

Nedarim 27A

And there were in it והיו בה

'bnos' shuach (a superior type of figs) בנות שוח

A person makes a neder to forbid the figs in a basket and then discovers that there is a superior type of fig among the regular figs. Now that he has discovered this, he regrets his neder:

ואמר And he says

“If I would have known אילו הייתי יודע
that the bnos shuach were in it שבנות שוח בתוכה
I would not have made this neder” לא הייתי נזדר
(in this case, the rest of the figs in) the basket הכלכלה
are assur אסורה
and the bnos shuach are mutur בנות שוח מותרות
until R' Akiva came עד שבא רבי עקיבא
and taught ולימד
a neder נדר
that become partially permitted שהותר מקצתו
becomes totally mutur הותר כולו

The person only regrets that his neder included the bnos shuach, and as such, the Tanna Kamma (the Chachamim) hold that the bnos shuach are mutur but the rest of the figs in the basket remain assur. R' Akiva, however, argues and he holds that since the neder is batul with regard to the bnos shuach, it is batul with regard to the rest of the figs as well.

The Gemara will now analyze the Mishna and based on what it assumes the case to be, we will have a proof with regard to the machlokes Rabbah and Rava.

Is it not (the case of the Mishna) מאי לאו
that he said דאמר

“If I would have known אילו הייתי יודע
that the bnos shuach were in it שבנות שוח בתוכה
I would have said הייתי אומר
the black figs תאנים שחורות
and the white ones ולבנות
should be assur אסורות
and the bnos shuach בנות שוח
should be mutur מותרות
and it is (the shita of) R' Akiva ורבי עקיבא היא
and the Rabbanan argue ופליגי רבנן

This person made a neder to assur all the figs in the basket, and now that he discovers that there are bnos shuach that are mixed together with them, he regrets his original neder. The Gemara assumes that this means that he is now saying that he

would have changed what he said originally that all the figs should be assur and he says that he would have said that the black and white ones are assur and the bnos shuach should be mutur. And the Mishna tells us that this is a machlokes between R' Akiva and the Rabbanan. If so, we see like the shita of Rabbah, that even in a case in which the person would have changed his words, there is a machlokes between R' Akiva and the Rabbanan.

According to Rava, in a case that the person is changing his words, everyone agrees that the entire neder is batul, and yet the Mishna says not that way. The Mishna says that indeed even in this case there is a machlokes.

The Gemara answers:

לא No!

(The case is) that he says באומר

“If I would have known אילו הייתי יודע
that the bnos shuach was in it שבנות שוח בתוכה
I would have said הייתי אומר
the entire basket is assur כל הכלכלה אסורה
and the bnos shuach are mutur בנות שוח מותרות

The Gemara answers that Rava could say that the case of the Mishna is not one in which the person says that he would have changed his words, rather the person says that he would have kept what he said originally but he would have just added that the bnos shuach should be mutur. And it is in this case that there is a machlokes if we say that since part of the neder becomes batul, the entire neder becomes batul.

Another Case of a Neder Becoming Partially Mutur (making five people assur at once)

Who is the Tanna מאן תנא
to this להא

that the Rabbanan learned (in a Baraisa) דתנו רבנן
Someone who makes a neder (not to benefit) נדר
from five people מןמשה בני אדם
as one כאחד

if he becomes mutur to one of them הותר לאחד מהם
he becomes mutur to all of them הותרו כולן
(But if he says that is assur to everyone) except חוץ
from one of them מאחד מהן
he (i.e., the person that was singled out) is mutur הוא מותר
and they (the others) are assur והן אסורין

The Gemara understands that in both the raysha and the sayfa of this Baraisa the person originally said that 'all of you' should be assur and then he is matir one of them. In the raysha, he changes his wording and says that instead saying 'all of you are assur' what

he should have done was to list each person separately. Therefore, since in this case he is changing his words, the entire neder is batul.

And in the sayfa, the person says that he would keep this that he said that 'all of you' should be assur, but he should have added the words 'except for so-and-so'. In this case, since the person is not changing his words, the other people remain assur.

The Gemara now comes to answer its question of who the author of the Mishna is, and answers as follows.

If (we are going according) to Rabba **אִי לְרַבָּה**
the raysha is R' Akiva **רִישָׁא רַבִּי עֲקִיבָא**
and the sayfa **וְסִיפָא**
(is in accordance with) everyone **דְּבָרֵי הַכֹּל**
(And) if (we are going according) to Rava **אִי לְרַבָּא**
the sayfa is the Rabbanan **סִיפָא רַבָּנָן**
and the raysha **וְרִישָׁא**
(is in accordance with) everyone **דְּבָרֵי הַכֹּל**

According to Rabba, the only machlokes is in the case in which the person changes his words, but if the person does not change his words, everyone would agree that the neder is not batul. Therefore, the raysha that tells us that since he changes his

words, the entire neder is batul will only be the shita of R' Akiva (as the Rabbanan hold that the neder is not batul). And the sayfa that tells us that since he did not change his words, the neder is not batul will be in accordance with everyone.

And according to Rava that holds that the machlokes is only in a case that he did not change his words, but in the case that he does change his words everyone agrees that the neder is batul, we explain the Mishna as follows. The raysha that tells us that since he changed his words, the neder is batul will be in accordance with everyone. And the sayfa that says that since he did not change his words, the neder is not batul will only be the shita of the Rabbanan (as according to Rava, R' Akiva would argue even in this case).¹

משנה

נדרי אונסין The Halacha of

The Mishna on daf chof listed four groups of nedarim that are not chal. Our Mishna describes the 1st group, נדרי אונסין. An

¹ The Halacha that Comes Out from this Sugya

At the end of the sugya, the Ran makes the following points:

1. With regard to the machlokes R' Akiva and the Chachamim, we pasken like R' Akiva, and therefore we hold that once part of a neder become mutur the entire neder becomes mutur.
2. However, with regard to the machlokes between Rabbah and Rava, we don't have a determination as to whom the halacha follows, and as such, we have to be machmir like both of them. That is, in a case that the person changes his words, the halacha is that the entire neder is batul. This is because in this case, everyone agrees that R' Akiva holds that neder is batul (and as we just said the halacha is like R' Akiva). However, in the case that he does not change his words, then we have to be machmir and say that the neder is not batul. This is because according to Rabbah, everyone agrees that the neder is not batul, and therefore, since we don't know if the halacha is like Rabbah or Rava, we have to be machmir.
3. The Ran brings a shita that says that this that we pasken that in a case in which the person does not change his mind, we have to be machmir and say that the neder is not batul, is only in a case that is similar to the Mishna. In the Mishna's case, the person says that had he known that his father was among them, he never would have included him. In this case, since he is keeping his original words, and he is saying that he never had in mind to assur his father, the neder does not become batul. This is true because when we say that the father is mutur, this is not understood to be true because part of the neder became batul but rather we say that the father was never included in the neder in the first place. Therefore, since in a sense none of the neder became batul, the neder stays in effect with regard to the other people. However, in a case in which he made a neder to assur several people and then he finds a pesach to matir one of them, in this case the neder will be batul. In this case, when the neder was made he had in mind everyone, and therefore once he finds a pesach to say that one of them should be mutur, we say that since part of the neder is batul, the entire neder becomes batul.
4. The Ran continues and says that although there is such a shita, the Ramban does not hold this way. He holds that it does not make a difference if the one making the neder never had in mind a particular person, or if he only found a pesach afterwards, in both cases if the

person says that he would not have changed his words, the neder will not be batul, and if he says that he would have changed the words, the neder will be batul. The Ran then brings several different proofs to the shita of the Ramban ע"י שם רמב"ן.

5. The Ran continues and brings another chiddush of the Ramban that holds that even in a case in which the person changes his words, the only time we say that since part of the neder is mutur, the entire neder is mutur, is in a case in which the Chacham finds a pesach to say that had the person known this, he never would have made the neder. But in a case in which the Chacham is matir the neder through חרטה – regret, only the person who he has regrets about becomes mutur but the other people will stay assur. The Ran then quotes those who argue on the Ramban and says that at the end of the day, when the Chacham is matir with 'regret', he is uprooting the neder from the beginning, and is so, once part of the neder becomes mutur, this causes all of the neder to become mutur.
6. The Ran continues that this is all true in a case in which a Chacham is matir the neder with either a pesach or regret, but in a case in which several people are put into chairim (or nidui), and they are then matir one of them, the others will stay assur. This is for the simple reason that when the Bais Din (or Rav) is matir a person from chairim, they do not do so retroactively. Rather they say that although until this point the person was in chairim, now he is mutur. Therefore, since we are not saying that the chairim was batul retroactively, the fact that this particular person becomes mutur does not affect the others (i.e., we don't say that once part of the chairim becomes batul, the entire chairim should become batul, because in this case the chairim is not becoming batul but rather we are being matir it from this point and on).
7. The Ran concludes with one last halacha. That this last point is true with regard to a husband being matir his wife's nedarim as well. If the husband is mayfer part of his wife's nedarim, the part that he was mayfer will not affect the rest of it. The Ran explains that this is because we pasken that when a husband is matir his wife's nedarim, he is not doing it retroactively but rather he is just 'cutting it off', i.e., he is only being matir the neder from this point and on. Therefore, what the husband now does, does not affect the rest of the neder.

אונס -onus is defined as something that happens that is out of your control. As the Mishna will explain.

The cases of nedarim of onus (are) **נדרי אונסין**
(if) a person makes a neder **הדירו חבירו**
that his friend should eat with him **שיאכל אצלו**

A person makes a neder that unless his friend eats with him, all of his property should become assur for his friend to benefit from. A person makes this neder:

And he (the friend) became sick **וחלה הוא**
or his son became sick **או שחלה בנו**
or the river prevented him from (coming) **או שעקבו נהר**
these are cases **הרי אלו**
of nedarim of onus **נדרי אונסיני**

In all these cases the neder will not be chal. This is true because the only reasons that his friend did not come and eat with him was because of something that happened that was beyond his control (i.e., either he gets sick, or his son gets sick, or the river becomes unpassable).

The Ran explains that the reason why the neder is not chal in these cases is because when the person made the neder, he did so with the intent of making his friend assur only if his friend does not come because he did not want to. But if the reason why he didn't come was because of an onus, even if the onus is not a complete onus, in this case the person never meant to make the neder, and as such it is not chal.

גמרא

The Different Cases in Which a Condition Was Not Met as a Result of an Onus

The was a certain man **הוא גברא**
that 'deposited' his z'chusim **דאתפיס זכותא**
in Bais Din **בבי דינא**
and he said **ואמר**
"If I do not come (back) **אי לא אתינא**
until thirty days **עד תלתין יומין**
be mevatal my z'chusim" **ליבטלון הני זכותאי**
and an onus happened to him **איתניס**
and he did not come **ולא אתא**
and Rav Huna said **אמר רב הונא**
be mevatal his z'chusim **בטיל זכותיה**

The Mefarish explains that a person came to Bais Din and had various documents that proved that he was correct in a

dispute that he was having (the Gemara refers to these as z'chusim (translated as legal rights). After he deposited these documents with the Bais Din, he told them that he is leaving but he will return within thirty days, and if he does not return within this time-frame, he agrees to waive any rights he might have. After he left, an onus happened to him and this prevented him from being able to return to the Bais Din within the thirty-day timeframe. Since he did not return within the required thirty days, Rav Huna ruled that he should lose his rights. And on this the Gemara asks:

Rava said to him **אמר ליה רבא**
(but) he was an onus **הוא אונס**
and the Torah exempts an onus **ואנוס וחמנא פטריה**
as it is written (Devarim 22:26) **דכתיב**
"And to the young girl **ולנערה**
do not do anything" **לא תעשה דבר**

The Torah tells us that although normally a girl who is mezaneh (commits adultery) is chayiv misa, if a girl was forced to do it, she is not punished. And from this we learn the rule that the Torah does not punish someone who does something that is against his will, i.e., an action that happens without your consent is not considered as if you did it. Rava therefore asks that in our case as well, we should say that the person's not coming to Bais Din should not be held against him and he should not lose his z'chusim.

On this question the Gemara points out:

And if you are going to say **וכי תימא**
killing is different **קטלא שאני**

One might have said that in reality the Torah holds that a person's actions are always held against him, even if the action was done against his will. And it is just with regard to Bais Din killing someone that we say that in order to give such a severe punishment, the person 'really' has to deserve it, i.e., his wrong action had to been done with his consent. And if this would really be true, then Rava' question on Rav Huna would not be valid. But to this Rava says:

But we learned in a Mishna **והתנן**
(the case of) nedarim of onus **נדרי אונסין**
(is a case in which) one makes a neder **הדירו**
(with) his friend **חבירו**
that he should he with him **שיאכל אצלו**
and he got sick **וחלה הוא**
or his son got sick **או שחלה בנו**
or the river prevented him **או שעקבו נהר**
these cases **הרי אלו**

(are the cases of) nedarim of onus נְדָרֵי אֲוֹנָסִין

The Ran explains that from our Mishna we see that even though the person does not say that he means to exclude the case of onus, we assume that the reason for this omission is not because he means to include onus, but rather the reason is because the case of onus simply didn't occur to him. Therefore, when an onus does occur, the neder is not chal because we assume that he never meant to include the case of onus.

Rava asks that if so, the same should be true in the case of Rav Huna as well. Even though the person did not say that he is excluding the case of onus, we should assume that the reason he didn't do so is simply because the case of an onus did not occur to him. And as such, when an onus does occur, the person should not lose his z'chusim.

The Ran explains that although seemingly this is a valid question on Rav Huna, Rav Huna does not bother to answer it as he holds that there is a fundamental difference between the two cases.

In the Mishna's case, the one making the neder does not stand to lose if the condition is not met, and as such, the fact that he does not say that he is not including the case of onus doesn't tell us anything with regard to whether he is or if he is not including the case of an onus. Therefore, we assume that he would not want to include even an onus.

However, in Rav Huna's case, the one who made the condition is the one who will lose out if the condition is not met, and as such, we say that if he does not say that he is excluding the case of an onus, it is he who caused himself his loss by not mentioning that he doesn't mean the case of an onus, and that is why he will lose his z'chusim even if the reason he did not come back was beyond his control.

The Gemara continues and asks not on Rav Huna but rather on Rava (as explained):

And according to Rava וְלִרְבָּא

what is the difference (between this) מַאי שְׁנָא

and this that we learned in a Mishna מִהָא דְתַנּוּ

(If a person says) "This is your get from now מַעֲכָשִׁי

if I do not come אִם לֹא בֹאתִי

from now מִכָּאן

until twelve months" עַד שְׁנַיִם עָשָׂר חֳדָשׁ

and he then dies וּמָת

within the twelve months בְּתוֹךְ שְׁנַיִם עָשָׂר חֳדָשׁ

(the Mishna says) this is a get הָרִי זֶה גֵט

but why אֲמַאי

but he was an onus וְהָא מִינָס אֵיתְנִיס

The Mishna in meseches Gittin describes a case in which a man gives his wife a get and tells her that the get should take affect now but only if he does not return within the next twelve months. That is, if after twelve months we see that he has not returned, we know that the get had been in effect from the point that the man gave his wife the get twelve months earlier.

The Mishna continues and says that if the man dies within the twelve months then the get is chal. That is, even though the reason the man did not return was obviously due to an onus (he was dead), the Mishna tells us that this does not make a difference. If so, we see not like Rava said. Rava had said that a person is not held accountable for something that is an onus (and that is why he asked his question on R' Huna), and yet we see from this Mishna that a person is held accountable for something that is an onus,

The Gemara answers:

They say אָמְרֵי

maybe דְּלִמָּא

it is different over there שְׂאֵנִי הֵתֵם

Nedarim 27B

For had he known דאי הוה ידע
that he would die דמית
immediately מן לאלתר
he would have finalized (his decision) הוה גמר
and given her the get (unconditionally) וניהיב גיטא

The Ran explains that the only reason this person gave his wife the get was in order that she should not fall to yibum (if a man dies without children, his wife either has to do yibum (i.e., marry his brother or she has to do chalitzah). Therefore, had he known that he would die, he would have given her the get immediately without any conditions attached. Therefore, now that he died, even though he did make a condition, the fact that it was not fulfilled as a result of his dying will not make a difference.

However, in Rav Huna's case, a case in which this explanation does not apply, we will still say that the person would not have made his condition had he known that an onus would prevent from coming back to Bais Din in time.

The Gemara continues to ask on Rava:

(And) what is the difference between (this) מאי שנא
from the one מההוא
that said to them (i.e., to the witnesses on the get) דאמר להו
"If I do not come back לא אתינא
from now until thirty days מן תלתין יומין
it should be a get" ליהוי גיטא

The person says that if he does not come back within thirty days, the get should be chal. And then:

He came אתא
and the (lack) of a ferry stopped him מפסקיה מעברא
and he said אמר
to them (i.e., from the other side of the river) להו
"Look that I have come חזו דאתאי
Look that I have come" חזו דאתאי
And Shmuel said ואמר שמואל
this is not 'called' coming לא שמייה מתייבא
but why אמאי
but he is an onus והא מינס אנוסי

The man is trying to come back and the only reason why he can't is because there is no ferry to take him across the river, i.e., he is being held back against his will. And yet, despite the fact that he is being held back against his will, Shmuel still says that this is not considered as if he came back (as he is still on the other side of the river), and as such the get is going to be chal.

But according to Rava we should say that get is not chal as an onus happened to him, and yet we see that Shmuel said not that way.

The Gemara answers:

Maybe דלמא
an onus that is 'revealed' אנוסא דמיגליא
is different שאני
and (with regard) to a ferry ומעברא
(it is considered) a 'revealed' onus מיגלי אנוסיהו

The Gemara answers that although it is true that when the person comes to the river, the reason he cannot cross it is beyond his control (as the ferry is not there), this is not considered as a regular onus, as this onus was predictable (revealed). That is, since it is common that there will be no ferry there to take him across, this is something that he could have seen, and as such, if he did not want to include this case in his condition, he should have said so.

The Problem of אסמכתא

The Gemara now asks on Rav Huna:

(And according) to Rav Huna לרב הונא
but it is an asmachta היא אסמכתא
and an asmachta ואסמכתא
is not koneh (acquired) לא קניא

An asmachta is a deal in which a person agrees to give someone something but does not really mean to do so. For example, he says that he will give something to his friend if he does not do something. The only reason why this person agrees to this is because he does not think that he will fail to do this thing. And then unexpectedly he is not able to do what he set out to do. In this case, the rule of אסמכתא לא קניא (an asmachta is not acquired) says that since the first person never had in mind to give away his object, he does not have to do so.

Seemingly, our case would be a perfect example of an asmachta. When the person said that he should lose his z'chusim if he does not return within thirty days, he definitely thought that he would be able to do so. That is, he never had in mind to actually give up his rights, if so, how can we say that he loses his rights as a result of not coming back on time?

The Gemara answers:

It is different over here שאני הכא
that his z'chusim are being held (by Bais Din) דמיתתקסן זכותיה

In our case, Bais Din is holding onto his z'chusim. Tosefos explains that since the person allows Bais Din to hold it, it must

be that he has in mind to allow his z'chusim to become batul (because otherwise he would not have given them away).

But on this answer the Gemara asks:

וְהִיא בְּמִתְקַסִּין
that they are being held
לֹא אִם
is it (really) not
אֲסַמְכְתָּא הִיא (considered) an asmachta
וְהִתְנַחֲמֵנוּ
But we learned in a Mishna
מִי שֶׁפָּרַע חֻבּוֹ
one who pays back part of his debt
וְהִשְׁלִיךְ אֶת שְׂטָרוֹ
and he deposited his shtar/the loan document
(lit. a third, i.e., he gave the shtar to a third party)
וְאָמַר
and he said
אִם אֵין אֲנִי
"If I do not
נֹתֵן לּוֹ
give to you (the rest of the debt)
מִכָּאֵן עַד שְׁלֹשִׁים יוֹם
from now until thirty days
תֵּן לוֹ שְׂטָרוֹ"
give him the shtar"

In this case, a third party was given the shtar after the borrower had paid back part of the loan (see footnote on why this was done²), and the borrower then told the third party that if he does not pay back the rest of the loan within thirty days, the third party should give the shtar back to the lender and this would allow the lender to collect what was already paid for a second time (i.e., the lender will now be able to collect the entire loan even though the borrower had already paid part of the loan back).

The Mishna continues:

הִגִּיעַ זְמַן
If it reaches that time
וְלֹא נָתַן
and he (the borrower) did not give (the rest of the debt)
רַבִּי יוֹסִי אָמַר
R' Yosie says
תֵּן
he gives it
וְרַבִּי יְהוּדָה אָמַר
and R' Yehuda says
לֹא תֵּן
he does not give it
וְאָמַר רַב נְחֻמָּן
And Rav Nachman said
אָמַר רַבָּה בַּר אַבְוָה
that Rabbah bar Avuha said
אָמַר רַב
that Rav said
אֵין הִלְכָה כְּרַבִּי יוֹסִי
the halacha is not like R' Yosie

² Who Holds on to the Shtar in the Case that the Borrower Pays Back Part of the Loan?

Typically, when someone would borrow money, the borrower would sign a document that he owes the money, and the document would then be given to the lender to hold. When the time would come for the debt to be paid, the lender would present the document to prove that the money was still owed. Once the loan would be paid back, the document would be given to the borrower (if the lender would be allowed to keep the document, he would be able to collect for a second time).

If the borrower would pay back part of the loan, then there would be two options that could be done. The first option is for the lender to hold onto the document and to write what is known as a שובר – a receipt. The lender would

דָּאָמַר אֲסַמְכְתָּא קִנְיָא
that said asmachta is koneh

If it reaches the end of the thirty days and the borrower does not pay back the rest of the loan, R' Yosie holds that the third party gives the shtar to the lender and R' Yehuda holds that he does not. And Rav said that the halacha is not like R' Yosie who said that asmachta is koneh. That is, when the borrower told the third party to give the shtar to the lender if he does not pay off the loan within in thirty days, he obviously did not have in mind that this should actually happen, i.e., this is a case of asmachta.

And yet R' Yosie holds that the third party should give the shtar to the lender as R' Yosie holds that even though this is a case of asmachta, he holds that an asmachta is koneh. And on this Rav Nachman said that the halacha is not like R' Yosie as the halacha is that asmachta is not koneh, and this is true even though the borrower gave the shtar to a different person.

If so, we now come to the Gemara's question. How can Rav Huna say that asmachta is koneh if R' Yehuda, his Rebbi, holds not that way? And we can't answer that even though R' Yehuda holds asmachta is not koneh, perhaps Rav Huna's case is different because in Rav Huna's case the person gave the shtar to someone else. We cannot answer this way because we see from the case that the Gemara just brought that R' Yehuda holds that even when the person gives the shtar to someone else, he still says asmachta is not koneh.

The Gemara answers:

שְׂאֵי הִכָּא
It is different here (in Rav Huna's case)
דָּאָמַר רַב
for he said
לְבַטְלֵן זְכוּתֵיהּ
to be mevatal the z'chusim

The Ran explains that the Gemara is answering that the only time there is a problem of asmachta is in a case that a person is giving something to someone else. However, in Rav Huna's case, all he is doing is being mochel (forgoing) the z'chusim that he has, and for this there is no problem of asmachta.

The Ran gives an example of someone who gives his friend an object and says that it should belong to you if I do not return within thirty days. In this case as well there will be no problem of asmachta as the person already has the object. The only problem of asmachta will be in a case that the person has to either give

keep the shtar in order to collect the rest of the loan, and the borrower would have to receipt in order to prevent the lender from recollecting the part of the loan that he had already paid.

The second option is for the lender to give the shtar to a third party. The third party would hold onto the shtar and not give it to the borrower until the entire loan would be paid back. This arrangement would benefit both parties as the lender would not be able to collect more than he was entitled to, and the borrower would be forced to pay back the rest of the debt.

something or has to pay something. In this case, since something has to be transferred from person to person, this is the case of asmachta that he said will have no effect.

The Ran then brings the shita of Rashi that says that the reason R' Huna's case is different than the typical of asmachta is because in R' Huna's case, all the person is saying is that the z'chusim should be batul. That is, he says that if I don't come back within thirty days, you should know that the shtar is false. And therefore, since all he is doing is admitting the truth and saying that the shtar is not valid, in this case there will be no problem of asmachta.

The Gemara concludes the sugya by saying:

And the halacha is והלכתא
an asmachta is koneh אסמכתא קניא
but this is (only in a case) והוא
that he was not an onus דלא אגיס
and this is (only true in a case) והוא
that he was koneh from him דקנו מיניה
in a 'honorable' Bais Din בבית דין חשוב

The Gemara concludes and says that an asmachta is koneh but only if the following conditions are met.

1. He was not an onus.
2. He made a kinyan that the person should be koneh the object from now (if the condition was not met). And even if he did not say this, if the kinyan was made in an 'Honorable Bais Din' the kinyan will be chal (as in this case we assume that he wants to make a kinyan from now).

³ When Do We Say that an Asmachta is Koneh?

- 1) He was not an onus. That is, if a person says that he will give something to his friend if this person does not do a certain action, the person will be obligated to give that object to his friend only if the reason why he didn't do that action was because he didn't want to. But if the reason that he didn't do it was due to circumstances beyond his control, that is the asmachta will not be koneh. The Ran explains that when we say that he can't be an onus, this does not mean that he has to be a complete onus, but rather even if he was only a partial onus, similar to the cases of our Mishna (either he got sick, his son got sick, etc.). Even in these cases we say that the asmachta will not be koneh (that is, even though technically when he was sick, he could have forced himself to go despite his sickness, if he doesn't do so, he is still considered an onus and the asmachta will not be koneh.)
- 2) He has to make a kinyan. That is, they make a kinyan sudar which means that he and the other person pick up a sudar (handkerchief) and say that if the person does not do a certain action, this sudar should function as an act of acquisition to allow the person to be koneh the possessions that this person is trying to give his friend. In this case there is no problem of asmachta as the kinyan sudar only works מעכשיו (from now). That is, the person makes the kinyan sudar and says that if he does not come back within thirty days, the kinyan will make you be koneh this object from now, i.e., right away. Therefore, since the other person is acquiring the object from now, there is no problem of asmachta, as the problem of asmachta is only relevant when he says that if he doesn't do something by a certain time, then at that later

See footnote where each of these conditions are explained at length.³

משנה

The Type of Nedarim that One Can Make In Order to Protect His Property

On can make a neder נודרין
to murderers להרגין
to 'robbers' ולהרמין
and to tax collectors ולמוכסין
that this is terumah שהיא תרומה
even though it is not terumah אף על פי שאינו תרומה
(he can also make a neder) that these שהן
belong to the king's house של בית המלך
even though אף על פי
that they do not שאינן
belong to the king's house של בית המלך

The Mishna tells us that one is allowed to lie and to make a neder in order to protect his property. That is, if either a murderer, a robber, or a tax collector comes and demands that he hand over his crops, he can say that in reality these crops are terumah, and to prove that he is telling the truth, he makes a neder to assur himself to certain objects if the crops are really not terumah.

In the second case of the Mishna, the person says that these crops belong to the king's house, and again he makes a neder to

time the other person should be koneh this object. The Ran explains that the kinyan sudar cannot affect a kinyan to take effect as a later date for the simple reason that when that later date comes, the kinyan is no longer here (that is, at that later point the sudar will have already been returned to its owner). Therefore, since the kinyan sudar will have to make the kinyan be chal now, there is no problem of asmachta, as there is no problem of asmachta anytime the kinyan is happening now and not at a later date.

- 3) We need that the asmachta to be made in an 'Honorable Bais Din'. The Ran defines an 'Honorable Bais Din' as one that has the power to extract money from a person. The Ran clarifies and says that if the person says that the kinyan should happen from now מעכשיו, then the kinyan will work (if the conditions are not met) even without a Bais Din. The Ran explains that the only reason the Gemara says that you need a Bais Din is to tell us that if this 'deal' was made in an 'Honorable Bais Din' then the asmachta will be koneh even if the person did not say that the kinyan should be chal 'from now'. If the 'deal' was made in an 'Honorable Bais Din', we say that since the person is making this 'deal' in a Bais Din, he is obviously serious about it and he is only making the 'deal' because he wants it to work. Therefore, even if he doesn't actually say the words 'from now' it is as if he has said them, as this is the only way the 'deal' that he made will be chal. (In other words, we don't 'really' need an 'honorable Bais Din' but if we have one, then we know that a kinyan was done.

4)

prove his point. The chiddush of the Mishna is that although he only made these neder as the result of being forced to do so in order to protect his produce, the nedarim in certain aspects will be chal, as the Gemara will explain.⁴

The Mishna said the one is allowed to make a neder to back up a false claim in order to protect one's property. The Mishna

now explains the different shitos of when a person can or cannot do this.

Bais Shammai says **בית שמאי אומרים**
with all nedarim **בכל נודרין**

⁴ If One is Willing to Kill, Why Will he Not be Willing to Eat Terumah?

The Rishonim ask the obvious question on the Gemara. If we are dealing with people who are willing to kill people in order to steal from them, how can the issur of eaten terumah be a reason for them not to do so?

Tosefos and the Rosh say simply that even through these people are willing to kill and steal, they are still not going to eat terumah which is assur to a non-Kohen.

The Rosh adds that they will not steal as terumah is worth very little.

Other Rishonim say that they will not eat the terumah as it carries a **חיוב** מיתה.

There is a famous line from the Kotzker Rebbe who said that it is a shame that the Aseres HaDibbros were not included in the tzava (will) of R' Yehuda Chassid. The Kotzker was lamenting the fact that we find those people who are very makpid on certain things and yet when it comes to things that are truly chamor, they are not as makpid (an example might be someone who is makpid on certain segulos but not on shmiras Shabbos).

Although it was the Kotzker who publicized this problem, in reality this distortion of values was already in play during the times of the Mishna, as we see from the previous Rishonim. They explain that there were people who would be willing to kill someone and yet they would not be willing to do other less chamor avayros.