

Nedarim 25A

He said (back) to him
when a person swears
according to our ‘mindset’
he swears
and we
we do not give
(such a name) to ants

אמר ליה
כי משתבע
אדעתא דידן
משתבע
ואנן
לא מסקינן נפשו
אשומשמוני

Therefore, even if this person calls ants with the nickname “the ones who went up from Mitzrayim” this would not make a difference as this is not how we refer to them. Therefore, if a person makes a shevuah and refers to the ones who went up from Mitzrayim, we say that this refers to the actual people who went up and not anyone(thing) else.

Does a Person Make a Shevuah According to His Own Mindset or According to Our Mindset?

But on this the Gemara asks:
(But is it true that) with the mindset
of himself
a person doesn’t swear
but we learned in a Baraisa
when they would make him swear
they would say to him
“It should be known
that not on the condition
that is in your heart
are we making your swear
rather
according to our mindset
and according to the mindset
of Bais Din (we are making you swear)

ועל דעתא
דנפשיה
לא עביד איניש דמשתבע
והתניא
כשהו משביעין אותו
אומרים לו
הוי יודע
שלא על תנאי
שבלבד
אנו משביעין אותך
אלא
על דעתינו
ועל דעת
בית דין

The Baraisa tells us that when Bais Din would make someone swear, they would tell the person that he should be aware that when he makes the shevuah, it will be done with the way Bais Din meant it and it will not make a difference if this person has other intentions while making the shevuah, as will be explained.

The Gemara explains the intent of the Baraisa:
What is (the Baraisa) coming to exclude
is it not coming to exclude
that he brought in woodchips

לאפוקי מאי
לאו לאפוקי
דאסיק להו לאיסקוונדרי

and he gave them
the (nick)name zuzie

ואסיק להו
שמה זוזי

The Baraisa says that when a person makes a shevuah in Bais Din, they tell him that the shevuah is being done with what they have in mind and in will not make a difference if he has other intentions when he says the words of the shevuah. That is, they tell him that the determining factor in whether his shevuah is considered a true shevuah or a false shevuah is if the shevuah is true according to the way Bais Din interprets it.

The Gemara at first thinks that an example of this halacha is when a person makes a shevuah that he returned the zuzim (a type of coin) to the person when in reality all he did was give wood chips which this person happens to call zuzim. That is, although in a way this person told the truth when he said that he returned the zuzim to the person, this will still be considered a false shevuah as in the mind of Bais Din the word zuzim only refers to a type of coin and nothing else.

And on this the Gemara points out:

From this it was said (that the shevuah is being made) according to our mindset
this implies
that a person would
make a shevuah
according to his own mindset

ומדקאמר
על דעתינו
מכלל
דעביד איניש
דמשתבע
אדעתא דנפשיה

The Baraisa said that Bais Din tells the person that his shevuah is being made according to their mindset. The Gemara assumes that the reason they do this is to prevent a person from calling woodchips with the term zuzim. This would imply that the reason a person cannot say this is only because Bais Din said specifically that the shevuah is being done according to them. But if they would not have said this, then indeed he would be able to explain his shevuah according to his own mindset.

But if so, we see from this Baraisa not like we said before. Previously, we said that when a person makes a shevuah he does so according to the mindset of the typical person and not with his own particular way of speaking, and from this Baraisa we see not this way.

The Gemara answers:

No (this is not why Bais Din says this)
(Rather they say it to) exclude
(the case of) of Rava’s cane
as there was a certain man
that was
owed money from his friend

לא
לאפוקי
מקניא דרבא
דהוא גברא
דהוה
מסיק בחבריה זוזי

he came before Rava
 and he (the lender) said
 to the borrower
 “Go pay me”
 he said to him (the borrower back to the lender)
 “I paid you”
 Rava said to him (the borrower)
 “If so
 go make a shevuah to him
 that you paid him”
 he went
 and brought a cane
 and put the zuzim inside of it
 and he leaned on it and went
 and he came on it to the Bais Din
 he (the borrower) said to the lender
 “Take this cane in your hand”
 (The borrower) then took a sefer Torah
 and he swore that he had paid
 all that he had in his hand
 that lender
 got angry (when he heard this)
 and he broke that cane
 and those zuzim spilled
 to the ground
 and it was found to be
 that on the truth he swore

אתא לקמיה דרבא
 אמר ליה
 ללוה
 זיל פרע לי
 אמר ליה
 פרעתיך
 אמר ליה רבא
 אם כן
 זיל אישטבע ליה
 דפרעתיך
 אזל
 ואיתי קניא
 ויהיב זוזי בגויה
 והוה מסתמיך ואזיל
 ואתי עליה לבי דינא
 אמר ליה למלוה
 נקוט האי קניא בידך
 נסב ספר תורה
 ואישטבע דפרעיה
 כל מה דהוה ליה בידיה
 והוא מלוה
 רגז
 ותברה להווא קניא
 ואישתכף הנהו זוזי
 לארעא
 ואישתכח
 דקושטא אישטבע

swear
 according to his own mindset
 דמישטבע
 אדעתא דנפשיה

The Reasons Why Moshe Had to Make Klal Yisroel Swear in a Particular Manner

But we learned in a Baraisa
 and similarly we find
 with Moshe Rabbinu
 when he made Klal Yisroel swear
 in the plains of Moav

והתנא
 וכן מצינו
 במשה רבינו
 כשהשביע את ישראל
 בערבות מואב

Although Klal Yisroel had accepted the Torah at Har Sinai, the pesukim in Devarim tell us how when Klal Yisroel were in the plains of Moav, Moshe made them swear that they would keep the Torah. The Gemara now describe what he said to them.

He said to them
 “It is known
 that it is not
 according to your mindset
 (that) I am making you swear
 rather according to my mindset
 and according to the mindset
 of Hashem
 as it says (Devarim 29:13)
 ”And not with you alone etc.”

אמר להם
 הווי יודעים
 שלא
 על דעתכם
 אני משביע אתכם
 אלא על דעתי
 ועל דעת
 המקום
 שנאמר
 ולא אתכם לבדכם וגו'

The Poskim there say :
 הלא אתכם לבדכם אנוכי כרת את הברית ה'
 הזאת ואת האלה הזאת. כי את אשר ישנו פה עמנו עמד היום לפני ה'
 אלקינו ואת אשר איננו פה עמנו היום.

The second posuk says that Hashem was not only making a bris (treaty) with those standing there but rather the bris was being made with those that were there standing before Hashem and with those who were not standing there before Hashem.

The Ran explains that because this is what is said in the second posuk, when the first posuk says that it is not just with you alone that I am making the bris, the intent cannot just be to say that this bris is being made with the people of future generations as well. This cannot be the intent of the posuk because this is what it says in the next posuk. The very next posuk says explicitly that the bris will be with even those that are not there. If so, what does the first posuk mean that the bris is not being made with you alone?

The Ran explains that the Gemara sees from here that when the posuk says that it is not with you alone that I am making the

The Gemara is answering that that reason Bais Din tells the person that he is swearing according to their understanding, is not because a person has the right to decide that his words mean something different than the standard interpretation of his words, but rather the reason why they have to say this is in order to prevent a story similar to this one. That is, if that Bais Din would have told the borrower that the shevuah is being made according to their mindset, he would not have been able to do what he did (i.e., he would not have been able to do the cane-trick).

Although the Gemara understands that from the this Baraisa there is no proof to the question if a person swears according to his own mindset or not, the Gemara will now try to bring another proof that a person does swear according to his own mindset, even if this is at odds with the standard interpretation of his words.

But still
 (are we going to say) that a person does not

ואפתי
 לא עביד

Hashem. As the Rosh quotes the posuk in Megillas Esther (3:3) says מִדּוּעַ אֲתָהּ עוֹבֵר אֶת מִצְוֹת הַמֶּלֶךְ – “Why do you transgress the ‘mitzvohs’ of the king”.

The Gemara continues to ask that seemingly Moshe had another solution to make sure that everyone understood that the shevuah was coming to ensure that they would serve Hashem and follow the mitzvohs without the need to explicitly say that the shevuah is being made with his mindset and not theirs.

But let him make them swear that they would fulfill all the mitzvohs

וְלִשְׁבַע יִתְהוֹן
דְּמִקְיָמִיתוֹן
כָּל מִצְוֹת

If the concern was that they would not do some of the mitzvohs, as they will claim that they are doing the mitzvohs, i.e., not the mitzvohs of Hashem but rather the mitzvohs of the king, seemingly there is something else Moshe could have said. He could have said that the shevuah is coming to make sure that you do all the mitzvohs. And if they swear to do all the mitzvohs, then they could not then say that doing the mitzvohs of the king would satisfy this requirement. This is true, because even if the commandments of the king are considered as mitzvohs, the mitzvohs of Hashem are certainly also considered mitzvohs. Therefore, the only way they would be able to claim that they did all the mitzvohs would be to actually do the mitzvohs of Hashem. And if so, the question returns as to why there was a need from Moshe to add that the shevuah is only being made with his mindset and not theirs if there was another thing that he could have said.

The Gemara answers, that even if Moshe would have made them swear to keep all of the mitzvohs, they would still be able to say:

(That this only) implies the mitzvah of tzitzits as Mar said the mitzvah of tzitzits is equal corresponding (to) all the mitzvohs of the Torah

מִשְׁמַע
מִצְוַת צִיצִית
דְּאָמַר מַר
שְׁקוּלָה מִצְוַת צִיצִית
כְּנֶגֶד
כָּל מִצְוֹת שְׁבִיתוֹרָה

Even if Klal Yisroel would have sworn to keep all of the mitzvohs of the Torah, they would still be able to avoid most of the Torah, as long as they would keep the mitzvah of tzitzits (because if one does the mitzvah of tzitzits it is as if he has done all of the mitzvohs).

The Gemara continues to ask that seemingly there is something else that Moshe could have said

But let him make them swear

וְלִשְׁבַע יִתְהוֹן

to keep the Torah

דְּמִקְיָמִיתוֹן תּוֹרָה

If they would swear to keep the Torah, seemingly this would obligate them to keep the Torah with all of its mitzvohs. If so, why would it not be enough for Moshe to say this?

The Gemara answers:

This implies (just) one Torah

מִשְׁמַע תּוֹרָה אַחַת

The Gemara answers that if they would swear to keep the Torah, this would imply that they would only have to keep one Torah, that is Torah shel B'ksav (the written Torah) and not Torah shel Baal Peh (the oral Torah).

The Gemara continues to ask:

But let him make them swear that they will keep the Torahs

וְלִשְׁבַע יִתְהוֹן
דְּמִקְיָמִיתוֹן תּוֹרוֹת

If they would swear to keep the Torahs, they would have no choice but to keep both Torahs (i.e., they would have to keep Torah shel B'ksav and the Torah shel Baal Peh).

The Gemara answers that even if they would have sworn this, they would still be able to claim:

(That there words only) imply

מִשְׁמַע

the Torah of the mincha

תּוֹרַת מִנְחָה

the Torah of the (korban) chatas

תּוֹרַת חַטָּאת

(and) the Torah of the (korban) asham

תּוֹרַת אֲשָׁם

When the Torah describe the halachos of each one of these korbanos, it does so by using the term ‘toras’. For example, when describing the halachos of the korban chatas, it does so by saying that this is the toras hachatas. If so, even if Klal Yisroel would swear to keep the Torahs, they would still be able to say that they had in mind to keep the halachos of these korbanos but not that they meant that they would keep all of the mitzvohs.

But even on this the Gemara asks:

And let him make them swear

וְלִשְׁבַע יִתְהוֹן

that they would keep

דְּמִקְיָמִיתוֹן

the Torahs and the mitzvohs

[תּוֹרוֹת] וּמִצְוֹת [תּוֹרוֹת]

Seemingly, if they would make a shevuah to keep the Torahs and the mitzvohs, this would cover everything. That is, even if they would claim that their intent when they said that they would keep the Torahs was to refer to the korbanos, but they would still have to keep all of the mitzvohs as they also swore to keep the mitzvohs.

The Gemara answers that even this would not be enough, as Klal Yisroel would still be able to claim that this expression:

Implies the Torah of the Mincha (and the word) mitzvohs

מִשְׁמַע
תּוֹרַת הַמִּנְחָה
מִצְוֹת

implies
the mitzvohs of the king

משמע
מצות המלך

As we said previously, the word mitzvohs could be interpreted to mean the commandments of the king and not the mitzvohs of Hashem. If so, even if they would swear to keep the Torahs and the mitzvohs, this would still not be enough to prevent Klal Yisroel's possible claim that they never meant to swear to keep all of the mitzvohs.

The Gemara continues to ask:

But let him make them swear
that they will keep
the entire Torah

ולישבע יתהון
דמקמימיתון
תורה כולה

Seemingly if Klal Yisroel would swear that they will keep the entire Torah, this would force to keep all of the mitzvohs.

But once again the Gemara says that this would not be sufficient, as Klal Yisroel would still be able to say:

(The words) the entire Torah

תורה כולה

could imply avodah zorah

משמע עבודה זרה

as we learned in a Baraisa

דתנא

avodah zorah is (so) chamor (severe)

חמורה עבודה זרה

for anyone who denies it

שכל הכופר בה

it is as if

כאילו

he agrees to the entire Torah

מוצה בתורה כולה

The Baraisa tells us that one who denies avodah zorah is considered as one who agrees to the entire Torah. That is, we see from this statement that in a certain sense one who keeps the mitzvah of not serving avodah zorah is as if he has fulfilled the entire Torah. Therefore, even if Klal Yisroel would have sworn to keep the entire Torah, they would have still had the ability that their intent in doing so was just to say that they would not serve avodah zorah.

The Gemara persists in its attempt to find something that Moshe could have said that would have made the need to explicitly say that the shevuah was with his mindset unnecessary.

But let him make them swear

ולישבע יתהון

that they would fulfil

דמקמימיתון

(the mitzvah of not serving) avodah zorah

עבודה זרה

and the entire Torah

ותורה כולה

or (he could have made them swear)

אי נמי

(to keep the) 613 mitzvohs

שש מאות ושלש עשרה מצות

The Gemara asks that there were still two possibilities of what Moshe could have done to ensure that Klal Yisroel would need to keep all the mitzvohs. He could have made them make a shevuah to keep the mitzvah of not serving avodah zora and to keep the entire Torah. In this case the term 'the entire Torah' would have to refer to all of the mitzvohs and it cannot be referring to avodah zorah as avodah zorah was mentioned as a separate obligation. Another possibility would be to have Moshe say explicitly that they would have to keep all six hundred and thirteen mitzvohs.

The Gemara concludes that while it could be that these could have been valid possibilities, Moshe still did not want to say like any of them.

Rather, Moshe Rabbinu

אלא משה רבינו

'picked' something that was not a bother

מיפתא דלא טריחא נקט

The Gemara says that although it is true that Moshe could have said something else, he did not do so as he wanted to say something simple that would take care of all these possibilities.¹³⁹

What is the Case in Which One Claims to Have Seen a Snake that is Similar to the Beam of a Wine Press?

The Mishna brought the following case:

(One who says) "If I did not see

אם לא ראיתי

a snake like the beam of a winepress"

נחש כקורת בית הבד

The Mishna labeled this neder as a non-sensical neder. The Gemara assumes that this is because there is no such thing of a snake that size. And on this the Gemara asks"

And no! (is there really no such thing)

ולא

but there was this snake

והא ההוא חניא

that was in (i.e., existed)

דהוה בשני

during the years of Shevor Malka

שבור מלכא

and they would throw before it

רמו ליה

thirteen stablefuls of hay

תליסר אורותא דתיבנא

and it would swallow it

ובלע יתהון

¹³⁹ The Sugya in Meseches Shevuos

The Ran points out that although the Gemara in meseches Shevuos has this same sugya, the sugya there concluded in a different fashion. At the end of the sugya there the Gemara asks that if it was really true that the reason Moshe said that the shevuos is being made with his mindset was to prevent Klal Yisroel from claiming that they had other intentions, why did he end of by saying "With my mindset and with the mindset of Hashem"? It should have been enough to just

say that the shevuah was being made with Moshe's mindset and why was there a need to mention the mindset of Hashem?

The Gemara there answers that the reason why Moshe added the words "and with the mindset of Hashem" was in order that they would not be able to be mayfer (undo) the neder at a later date. Rashi explains that a neder that is made על דעת אחרים is considered a neder that is made על דעת הרבים that does not have hafarah (i.e., a Chacham cannot be matir such a neder).

This snake was bigger than an olive press beam, and if so, if one makes a neder that he saw an olive press beam sized snake why is this considered a non-sensical neder, perhaps he really saw a snake this size?

Shmuel said **אמר שמואל**
(his intention was to say) that it was 'grooved' **בְּטְרוּף**

Shmuel answers that when the person compares the snake to the beam, his intention was not to compare their sizes but rather he intent to say that the same was olive press beam is 'grooved' i.e., it has indentations/cervices all along it, so too this snake is 'grooved' as well.

But on this the Gemara asks:

(But) all snakes **כולהו נחשי**
are 'grooved' **מיטְרוּף טְרָפִי**

The Gemara answers:

We are 'discussing' (that he said) it's back is **אגבו טרוף קאמרינו** 'grooved'

The Gemara answers that while it is true that snakes have crevices in their skin, this is only true with regard to its neck, but not with regard to their backs. And this person said that he saw a snake that even its back was 'grooved', similar to an olive press beam that is 'grooved' all along it. This is something that does not exist, and that is why if someone makes a neder by saying that he saw a snake like this, his neder is labeled as non-sensical neder.

The Accepted Definition of an Olive Press Beam (with regard to selling and buying)

The Gemara asks:

But let the Mishna (just) say it was 'grooved' **ולתני טרוף**

The point of the Mishna is to say that there is no such thing as a 'grooved' snake. If so, why did does the Mishna not just say a case in which the person makes a neder by saying that he saw a 'grooved' snake? What is the point of the Mishna specifically

mentioning a case in which he compares the snake to an olive press beam?

The Gemara answers:

Something **מילתא**
in a 'by-the-way' manner **אגב אורחיה**
it is teaching us **קא משמע לן**
that an olive press beam **דקורת בית הבד**
its back is 'grooved' (i.e., is has these notches) **גבו טרוף**

By mentioning the case in which a person compares the snake that he saw to an olive press beam that is 'grooved', we learn that indeed an olive press beam is 'grooved'. And on this explanation the Gemara asks:

But what is the practical difference **למאי נפקא מינה**

That is, what difference does it make if an olive press beam is 'grooved' or not? Why would the Tanna of the Mishna feel a need to teach us a piece of knowledge that seems to have no practical purpose?

To which the Gemara answers that the reason that this is relevant is with regard:

To business **למקח וממכר**
to tell you **לומר לך**
that one that sells **המוכר**
an olive press beam **קורת בית הבד**
to his friend **לחבירו**
if its back is 'grooved' **אי גבו טרוף**
yes (the sale is a good sale) **אין**
and if not **ואי לא**
no! (it is not a good sale) **לא**

The Mishna describe a person comparing to this snake to an olive press beam in order to teach us that a standard olive press is 'grooved', and therefore, when it comes to buying one, it can be assumed that the buyer meant to specify buy a 'grooved' one. And if after the buyer buys this beam it turns out that it is not 'grooved', he would be able to demand his money back and to void the sale.

Nedarim 25B

משנה

The Cases of נְדָרֵי שְׁגִיגוֹת - Mistaken Nedarim

The Mishna on daf chof describes four categories of nedarim that are not chal. The third of these groups are mistaken nedarim, which the Mishna will now describe.

(The case of) mistaken nedarim	נְדָרֵי שְׁגִיגוֹת
I ate”	אִם אָכַלְתִּי
(If a person says this should be assur) “If I drank”	וְאִם שָׁתִיתִי
(or if he says) “If and he (then) remembers that he ate (or) that he drank	וְנִזְכַּר שֶׁאָכַל וְשָׁתָה
A second type of mistaken neder: (A person says “Konam this) “If I eat” (or he says “Konam this) “If I drink” and he forgets and he eats or drinks	שֶׁאֲנִי אוֹכֵל וְשֶׁאֲנִי שׁוֹתֵה וְשָׁכַח וְאָכַל וְשָׁתָה

The Ran explains that the Mishna is describing two distinct cases of mistaken nedarim. The first is when the person makes a mistake when he says the neder. that is, he says that this should be assur if I ate or drank today, and when he made this neder he thought that he had not eaten or drank that day and that is why he made the neder. He then realizes that he had been mistaken and in reality, he had had something to eat or to drink. The halacha is that since this neder was made under a mistaken assumption it is not chal.

¹⁴⁰ Why Does the Mishna Not Say a Simple Case of A Mistaken Neder?

Seemingly the Mishna leaves out what would seem to be a basic case of a mistaken neder. And that is the case in which one made a simple neder to assur a certain food on himself, and subsequently he forgets that he made that neder and he eats that food.

Rashi in meseches Shevuos (28b) explains that this case would not fit the Mishna. Because in this case the Mishna would not be able to say that it is mutur but rather the Mishna would have to say that he is patur.

That is, the Mishna is listing different cases of nedarim that are mutur, that is, the nedarim are not chal. But this is not true in this case. In the case in which the person simply mistakenly violated his neder, the neder is not mutur (i.e., there was nothing wrong with the neder). Rather it was a good neder that he transgressed by mistake. And since he only transgressed the neder by mistake he will be patur from malkus.

The second type of mistaken neder described in Mishna is when the mistake is made not when the neder was said, but rather when the neder is supposed to be chal. The person says that this should be assur if I eat or drink today, and later on that day the person forgets the neder that he had made and eats or drinks. In this case as well the neder is not chal. This is true because at the time of that the neder was supposed to be chal, that is, at the time of that he ate or drank, the person forgot that he had made a neder, and as such it is only considered as a mistaken neder.

To Summarize: The Mishna describes two types of mistaken nedarim. A neder where the mistake is at the time the neder was made and a neder where the mistake was made at the time that the neder was supposed to be chal.¹⁴⁰

The Mishna continues with another case of a mistaken neder. If he said	אָמַר
“Konam my wife from benefitting from me for she stole my wallet or because she hit my son”	קִוְנָם אִשְׁתִּי נְהִינִית לִי שְׁגָנְבָה אֶת כִּיסִי וְשָׁהַכְתָּה אֶת בְּנִי
and it became known that she did not hit him or it became known that she did not steal	וְנֻדַע שֶׁלֹּא הִכְתּוּ וְנֻדַע שֶׁלֹּא גָנְבָה

A Neder that Becomes Partially Mutur (the machlokes Bais Shammai and Bais Hillel

The Mishna continues with another example of a mistaken neder.

If he see them (i.e., a group of people) eating (his) figs and he says	רָאָה אוֹתָן אוֹכְלִין תְּאֲנִים וְאָמַר
“They should be onto you as a korban”	הֲרִי עֲלֵיכֶם קֶרְבָּן

Rashi continues and says that one cannot learn that this is the case of the Mishna by saying that when the Mishna says that it is mutur this meant he is ‘mutur’ from malkus. This is because the Mishna would not need to tell us that he is patur from malkus as this is obvious. Of course he would be patur from malkus. In order to receive malkus one needs to be warned beforehand. And this person obviously never received any warning as the case is one in which he forgot that he made the neder.

Rashi continues and says that one cannot learn that when the Mishna says the neder is mutur, it means to say that he is patur from malkus, because the term ‘mutur’ and the term ‘patur’ are not interchangeable. The term ‘patur’ means he is exempt, and the term ‘mutur’ means that it is permitted. If so, one cannot say that the person is ‘mutur’ from malkus.

The Case and Halacha of Mistaken Shevuos

This person sees a group of people eating his figs and in order to stop them from doing so, he makes a neder that the figs should be assur to them.

After this person makes this neder, the Gemara tells us:

And it was found	וְנִמְצְאוּ
(that in that group was) his father	אָבִיו
and brother	וְאָחָיו
and there were (also)	וְהָיוּ
others with them	עִמָּהֶן אֲחֵרִים
Bais Shammai says	בֵּית שַׁמַּי אֹמְרִים
they (the father and brother)	הֵן
are mutur	מִתְרִים
and those with them are assur	וְמֵה שְׁעִמָּהֶם אֲסוּרִים
And Bais Hillel says	וּבֵית הִלֵּל אֹמְרִים
these (the father and brother)	אֵלָיו
and these (the other people)	וְאֵלָיו
are mutur	מִתְרִין

When this person made this neder, he did so without realizing that his father and brother were among those who were eating his figs. If he would have known this, he would not have made a neder to forbid them from eating the figs, and as such, everyone agrees that with regard to them the neder is considered a mistaken neder and is not chal with regard to them.

The question is what is the halacha with regard to the other people (i.e., the intended target of the neder). Do we say that once the neder is not chal with regard to the father and brother, it is not chal at all? Or do we say that it is just with regard to the father and brother that it is not chal but it is chal with regard to everyone else. This is the machlokes Bais Shammai and bai Hillel.¹⁴¹

גמרא

¹⁴¹ Why in this Case is the Neder Not Chal Even though He Did Not Say Explicitly that the Neder is Not Intended to Include His Father and in the Previous Case the Neder is Only Batul if He Says that the Neder is Being Made Because His Wife Stole His Wallet?

In this case, the Mishna said that with regard to the father and brother the neder is not chal as he never intended to include them in the neder. This is true even though he never said to whom the neder is directed towards.

And yet in the previous case of the Mishna, the reason that the neder is not chal is because he explicitly said that the neder is being made because his wife stole his wallet, and it turns out that she did not steal it.

In that case, if he would have made the neder without stating the reason, the neder will be chal, even if he claims that it was made under false pretense (and the only way the neder will become mutur is if he goes to a Chacham to matir it).

We learned in a Baraisa	תָּנָא
just like	כְּשֵׁם
this that mistaken nedarim	שֶׁנִּדְרֵי שְׁגָגוֹת
are mutur	מוֹתְרִין
so (too)	כֵּן
are mistaken shevuos	שְׁבוּעוֹת שְׁגָגוֹת
are mutur	מוֹתְרוֹת
The same way that mistaken nedarim are mutur, so too mistaken shevuos are mutur as well. That is, if a person makes a shevuah that this food should be assur to eat, and it was then discovered that the shevuah was made in error, the food will be mutur.	
What is the case	הִיכֵי דְמֵי
of mistaken shevuos	שְׁבוּעוֹת שְׁגָגוֹת
for example	כְּגוֹן
Rav Kahana and Rav Asi	רַב כְּהָנָא וְרַב אֲסִי
one of them said	הִדִּין אִמְר
“A shevuah	שְׁבוּעָתָא
that like this Rav said”	דְּהִכֵּי אִמְר רַב
and the other one said	וְהִדִּין אִמְר
“A shevuah	שְׁבוּעָתָא
that like this Rav said”	דְּהִכֵּי אִמְר רַב
that each one of them	דְּכַל חַד וְחַד
according to his own mindset	אֲדַעְתָּא דְּנַפְשֵׁיהּ
he swore correctly	שְׁפִיר קְמִישְׁתַּבַּע

Both Rav Kahana and Rav Asi heard something from Rav, but they disagreed as to what Rav said. Each one of them then got up and made a shevuah that his report of what Rav said was the correct one. That is, each one said that fruits should be assur to him if Rav didn't say the way he said he did. In this case, even

But why don't we say that once the neder was made under false pretense, the neder should be batul without the need for a Chacham to be matir it? What is the difference between these two cases?

The Ran answers that there is a fundamental difference between these two cases. In the last case of the Mishna, there is a mistake in the actual neder itself. That is, he made a neder against these people without realizing that his father was among them. Therefore, since he never had any intention to assur his father, the neder is not chal at all. However, in the case of the wife, he had intention to make her assur, although his intention was for a mistaken reason (he thought she stole when she really had not).

Therefore, since he meant to make the neder, the only way he can then be matir it, is if he goes to a Chacham and the Chacham uses this mistake as a pesach (or if he does as the person did in the Mishna and says the reason for the neder at the time that he made the neder).

if it would be determined which version of Rav's words is the correct one, both of them will be mutur to eat. This is because each one of them only made their shevuah with the mindset that what they were saying is the correct version. Therefore, if one of them is discovered to be mistaken, his shevuah will still not be chal as he only made his shevuah as he thought that he was correct.¹⁴²

Another Machlokes Tannaim if We Say that Once Part of a Neder is Batul the Entire Neder is Batul (someone makes a neder not to eat for thirty days and forgets that it is assur to fast on Shabbos)

We learned in the Mishna:

A person saw them eating etc. רָאָה אוֹתָן אוֹכְלִין

The Mishna brought a case in which Bais Shammai and Bais Hillel disagreed if we say that once part of a neder is batul, the entire neder is batul. The Gemara will now bring another machlokes Tannaim that revolves around this same question.

We learned in a Mishna over there תִּנּוּ הַתָּם
(that says) we find a pesach (opening) פּוֹתְחִין
with Shabbosim בְּשַׁבָּתוֹת
and Yomim Tovim וַיָּבִיאוּ טוֹבִים

The Mishna there is describing a person who makes a neder not to eat meat or drink wine for an entire year. He then finds out that it is assur to deprive himself on Shabbos and Yom Tov and says that had he known this he would not have made the neder to include these days. The halacha is that this is a good pesach.

¹⁴² Why Did the Gemara Not Pick a Simple Case to Illustrate the Halacha of a Mistaken Shevuah?

Seemingly if the Gemara wants to know a case of a mistaken shevuah, it could have said a simpler case, similar to the case that it said for nedarim. That is, the case could have been simply that the person said I am making a shevuah if I ate yesterday, and it turns out that indeed he did eat yesterday but he forgot this at the time that he made his shevuah. This would be a classic case of a mistaken shevuah, and if so, why does the Gemara have to quote the story with Rav Kahana and Rav Asi to find a case

The Ran answers that it is true that the Gemara could have found a simpler case, however, the Gemara specifically choose this case in order to teach us a chiddush. In this case, at the time each one of them made their shevuah, they knew that their friend adamantly disagreed with them. As such, one could have thought that this case could no longer be considered as a case of a mistaken shevuah. That is, how can each one of them claim to have made the shevuah as a mistake if their friend was saying not like them. They knew that they could be wrong and yet they made their shevuah anyway. If so, one could have thought that this should not be considered as a mistaken shevuah. The Gemara therefore teaches us otherwise. That even in this case it is considered as a mistaken shevuah since at the end of the day, each one only made their shevuah because

The Mishna continues and says:

In the beginning	בְּרֵאשׁוֹנָה
they would say	הֵיוּ אוֹמְרִים
those days (i.e., Shabbos and Yom Tov)	אוֹתָן הַיָּמִים
are mutur	מוֹתְרִים
and the rest of the days	וּשְׁאֵר כָּל הַיָּמִים
are assur	אֲסוּרִים
until R' Akiva came	עַד שֶׁבָּא רַבִּי עֲקִיבָא
and taught	וְלִמַּד
a neder	נֶדֶר
that part of it becomes mutur	שֶׁהוּתַר מִקְצָתוֹ
all of it becomes mutur	הוּתַר כָּלּוֹ

The case in that Mishna is similar to our case. That is, just like in our case, part of that person's neder became mutur and the question will be if this causes the rest of the neder to become mutur as well, so too it is with regard to the Mishna's case.

In the case of this Mishna, the heter (i.e., the pesach) was only with regard to the Shabbosim and Yomim Tovim, and indeed, at first, they said that only those days will be mutur (similar to the shita of Bais Shammai). But this was only true until R' Akiva came and said that since we are saying that some of the days are now mutur, all of the days are mutur (similar to the shita of Bais Hillel).¹⁴³

When Do Bais Shammai and Bais Hillel Argue with Regard to a Neder that Became Partially Mutur?

The Gemara will now define when Bais Shammai and Bais Hillel have their machlokes

they thought that they were the correct one in this disagreement (as to what Rav really said).

¹⁴³ The Difference Between the Our Case and the Case of that Mishna

The Ran points out that although our Mishna and that Mishna are similar in the respect that they both revolve around the question of what happens when part of a neder becomes mutur, there is a difference between them. In our Mishna, the part of the neder that affects the father and brother become mutur automatically without the need to go to a Chacham. However, in the case of the Mishna that the Gemara is now bringing, the part of the neder regarding Shabbos and Yom Tov only becomes mutur once the Chacham verifies with the person that he would not have made the neder had he known that it is assur to give oneself pain on Shabbos and Yom Tov.

The Ran explains the reason why in our Mishna's case there is no need to find a pesach, is because is it obvious to all that the neder was never meant to include his relatives. As opposed to the one who made a neder not to eat meat or drink wine the entire year. Even at the time of the neder, he knew that his neder would include Shabbos and Yom Tov, he just didn't know that he was not allowed to forbid meat and wine on those days. Therefore, since originally when he made the neder, he had in mind to include these days, the only way his neder can become mutur is by going to a Chacham and to find a pesach.

Rabba said
 according to everyone
 any 'time'
 that he says
 "If I would have known
 that my father was among them
 I would have said
 all of them are assur
 except for (my) father"
 all of them are assur
 and his father is mutur
 they do not argue
 except (for the case)
 that he says
 "If I would have known
 that my father was among them
 I would have said
 so-and-so and so-and-so
 are assur
 and my father is mutur

אָמַר רַבָּה
 דְּכֹלְי עֲלֵמָא
 כּל הַיְכָא
 דְּאָמַר
 אִילוּ הָיִיתִי יוֹדֵעַ
 שְׂאֵבָא בִּינִיכֶם
 הָיִיתִי אוֹמֵר
 כּוֹלְכֶם אֶסְוֵרִין
 חוּץ מֵאָבִי
 דְּכֹלְהוֹן אֶסְוֵרִין
 וְאֵבִי מוֹתֵר
 לֹא נִחְלָקוּ
 אֶלָּא
 בְּאוֹמַר
 אִילוּ הָיִיתִי יוֹדֵעַ
 שְׂאֵבָא בִּינִיכֶם
 הָיִיתִי אוֹמֵר
 פְּלוֹנִי וּפְלוֹנִי
 אֶסְוֵרִין
 וְאָבִי מוֹתֵר

group, he would have made sure to add the words "except for my father".

- The second possibility is that he regrets ever saying the words "all of them should be assur", and what he would have said had he known that his father was in the group was that this person and this person (i.e., non-relatives that were in the group) should be assur and my father should be mutur.

Rabbah says that in the first case everyone would agree that the other people stay assur. This is true because what he said with regard to the other people "all of you should be assur" he doesn't regret. The only thing that he regrets is that he did not add the words "except for my father". Therefore, since what he said regards to the other people is something that he wants to stand, this is not considered as a neder that part of it became batul, as the person does not have regret for those words at all.

In the second case, however, the person regrets making every part of the neder. That is, he regrets that he did not explain that he was not including his father, and he also regrets what he said with regard to the other people. Even with regards to the other people he regrets saying the term "all of them" as this could imply even his father, and what he now says that he should have done in order to forbid the non-relatives was to make the neder using their names.

Rabbah says that it is specifically in this case that there is a machlokes Bais Shammai and Bais Hillel. In this case, he made both these mistakes and therefore Bais Hillel say that since part of this neder became mutur, the whole neder becomes mutur.

When the person says that he would never have made the neder had he known that his father was in the group, there are two things he can now say.

- He could say that although he had said all of them should be assur, had he known that his father was part of the