

## Nedarim 28a

Except for a shevuah חוץ מבשבועה  
and Bais Hillel says ובית הלל אומרים  
even with a shevuah אף בשבועה

The Ritva explains that the machlokes Bais Shammai and Bais Hillel is with regard to making a shevuah that he will not eat fruits if the crops are not terumah or belongs to the king, (similar to the case of neder that the person makes a neder that he will not eat any fruits if this is not terumah, as the Gemara will explain). But even Bais Hillel will agree that a person cannot make a shevuah that this is terumah as person cannot swear falsely.

However, the Meiri (in his explanation of our Mishna on daf chof) explains that a person can even make a shevuah that these crops are terumah.

And although it is certainly assur to make a false shevuah in order to protect his property, the reason why this shevuah is mutur is because as the time that he says that these fruits belong to the king, he has in mind the true owner of the crops, that is, in his mind he refers to the owner of the crops as a king, as the Gemara in meseches Megillah (12b) tells us that even the lowly weaver is the ruler of his house (and this will be similar to what the Gemara tells us with regard to a neder. That even if the person makes a neder that he will not eat any of the fruits of the world, he has in mind that this should only be for one day).

The Mishna continues:

Bais Shammai say בית שמאי אומרים  
he cannot 'open' (start) with a neder לא יפתח לו בנדר  
and Bais Hillel says ובית הלל אומרים  
he can even open (with a neder) אף יפתח לו

Although Bais Shammai hold that one can make a neder in order to protect his property, he cannot be the one to propose this. That is, if after this person says that his crops are terumah the other person demands that he backs up his claim with a neder, then he is allowed to do so. But if the other person does not demand the neder, this person is not allowed to initiate the idea of backing up his words with a neder.

The Mishna continues:

Bais Shammai says בית שמאי אומרים  
with what he makes him make a neder במה שהוא מדירו  
and Bais Hillel says ובית הלל אומרים  
also with what במה אף  
he does not make him make a neder שאינו מדירו

How is this כיצד  
(If he, the robber) says (to the owner) אמר לו

אמור "Say

'Konam קונם

my wife to benefit from me' אשתי נהנית לי

And he (the owner added and) said ואמר

"Konam my wife and children ובני אשתי

to benefit from me" נהניו לי

Bais Shammai says בית שמאי אומרים

his wife is mutur אשתו מותרת

and his children are assur ובניו אסורין

and Bais Hillel say ובית הלל אומרים

these and these are mutur אלו ואלו מותרין

In this case the man only demanded that the owner make a neder with regard to his wife, and he went ahead and made a neder with regard to both his wife and his children. Therefore, Bais Shammai hold that only his wife is mutur but his children are assur, (as there was no reason why he had to make the neder with regard to his children). Bais Hillel disagrees and holds the even the children will be mutur. Bais Hillel hold that even though the person did not have to forbid his children, the only reason he did so was to help prove his claim, and as such, even this part of the neder is going to be mutur.

## גמרא

### The Parameters of Dina D'malchusa Dina with Regard to Paying Taxes

One of the cases that the Mishna mentioned was the case in which the person is trying to avoid giving his crops to the tax collector. And on this the Gemara asks:

But Shmuel שמואל אמר

the law of the land is the law דינא דמלכותא דינא

Shmuel said the famous rule of דינא דמלכותא דינא, that one must follow the law of the land. If so, if the government is demanding taxes, how is this person allowed to trick the tax collector and not pay this tax?

The Gemara answers:

אמר רב חנינא Rav Chanina said

that Rav Kahana said אמר רב כהנא

that Shmuel said אמר שמואל

(the Mishna is referring) to a tax collector במוכס

that does not have a set amount שאין לו קצבה

The Rosh (in his second explanation) explains that since this tax collector would collect as much as his heart desired, even more

than the king authorized, what he is doing is not considered lawful, and as such, this is why one is allowed to trick him.

An additional answer as to how this person was allowed to evade paying taxes:

D'bei Yannai said דְּבֵי יַנַּאי אָמַר  
(the Mishna is referring to) a tax-collector בְּמוֹכֵס  
that 'stood' up by himself הָעוֹמֵד מֵאֵלָיו

The tax collector referred to by that Mishna is not one that was appointed by the king to collect taxes, rather he 'appointed himself' to collect taxes, and if so, there is obviously no reason why one would have to pay him anything.

### The Exact Wording of Making a Neder to Protect One's Property

The second case of the Mishna described a person who said the following in order to protect his property:

(The person said) that they belong to שָׁהוּן שָׁל  
the house of the king בֵּית הַמֶּלֶךְ  
and even though עַל פִּי  
they do not belong שְׂאִינָן שָׁל  
to the house of the king בֵּית הַמֶּלֶךְ

The person says that this belongs to the king, and then to prove that he is telling the truth, he says that if they don't belong to him then I am making this neder.

The Gemara now asks:

How does he make the neder הִכִּי נָדַר

The Mishna just says that the person makes a neder that these fruits are terumah or belong to the king. But as the Ran explains this is not a neder! A neder makes something assur and cannot be used to just say something is true. If so, what is the case of the Mishna?

The Gemara answers:

Rav Amram said that Rav said אָמַר רַב עֲמֵרָם אָמַר רַב  
(the case is) that he says בְּאוֹמַר  
"They should be assur יִאָּסְרוּ"

#### <sup>5</sup> Why is this Different than a Neder of Zerizus?

The Mishna previously taught us that a neder that is made just to pressure someone to do something is not considered as a neder (as we assume that the person never really meant to make the neder). If so, why is our case different? In our case as well, the person only made the neder in order to save his property and not that he really wanted to.

The Tosefos Ri"ד answers that in the case of a neder of zerizus, everyone knows (יש אגן סהדי) that the only reason that he made the neder was to pressure his friend, and everyone also knows that if this person would have known that his friend would refuse to listen to him, then this person would never have made the neder, as he only made his neder to accomplish his goal.

However, in our case the reason that he made neder was in order to protect his property, and that is exactly what happened! Therefore, since the neder

the fruits of the world on me פִּירוֹת הָעוֹלָם עָלַי

if this does not belong to שָׁל

the house of the king בֵּית הַמֶּלֶךְ

The Gemara answers that the person is not directly making a neder to say that these objects belong to the king rather the person says that if he is lying then all of the fruits of the world should be assur to him. And on this the Gemara asks:

(But) since כִּיּוֹן

he said that they should be assur יִאָּסְרוּ

it should be assur on him אֵיתָסְרוּ עָלָיָהּ

all the fruits of the world כָּל פִּירוֹת הָעוֹלָם

In the Mishna's case, the property does not belong to the king, and if so, why would this person not be obligated to keep his neder?<sup>5 6</sup>

The Ritva explains that although the person is being forced to make this neder, the reason he is making the neder is not to protect his life but rather it is to protect his property, and therefore he would be chayiv to keep it, despite the fact that he was forced to make it.

The Gemara answers:

(In the Mishna's case) the person says בְּאוֹמַר

"Today" הַיּוֹם

The Gemara answers that although the person made a neder to assur all of the fruits of the world, and this would seem like something that the person cannot keep, in reality the person said the neder should only be in effect for that day. And on this the Gemara immediately asks:

(But) if he said "Today" אֵי דְּאָמַר הַיּוֹם

the tax collector will not accept לֹא מְקַבֵּל מִיְנֵיהּ מוֹכֵס

If the person makes a neder that is easy to keep (i.e., not to eat the fruits of the world for a day), how would this convince the robber that he is telling the truth?

The Gemara answers:

(The case is that) he says in his heart בְּאוֹמַר בְּלִבּוֹ

"Today" הַיּוֹם

and he lets out וּמוֹצִיא

accomplished what he wanted it to accomplish, it is going to be chal (if not for the fact that he had in mind that it should last for only one day).

#### <sup>6</sup> Why is this Not Considered as a נְדָרֵי הִבְאִי - Non-Sensical Nedarim?

The Ritva brings the shita of Rabbenu Tam that if something makes a shevuah to assur all the fruits of the world, since this is a neder that cannot be fulfilled, the neder would not be chal as it would be considered as a נְדָרֵי הִבְאִי, a non-sensical neder that is not chal. If so, how can our Mishna say that the neder is chal?

The Ritva answers that the case of the Mishna would have that he only made the neder with regard to some specific fruits but not with regard to all the fruits of the world.

with his lips (i.e., he says) בְּשִׁפְתָיו  
 stam (an unspecified neder) סָתָם  
 and even though וְאִם עַל גַּב  
 we hold דְּסָבִירָא לָן  
 words of the ‘heart’ דְּבָרִים שֶׁבְּלֵב  
 are not words אֵינָן דְּבָרִים  
 with regards to onsim לְגַבֵּי אוֹנְסִין  
 it is different שְׂאֵנִי

The Gemara answers that in reality when the person made the neder, he had in mind that the neder should only be chal for that day, and yet when he said out the neder, he just said that all fruits of the world should be assur without mentioning any limitations. The robber who hears the neder thinks that the person is forbidding the fruits forever, and as such, the robber thinks that the neder proves that the person must be telling the truth, when in reality he isn't.

The Gemara points out that although normally there is a rule that דְּבָרִים שֶׁבְּלֵב אֵינָן דְּבָרִים, that words of the heart are not considered words, (i.e., when a person says something, he cannot later say that he had other intentions in mind besides for the simple implications of the words he said). Therefore, in this case as well this rule should apply. That since his words imply a neder forever, the fact that he has in mind for one day should not make a difference.

To which the Gemara answers that while this is typically the halacha, that what a person has in mind does not play a role in determining the status of his words, the case of onus is different. The Ran explains that typically the stronger implication of a neder is that the neder is making an issur forever (for if not, why did the person not specify otherwise). However, in the case of an onus, the opposite is true. Since the person is only making the neder in order to protect his property, the stronger implication is that he wants to limit the neder as much as possible, and therefore since the person did not specify otherwise, we say that indeed the neder was for only one day.

**The Machlokes Bais Shammai and Bais Hillel with Regard to the Halachos of Making a Shevuah or Neder in Order to Protect One's Property**

The Gemara starts the next sugya by quoting the machlokes Bais Shammai and Bais Hillel that is found in the Mishna.

Bais Shammai say בֵּית שַׁמַּי אוֹמְרִים  
 with all etc. בְּכָל כּוֹי

Bais Shammai say בֵּית שַׁמַּי אוֹמְרִים  
 with what he forces him to make a neder בְּמָה שֶׁהוּא מְדִירוֹ

and Bais Hillel say וּבֵית הִלֵּל אוֹמְרִים  
 also with what he did not (force) אִם בְּשִׂאֵינוֹ  
 him to make a neder מְדִירוֹ  
 How is this כִּיצַד  
 (if he) said to him (say) לוֹ אָמַר  
 "Konam, my wife אֶשְׁתִּי קוֹנָם  
 to benefit from me לִי" נִהְיִית לִי  
 (and this person went ahead) and said וְאָמַר  
 "Konam קוֹנָם  
 my wife and children וּבְנֵי אֶשְׁתִּי וּבְנֵי  
 from benefiting from me לִי" נִהְיִין לִי  
 Bais Shammai say בֵּית שַׁמַּי אוֹמְרִים  
 his wife is mutur אֶשְׁתּוֹ מוֹתֵרֶת  
 and his children are assur וּבְנָיו אֲסוּרִין  
 and Bais Hillel say וּבֵית הִלֵּל אוֹמְרִים  
 these and these are mutur אֵלּוֹ וְאֵלּוֹ מוֹתֵרִין

Having finished quoting the Mishna, the Gemara now brings a Baraisa that is relevant to the machlokes Bais Shammai and Bais Hillel.

Rav Huna said אָמַר רַב הוּנָא  
 we learned in a Baraisa תַּנָּא  
 Bais Shammai say בֵּית שַׁמַּי אוֹמְרִים  
 one cannot be the one to ‘open’ (propose) לוֹ אִם יִפְתַּח  
 with regard to a shevuah בְּשִׁבוּעָה  
 and Bais Hillel say וּבֵית הִלֵּל אוֹמְרִים  
 he can also ‘open’ (for him) לוֹ אִם יִפְתַּח  
 with a shevuah בְּשִׁבוּעָה

With regard to protecting one's property, Bais Shammai says that the person cannot be the one to suggest that he make a shevuah in order to prove that he is not lying when he says that this property is either terumah or belongs to the king. Bais Hillel argues and says that the person can be the one to suggest to the robber that he make a shevuah.

The Gemara will now ask that the implications of this Baraisa will seem to contradict the Mishna, as follows.

According to the Baraisa, we can make the following deduction:

According to Bais Shammai לְבֵית שַׁמַּי  
 with regard to a shevuah בְּשִׁבוּעָה  
 that is what he can't open (propose) הוּא דְּלֹא יִפְתַּח  
 but with regard to a neder הָא בְּנִדָּר  
 he can be the one to ‘open’ (to propose that he make a  
 neder) לֹא יִפְתַּח לוֹ

The Baraisa says that according to Bais Shammai the person is not allowed to offer (i.e., what the Baraisa calls ‘to open’) the robber that he will make a shevuah to prove that he is not lying. The implication is that it is only a shevuah (that is more chamur) that the person is not allowed to offer, but the person is allowed to offer to make a neder to prove that he is not lying.

And on this the Gemara asks:

**But we learned in the Mishna וְהָא תַנַּן**

**בַּיִת שְׁמַאי אֹמְרִים**

**לֹא יִפְתַּח לוֹ בְּנֶדֶר**  
**a person cannot ‘open’ with a neder**

The Mishna clearly says that according to Bais Shammai the person cannot be the one to propose the making as a neder as a means to prove that the person is telling the truth, that is, not like the Baraisa implies.

The Gemara continues to ask on the implications of the Baraisa:

**וְתוּ**  
**And further more**

**מִיִּפְתָּח**  
**(with regard) to ‘opening’**

**הוּא דְלֹא יִפְתַּח לוֹ**  
**this is what he can’t ‘open’**

**בְּשִׁבוּעָה**  
**with a shevuah**

**הָא מִיִּדֵּר נֶדֶר**  
**but he can make a ‘neder’**

**בְּשִׁבוּעָה**  
**with a shevuah**

The Baraisa implies that according to Bais Shammai, the person cannot be the one to propose the idea of making a shevuah in order to prove that he is not lying. But if the robber would demand him to make a shevuah, he would be allowed to do so.

And on this the Gemara asks:

**וְהִתַּנַּן**  
**But we learned in the Mishna**

**בַּיִת שְׁמַאי אֹמְרִים**

**בְּכֹל נֹדְרִין**  
**with everything you can make a neder**

**חוּץ מִבְּשִׁבוּעָה**  
**except for shevuah**

The Mishna says clearly that although Bais Shammai allows one to make a neder in order to protect his property, they do not allow one to make a shevuah to do so. That is, even if he is not the person who is the one to first propose the idea to make a shevuah, the person can still not do so. If so, how could the Baraisa imply otherwise?

**To Summarize:** The Gemara asks that the implications of the Baraisa contradicts the Mishna in two aspects:

1. The Baraisa says that according to Bais Shammai the person cannot be the one to propose making a shevuah to prove that the person is not lying, this implies that it is just with regard to making a shevuah that the person cannot be the one to offer to do so, but with regard to a neder, he can be the one to propose to make a neder, something that is contradicted by the Mishna.

2. The Baraisa says that according to Bais Shammai the person cannot be the one to propose making a shevuah to prove that the person is not lying. This implies that that if it was the robber who at first proposed it, even Bais Shammai would agree that he could make the shevuah, something that is contradicted by the Mishna that says that according to Bais Shammai one can never make a shevuah to prove himself right.

The Gemara answers that in reality Bais Shammai hold as our Mishna says, that one cannot be the one to propose to make even a neder, and one can never make a shevuah, even if it was the robber who at first proposed the making of the shevuah. And although the implications of the Baraisa would seem not this way, the Gemara will explain why no such implications are warranted, as follows.

The Gemara explains:

**תַּנָּא מִתְּנִיתִין**  
**The Mishna learned**

**בְּנֶדֶר**  
**(the case of) neder**

**לְהוֹדִיעַדָּ**  
**to tell us**

**כְּחַן דְּבֵית שְׁמַאי**  
**the ‘strength’ of Bais Shammai**

**וְתַנָּא בְּרִיִּיתָא**  
**(and) the Baraisa learned**

**בְּשִׁבוּעָה**  
**(the case) of shevuah**

**לְהוֹדִיעַדָּ**  
**to tell us the ‘strength’**

**כְּחַן דְּבֵית הִלֵּל**  
**of Bais Hillel**

The Gemara explains that the reason why the Mishna decided to discuss the case of neder, is to tell us how far the shita of Bais Shammai goes. That is, by choosing to discuss the case of neder, we see that even with regard to making a neder (which is not as chamur as making a shevuah), Bais Shammai hold that the person cannot be the one to propose making the neder.

And the Tanna of the Baraisa choose the case of shevuah to teach us just how far Bais Hillel’s shita goes. That Bais Hillel hold that not only can the person be the one to propose making a neder, but he can even be the one to propose making a shevuah.

And once the Baraisa picked the case of shevuah to discuss, we understand very well why Bais Shammai will say that one cannot be the one to propose making a shevuah. The reason why Bais Shammai says this was simply because he was coming to argue on Bais Hillel.

That is, the reason why we thought that Bais Shammai’s words imply that one can be the one to propose making a neder and that one is allowed to make a shevuah, is because if this was not the case, why would he make the statement that one cannot ‘open’ with a shevuah. They should have said that one can never make a shevuah and one cannot propose making a neder to save his property. Why would they talk about being the one to ‘open’

with a shevuah if they could have said a much bigger chiddush that one can never make a shevuah and one cannot even be the one to 'open' even a neder?

The answer the Gemara now gives is that Bais Shammai made the statement with regard to 'opening' with a shevuah, not because they could not have said a bigger chiddush, but rather they made this statement only because they wanted to argue on Bais Hillel. Bais Hillel said that one can even 'open' with a shevuah and Bais Shammai came to say that one cannot (and as such, nothing is implied by this that they specifically made their statement with regard to 'opening' with a shevuah).

The Gemara gives another way to answer the contradiction between the implications of the Baraisa and our Mishna.

Rav Ashi said רב אשי אמר  
this is what is learned הכי קתני  
Bais Shammai say בית שמאי אומרים  
there is no 'shayla' to a shevuah אין שאלה בשבועה  
and Bais Hillel say ובית הלל אומרים  
there is 'shayla' to a shevuah יש שאלה בשבועה

Rav Ashi answers that there is no contradiction between the Baraisa and the Mishna as the Baraisa is discussing a totally different halacha than the Mishna.

According to Rav Ashi, the Baraisa is discussing a regular case of shevuah and the question if one can get 'shayla' for it. That is, we know that even once a person makes a neder, he can still go to a Chacham and ask the chacham to be matir it. Bais Shammai hold that while this is true with regard to a neder, it is not true with regard to a shevuah. A shevuah is more chamur than a neder, and therefore, even though a Chacham can be matir a person's neder, he cannot be matir a person's shevuah (i.e., he cannot not get shayla, that is he cannot 'ask' the Chacham to be matir it). And Bais Hillel hold that a Chacham can even be matir a person's shevuah.

And therefore, when the Baraisa brings that Bais Shammai says that one cannot 'open' a shevuah, it is referring to a Chacham

finding a heter for him and has nothing to do with the Mishna's case of someone making a shevuah or neder in order to protect his property.

## משנה

### Making Something Hekdesh on Condition that They are Not Destroyed

(If a person says) these young plantings הרי נטיעות האלו  
should be a korban קרבן  
if they are not cut אם אינן נקצצות  
(Or if he says) this tallis טלית זו  
should be a korban קרבן  
if it is not burned אם אינה נשרפת  
they have להן יש  
pidyon (the ability to be redeemed) פדיון

By the Mishna telling us that these objects have pidyon, the Mishna is telling us that they are hekdesh. The Ran tells us that the Gemara will explain why the Mishna didn't just tell us straight that these objects are hekdesh, and the Gemara will explain the chiddush of the Mishna (that is, there seems to be no reason why this neder should not be chal, and if so, we will need to understand why the Mishna tells us something that we would know anyway).

In the first case of the Mishna, the object is hekdesh and you are able to redeem it. If, however, the person said:

These young plantings should be a korban הרי נטיעות האלו קרבן  
until they are cut עד שיקצצו  
(or he says) this tallis טלית זו  
should be a korban קרבן  
until it is burned עד שתשרף

## Nedarim 28b

They do not have pidyon אין להם פדיון

In this case, the person does not just say that they should be hekdesh if they are not cut or burned but he says that they should be hekdesh until they are cut or burned. And because he says this, they do not have pidyon until they are either cut or burned, as the Gemara will explain.<sup>7</sup>

### גמרא

#### Why Does the Mishna Not Just Say that it is Hekdesh?

In the first case of the Mishna, the Mishna is telling us that the person's declaration of hekdesh works and therefore these objects need to be redeemed, because if not they will be hekdesh. And on this halacha the Gemara asks:

(But) let the Mishna say וְלִיתְנֵי

they are hekdesh קְדוּשׁוֹת

(or) they are not hekdesh וְאִין קְדוּשׁוֹת

If the point of the Mishna is to say that the hekdesh is chal or not, why did the Mishna not just say so? Why does the Mishna say the halacha in a roundabout way, i.e., by saying if it needs pidyon or not?

The Gemara answers:

Since it needed to teach אֵיךְ דְּבַעֵי לְמִיתְנָא

the sayfa סִיפָא

that there is no pidyon אין להם פדיון

it also learned in the raysha תְּנָא נְמִי רִישָׁא

there is pidyon יש להם פדיון

The point of the second halacha of the Mishna is to say that not only are the objects hekdesh, but they do not have pidyon. If so, in the raysha where the halacha is not this way, the Tanna needed to say that there is pidyon. That is, if the Mishna is contrasting these two cases, it will need to discuss the same halacha by both (i.e., that in the raysha there is pidyon and in the sayfa there is not).

**Understanding the Case of the Mishna (in which the person says that these objects should be hekdesh if they are not cut down or burned)**

In the Mishna's case, the person makes a neder that these young trees should be hekdesh if they are not cut down or that this tallis should be hekdesh if it is not burned. The Gemara will now describe the case.

How did he make the neder הִיכִי נָדַר

The Ran explains that the Gemara is asking that in the case in which the person says that these young trees should be hekdesh if they are not cut down, the hekdesh should not be chal. Every tree is eventually cut, and if so, there should be no way that the tree should ever become hekdesh.

The Ran points out that this question is only on the first case of the Mishna that discusses making the tree hekdesh. However, on the second case of the Mishna in which the person says that this tallis should be hekdesh if it doesn't get burned, there is no such question. It is certainly possible for a tallis to never be burned, and if so, there is no reason why a neder that is made on condition that the tallis should not be burned, should not be chal.

The Gemara answers:

אָמַר אַמַּימַר

(we are discussing a case in which) he says בְּאוֹמַר

אִם אֵינֶן נִקְצָצוֹת הַיּוֹם

and the day passed וְעָבַר הַיּוֹם

and they were not cut וְלֹא נִקְצָצוּ

But on this the Gemara asks:

אִם כֵּן

why do I need to say it לְמַה לִּי לְמִימַר

it is obvious פְּשִׁיטָא

If a person makes an object hekdesh on condition that it is not cut down today, and it is not cut on that day, there seems to be no reason why this this neder should not be chal. If so, how can we say that our Mishna is discussing this case if there would be no need for the Mishna to teach us this halacha?

The Gemara answers:

לֹא צְרִיכָא

(except) for example כְּגוֹן

that there is a strong wind דְּאִיכָא זִיקָא נְפִישָׁא

The Gemara will explain this answer but before it does, the Gemara will prove that our Mishna must be discussing a case in which the object is likely to be uprooted (destroyed).

And we learned it (i.e., this halacha) וְהָא קָתְנִי לָהּ

with regard to a tallis גְּבִי טְלִית

(but is) a tallis וְטְלִית

<sup>7</sup> A Second Way to Understand the Gemara

Although the standard understanding of the Gemara is the way we explained above, the Ran brings a second way to understand it. In the second

explanation the person is not trying to make the trees or tallis into hekdesh but rather he is saying that they should be assur like a korban. See the Ran how he explains the sugya according to this explanation.

set to be burned? לְשָׂרִיפָה קִימָא!

Yes [אין]

for example that there is a fire כְּגוֹן דְּאִיכָא דְּלִיקָה

here also הֵכָא נָמִי

there is a strong wind דְּאִיכָא זִיקָא נְפִישָׁא

and you could have thought (to say) וְסָלְקָא דְּעֵתָךְ

that he placed his mind (he thought) דְּמַסִּיק אֲדַעְתִּיהּ

that he would not be able to save them דְּלֹא מִיתְנַצֵּלן

and because of this וּמִשּׁוֹם הַכִּי

he made his neder קָא נָדַר

קָא מִשְׁמַע לֵן (the Mishna) comes to teach us (otherwise)

The Mishna describes a person who makes a neder that this tallis should be hekdedsh if this tallis is not burned. But what type of condition is that? A tallis is not something that usually gets burned, and if so, why would the person talk about it not getting burned? The Gemara answers that the case of the Mishna must be one in which there is a fire nearby, and as such, we understand very well why the person would say that it should be hekdedsh if it is not burned in the approaching fire. And if so, this is the case with regard with the trees as well. There is a strong wind, and as such, it could be that this person assumes that the tree will be uprooted and that is why he made the neder.

That is, in the two cases of the Mishna, one could have thought that the neder should not be chal as the person never thought that his neder would come to be. That is, the person never thought that the tree would survive the storm and that the tallis would survive the fire, and if so, if they do survive the neder should not be chal as the person never had intention to make a real neder.

### The Reoccurring Hekdedsh – Can Hekdedsh Come Off By Itself – The Machlokes Bar Padda and Ullah

The Mishna continues and describes a person that says:

“הָרִי נְטִיעוֹת הָאֵלֵי קִרְבָּן כּוֹי”  
“These young trees הָאֵלֵי should be a korban etc..”

The Mishna continues and tells us that the person says that the trees should be hekdedsh until they are cut. In this case the Mishna says that they do not have pidyon. And on this the Gemara asks:

#### 8 Understanding the machlokes Between Bar Padda and Ullah (is there one machlokes or two?)

The Ran brings the Rashba who holds that there is just one machlokes between bar Padda and Ullah. That is, they argue just with regard to what happens after the trees are cut. Bar Padda holds that they need pidyon and Ullah holds that they do not (as he holds that the kedusha comes off by itself). But with

And forever? וְלְעוֹלָם!

The implication of the Mishna is that these trees will never have pidyon, and this is something that the Gemara cannot understand. The person said that they should be hekdedsh until they are cut, and if so, why are they hekdedsh forever?

The Gemara explains:

אָמַר בַּר פָּדָא

he redeems them פָּדָאן

and they return and become hekdedsh חוֹזְרוֹת וְקוֹדְשׁוֹת

(if he then) redeems them (again) פָּדָאן

(once again) they return חוֹזְרוֹת

and become hekdedsh וְקוֹדְשׁוֹת

until he cuts them עַד שֶׁיִּקְצְצוּ

(and once) they are cut נִקְצְצוּ

he redeems them one time (more) פּוֹדֵן פַּעַם אַחַת

and it is enough וְדַי

And Ullah says וְעוֹלָא אָמַר

since they were cut כִּיֹּן שֶׁנִּקְצְצוּ

he no longer (needs) to redeem them שׁוֹב אֵין פּוֹדֵן

The person said that they should be hekdedsh until they are cut, therefore even if he redeems them, they automatically become hekdedsh again. The Ran explains that this does not mean that the pidyon didn't work, rather it did but the original declaration of making it hekdedsh still has the power to make them hekdedsh until they are cut. Therefore, even if they are redeemed, they will become hekdedsh again. However, once they are cut, if they are then redeemed, they will not become hekdedsh anymore.

And on this last point Ullah argues on Bar Padda. Bar Padda said that once the trees are cut, if they are then redeemed, that pidyon will work forever and they will not become hekdedsh again. But Ullah holds that they do not need pidyon at all once they are cut. That is, Ullah holds that since the person says that they should be hekdedsh until they are cut, once they are cut, the hekdedsh falls off on its own. Ullah's reasoning is simple. Since the hekdedsh was only put into place until the cutting, once they are cut, they are no longer hekdedsh. Bar Padda however holds that hekdedsh cannot come off by itself, and therefore once they become hekdedsh, they will stay hekdedsh until the person redeems them (even if they are already cut). See footnote where we discuss if there is just one machlokes between bar Padda and Ullah or two.<sup>8</sup>

regard to what happens before the cutting, they both agree that even if the person redeems the trees, the trees will automatically come hekdedsh again.

The Ran then brings the shita of R' Moshe Kartabi who holds that they argue with regard to both halachas. That Ullah argues with bar Padda with regard to what happens after the trees are cut and he argues with bar Padda with regard to what happens before they are cut. According to R' Moshe Kartabi, Ullah holds

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that even before the trees are cut, if the person redeems them, they do not become hekdesch again.

R' Moshe Kartabi explains that in reality these two arguments depend on each other. According to Bar Padda, kedusha cannot leave an object without redeeming it, if so, he must understand the Tanna of the Mishna to mean that if the trees are redeemed before the cutting, they become hekdesch again. The reason he must hold this way is because if he did not hold this way, then this that the Tanna specifically describes the person as saying that the person said that that the trees should be hekdesch until he cuts them is unnecessary and serves no purpose. That is, if you hold that kedusha cannot come off by itself, and you hold that once they are redeemed, they don't become hekdesch again, then even if the person would just say that they should be hekdesch, the halacha of the trees will be identical to a case in which he said that they should be hekdesch until they are cut.

In both cases, even if they are cut, they will remain hekdesch until they are redeemed. And in both cases, once you do redeem them, they will not be hekdesch, regardless of if you cut them or not. But this can't be. If the Tanna picked a case in which the person said that the trees should be hekdesch until they are cut, there must be a reason why he did so. That is, these words must change the halacha of the trees in some way, because if not, they would not be included in the case.

R' Moshe Kartabi concludes that this is why Bar Padda was forced to say that if the person would redeem the trees before they are cut, that the kedusha returns. And if so, this is the significance of the person saying that they should be hekdesch until they are cut. Since he said these words, they become hekdesch even after they are redeemed (until they are cut). And if he would not have said these words, once they would be redeemed, they would not become hekdesch again.

But according to Ullah there is no need to say this halacha that the hekdesch comes back after they are redeemed. According to Ullah, we understand very well what the words 'until they are cut' add to the case. According to Ullah, kedusha can come off by itself, and if so, in the case that the person says that they should be hekdesch until they are cut, once they are cut, they will no longer be hekdesch. If so, the addition of the words 'until they are cut' are needed (because if they would not have been said the trees would be hekdesch until they are redeemed but now they will only be hekdesch until they are cut, even if he never redeems them).

And if so, we have no proof that if the trees are redeemed before they are cut that they will become hekdesch again. And indeed, according to R' Moshe Kartabi, Ullah holds that once they are redeemed, they will not become hekdesch again, even if they are not yet cut.