כַּעֲוֵרוֹת לְבוּבִין – There were certain people who would cut holes in the chest of a live animal, and though these holes they would remove the animal’s heart and offer it to their avodah zorah.
 טְרִיפוֹת נְבִילוֹת – A nevila is an animal that died without being shechted. A tereifah is an animal that has a mum (physical defect) that will cause it to die (that is, even if this animal was shechted properly, if it has this mum, it would still be assur).
 שְׂקָצִים וְרִמְסִים – Shekatzim and remasim are loosely translated as disgusting, creeping creatures. These animals (bugs/insects) are assur to eat.
 חֲלֵת אַהֲרֹן וְתְרוּמָתוֹ – Challos Ahron refer to the challah that is taken off from dough and given to the Kohen. His terumah refers to the terumah that must be given to a Kohen.

However, although min HaTorah this neder is not effective, the Chachamim made a gezayra and said that we have to act as if it is, and therefore this person’s wife will be assur until he goes to a Chacham and the Chacham permits it.

A Chacham permits a neder by finding a pesach – an opening. He asks the person if he would have made the neder if he would have known then what he knows now. If the person says that indeed, if he would have known that such and such would be true, he would not have made the neder, the Chacham can permit the neder. This is known as a pesach. An ‘opening’ to say that the neder is allowed on the basis that the neder was made under false pretense, i.e., the person did not have all the facts at the time the neder was made.

In this case as well, the Chachamim said that the neder is in effect until the Chacham can find a pesach for him. This is done in order to make sure that this person does not take nedarim lightly. The Chachamim were afraid that if they would declare this person’s neder to be void, this would cause the person not to take nedarim seriously, therefore, to alleviate this concern, they said that even this neder needs a pesach to be mutur.

However, although the Chacham can be matir the neder with a pesach, the Mishna says that the pesach must come from another place, i.e., the regret that he has cannot be the very making of the neder itself. That is, the regret cannot be simply that he did not know that using one’s parents for הַתְּפִסָּה is disrespectful, and if he would have known this he would not have made this neder. Rather, they must find a different pesach in order to make this neder mutur (i.e., they must find a different reason to say that if this person would have known ‘the entire picture’, he would not have made the neder).⁸¹

⁸¹ The Chiddush of Our Mishna that One Cannot Use the Honor of His Parents as a Pesach? Why Does the Mishna Specifically Pick the Case in which the Person Uses His Mother to be מתפייס with?

The Ran (in the name of the Rashba) explains that in reality if this person would use any דְּבַר הָאֲסוּר to assur his wife, although the הַתְּפִסָּה would not work, he would still need a pesach in order to be matir the neder.

However, the reason that the Mishna picked the case of being מתפייס with his mother is in order to teach the chiddush that one cannot use his parents’ honor as a pesach. That is, although later on (64a) the Mishna will tell us that one cannot use the honor of his parents as a pesach, the Mishna still needed to teach us this halacha with regard to our case.

In the Mishna later on, the neder that they are trying to find a pesach for is a bonified neder, and as such, one could have thought that this is why this type of pesach does not work. In our case, however, the neder is not a good neder, and it is only the Chachamim who say that you must treat it as a real neder. Therefore, one might have thought that in this case this would be considered a good enough pesach, and that is why the Mishna needed to tell us otherwise.

גמרא

The Author of the Mishna – Two Ways to Understand Why the Mishna Had to List the Case of חולין שאוכל לך

The Gemara starts by making the following diyuk (implication):

The reason (why the first case of the Mishna is mutur)	טעמא
(is because) he said	דאמר
“Chullin that I will eat from yours”	חולין שאוכל לך
but if he would have said	הא אמר
“La’chullin	לחולין
that I will eat from yours”	שאוכל לך
this would imply	משמע
that it should not be chullin	לא לחולין ליהוי

but rather (it should be) a korban (and therefore אלא קרבן assur)

The implication of the Mishna is that the reason the neder is not effective is because he said it should be chullin. But if he would have said that it should be ‘La’chullin’, this would imply that he is saying that it should not be chullin but rather a korban (as “La” could mean not), and it would be assur. In other words, the Mishna is implying that if he would have said “La’chullin” it would be assur because of the rule of שומע הך מפקל לאו אתה שומע הך.

But on this the Gemara asks:

Who is the author of the Mishna	מני מתניתין
if it is R' Meir	אי רבי מאיר
but he doesn't have	הא לית ליה
(the rule) that from the implication of	מקלל

Why Does Only the Person Who Assurs His Wife with a Pesach and Not Any Other Person Who Uses a Pesach to be Matir with?

Our Mishna told us about many cases in which a person uses a Pesach in order to be matir with. And yet, it is only in the case that one uses his mother for the Pesach, does the Mishna say that he needs a Pesach. But why? Why are we only concerned that in this case, if we allow it to be mutur we are afraid that he will not take nedarim seriously, and as such, when he will be matir with a Pesach he will not go to a Chacham to be matir it and he will just assume that it is mutur?

The Ran explains that it is specifically the case in which one assurs his wife that one needs a pesach despite the neder not being effective. This is because often a person would get upset with his wife and use nedarim as a way to get back at her. Therefore, in order that he should not take these types of nedarim lightly, we force him to get be matir his neder, even though according to the halachos of nedarim he would not have to. However, the other cases of making nedarim are not as common, and as such, there is little concern that he will come to this mistake.