

Nedarim 35a

They asked a question (from a Baraisa) אִיתִיבִיָּהּ
(in the case) that he said to him לוֹ אָמַר
“Lend me your cow” הִשְׁאִילֵנִי פָּרָתְךָ
(and the other person) said to him לוֹ אָמַר
“Konam this cow that I own שְׂאֵנִי קִנִּי
to (on) you לְךָ
(or if he says) my property נִכְסֵי
(should be assur) on you עָלֶיךָ
if a I have a cow אִם יֵשׁ לִי פָּרָה
'besides' for this one זֶה אֲלֵא

A person asks his friend to lend him a cow. His friend responds that he can't lend him a cow as he only has one. And then to prove that he is telling the truth, the friend makes a neder that all of his property should be assur to this person if he does have another cow.

The Baraisa brings another similar case.

(If a person says to his friend) “Lend me לִנִּי
your ax” קַדְוֹמְךָ
(and in response his friend) says to him לוֹ אָמַר
“Konam this ax that I have לִי שְׂיֵשׁ לִי
that I acquired קָדְוֹם שְׂיֵשׁ לִי
my property should (be a konam) on you עָלֶי
if I have an ax אִם יֵשׁ לִי קַדְוֹם
'besides' for this (one) זֶה אֲלֵא

The Baraisa continues and that the halacha in both these cases is as follows.

(If) it is found נִמְצְאָה
that he has (another cow or another ax) לוֹ שְׂיֵשׁ
during his lifetime בְּחַיָּו
(then) it is assur אֲסוּר
(but if) he dies מֵת
or if he gives it to him as a gift אוֹ שֶׁנִּתְּנָה לוֹ בְּמַתָּנָה
this is mutur הָרִי זֶה מוֹתֵר

The Baraisa clearly says that even though the neder is chal (as he did have another cow or ax) this will only make the cow or ax as long as he is alive, but if the one who made the neder dies, or if the one who made the neder gives the cow or ax to this friend, then since the object is no longer in the one who made the neder's reshus, the object is going to be mutur. This is in direct contradiction to what Rava said, that in such a case the object will still be assur even after it is given away to him as a gift.

The Gemara answers:

Rav Acha the son of Rav Ika said דָּרַב אִיקָא
שְׁנִיתְנָה לוֹ
it was given to him
עַל יְדֵי אַחֵר
through someone else

The Gemara answers that in the Baraisa's case, the person who made the neder at first gave the object to someone else and then that person gave the object to the person that the neder was made against. In this case, since the object at first leaves the reshus of the one making the neder, it will no longer be assur (as the neder can be in effect on an object that does not belong to the one who made the neder).

However, for the person who made the neder himself to give it to the subject of the neder, that would not be allowed.

The Gemara continues and says that not only is this a valid explanation of the Mishna's case, but the implication of the Mishna is like this as well.

Rav Ashi said אָמַר רַב אֲשִׁי
it is 'm'du'yik' also דִּיקָא נָמִי
as the Baraisa said דִּקְתָּנִי
that it was given to him לוֹ שְׁנִיתְנָה
and it does not say וְלֹא קִתְּנִי
that he gave to him לוֹ שֶׁנִּתְּנָה

The Baraisa says that it was given to him and not that he gave it to him. This would seem to indicate that indeed it was someone else who gave it to him and not that it was the one who made the neder himself that gave it to him.

Is There a Parsha of Meilah with Regard to Konamos?

They asked a question בָּעָא מִיָּגִיָּהּ
Rava from Rav Nachman רַבָּא מִרַב נַחְמָן
is there meilah וְשׁ מֵעִילָה
with regard to konamos בְּקוֹנָמוֹת
or not אוֹ לֹא

Do we say that since the term 'konam' is used to compare the object to hekdesch, the same way if a person uses an object of hekdesch he transgresses the issur of me'ilah and has to bring a korban asham, so too this person who uses an object that became assur through this type of neder transgresses this issur and has to bring a korban?

Or do we say that since at the end of the day that object is not hekdedsh, there is no issur me'ilah with regard to it?²⁹

אָמַר לֵיהֶם
תָּנִיתוּהָ
מִקוֹם
שֶׁנוֹטְלִין עָלֶיהָ שְׂכָר
תִּפּוּל הַנָּאֵה
שֶׁהִקְדָּשׁ

The Mishna said that in a situation in which the owner is not allowed to keep the 'finder's fee', it must be given to hekdedsh. And on this the Gemara points out:

לְמִימְרָא
כִּי הִקְדָּשׁ
מִה הִקְדָּשׁ יֵשׁ בּוֹ מַעִילָה
אִף קוֹנָמוֹס
יֵשׁ בָּהֶן מַעִילָה

The point of the Mishna's halacha is to say that the owner cannot just keep the benefit for himself. But if so, why did the Mishna not just say that he should throw the 'finder's fee' into the Yam Hamelech (the dead sea)? This is the standard expression that the Gemara uses to describe money that has to be 'thrown away' and if so, why does the Mishna not use the same terminology?

The Gemara answers that the reason the Mishna says to give it to hekdedsh is because in a sense it is already hekdedsh, as the halacha is as Rav Nachman said, that there is an issur of meilah with regard to konamos (i.e., things that become assur with a neder).

The Gemara now explains that although it might be true that from our Mishna we have a proof that there is me'ilah with regard to konamos, it reality this question of me'ilah with regard to konamos is a machlokes Tannaim.

(This question) is like the (these) Tannaim
קוֹנָמוֹס
כִּכָּר זֶה הִקְדָּשׁ
וְאִכְלָה
בֵּין הוּא

²⁹ Why Does the Ran Not Discuss the Chiyuv to Pay an Extra Fifth (קורן וחומש)?
When a person is ma'al with hekdedsh, not only does he have to bring a korban ashame, but he has to pay back the value of the object plus a chomesh (extra fifth). And yet when the Ran explains the sofek of the Gemara if there is me'ilah or not with regard to konamos he only discusses the question if there is a chiyuv korban but he does not mention the chiyuv to pay a chomesh. The question is why. If we treat the object as hekdedsh with regard to me'ilah, why would we not say that it has all of the halachos of me'ilah? And indeed, other Rishonim do hold that if we say that the object is subject to me'ilah, if the person uses it, he will have to the extra amount in addition to bringing the korban ashame.

וְבֵין חֲבֵירוֹ
מַעַל
לְפִיכָךְ
יֵשׁ לָהּ
פִּדְיוֹן

But if the person said:
"This loaf is on me like hekdedsh"
וְאִכְלָה
הוּא מַעַל
חֲבֵירוֹ לֹא מַעַל
לְפִיכָךְ
אֵין לָהּ פִּדְיוֹן
דְּבָרֵי רַבִּי מֵאִיר
וְחֻכְמִים אוֹמְרִים
בֵּין כֵּן וְבֵין כֵּן
לֹא מַעַל
לְפִי שֶׁאֵין מַעִילָה
בְּקוֹנָמוֹס

In the first case, since the person simply said that the loaf should be hekdedsh, it is assur to everyone, and as such, no matter who eats it, that person will be ma'al. And since the issur to eat it applies to everyone, it is similar to hekdedsh and that is why it has the ability to be redeemed (i.e., it has pidyon).

The halacha with regard to objects that are hekdedsh is that one has the ability to redeem them, and therefore, since this object is similar to hekdedsh, it is able to be redeemed as well.

However, in the second case the person said that the loaf should only be considered as hekdedsh with regard to him, i.e., only he should be assur to eat the bread. This is not similar to hekdedsh and therefore it will not have pidyon but the person who made the neder will still be ma'al if he eats it.

The Baraisa concludes with the shita of the Chachamim who hold that no matter who the person includes in his neder, the object will not be subject to the halachos of me'ilah (as it is not 'really' hekdedsh)..

And this is the answer to the Gemara's question with regard to if there is or if there is not me'ilah with regard to konamos. As

The Birchav Avrohom gives a beautiful explanation into the shita of the Ran. He explains that the reason that a person pays a chomesh when he is ma'al is because by being ma'al the person is stealing from hekdedsh, as by using the object he takes it out of hekdedsh and makes it chullin (i.e., a mundane non-hekdedsh object).
This obviously will not apply to an object that became assur with a neder. Even if the object will have certain halachos of hekdedsh, at that end of the day it is not hekdedsh and when he uses it, he does not cause hekdedsh a loss, and if so, there should be no reason why he would ever have to pay this extra fifth.

we see from this Baraisa, the answer is that it is a machlokes Tannaim, R' Meir holds that there is meilah by konamos and the Chachamim hold that there is not.³⁰

If a Person Makes a Loaf Assur with a “Konam Neder” to a Particular Person and then Gives the Loaf to that Person, Who is Ma’al, the Recipient or the Giver?

He said (asked) to him אָמַר לֵיהּ
Rav Acha the son of Rav Avya אָחָא בְרִיהּ דְרַב אַבְיָא
to Rav Ashi לְרַב אָשִׁי
(If a person says) “My loaf כִּכְרִי
is (konam) to you עָלֶיךָ
and (then this person) gives it to him לוֹ
as a present בְּמַתְנָה
who is ma’al מִי מַעַל
(to say) that the giver is ma’al לְמַעוֹל נוֹתֵן
but he did not assur it on him(self) הָא לֹא אֶסְיָרָא עָלֵיהּ³¹
(to say that) the recipient is ma’al לְמַעוֹל מְקַבֵּל
he can say כּוֹל דְאָמַר
something mutur I wanted הִיתִירָא בְעֵינֵי
(but) something that is assur I did not want אִיסוּרָא לֹא בְעֵינֵי

The Ran explains that when one causes an object of hekdesh to leave the reshus of hekdesh, the person is ma’al. That is, the very fact that the object left hekdesh requires that someone should be responsible for it. If so, the Gemara is asking that in our case as well this should also be true. The very fact that the object left the reshus of the one making the neder and entered the reshus of the one who received it should cause that someone should be ma’al, the question is just who that is going to be.

And this is where the Gemara runs into its problem. It would seem to be impossible that the one who made the neder should

be ma’al. This is because even though it is true that he is the one who handed over the object to the other person, but how can he be ma’al on an object that is mutur to him!

But it would also seem impossible that the one who received the object should be ma’al. If he would have known that this object was assur, he would never have received it, and therefore this action of receiving the object was done under false pretense and as such he should not be held responsible for it.

The Ran explains that although it is true that if someone mistakenly takes an object out of the reshus of hekdesh he is ma’al despite his lack of intent to ‘steal’ from hekdesh, this case is different. In this case the receiver was not the one who removed the object from hekdesh (i.e., the reshus of the giver) but rather it was the giver who took the object out of his reshus and gave it to the receiver, and all the receiver did was to receive the object (i.e., he agreed to accept the object). Therefore, since it has now been determined that his acceptance was done under false pretense, his acceptance of the object should not be ‘counted’ as an acceptance, and as such, he should not be ma’al.

But if all this is true, we are left with the question of who should be ma’al? It can’t be the one who made the neder and it can’t be the one who received it!

The Gemara answers:

He said to him אָמַר לֵיהּ
the receiver is ma’al מְקַבֵּל מַעַל
when he ‘uses it’ (lit. takes it out) לְכַשְׁיוּצִיא
for anyone who takes out שְׂכַל הַמוּצִיא
the money of hekdesh to chullin מַעוֹת הַקֹּדֶשׁ לְחוּלִין
and thinks that it is chullin הוּא חוּלִין
he is (still) ma’al מוֹעַל
so to this (person) אַף זֶה
is (also) ma’al מוֹעַל

30 If an Object Becomes Assur with a ‘Konam Neder’, Does it Become Mutur After it is Used?

The Ran concludes this sugya by saying that the halacha is like R' Meir that there is me’ilah with regard to konamos and asks the following question. According to the one that holds that there is me’ilah with regard to konamos, what happens when the person uses that object? Do we say that just like with regard to an object that is hekdesh, after the person uses it and is ma’al, the object loses its hekdesh status and is allowed to be used, does the same apply by konamos as well? That is, do we say that after the person violates the neder the object becomes mutur just like hekdesh or do we say that the object retains its issur?

31 The Rambam’s Shita with Regard to Who One Makes a Food Assur with a ‘Konam Neder’ and then Forces the Subject of the Neder to Eat it

The Ran quotes the Rambam that holds that if someone made a food assur with a neder to someone and then forces that person to eat the food, the one who made the neder will receive malkus for his actions. And on this the Ran says that from our sugya we see not this way. Our sugya clearly says that in the case

that the loaf of bread is not assur on the one who made the neder, the one who made the neder is not ma’al. After all, how could he be ma’al if the food the food was not assur to him? The Ran concludes that our Gemara is a proof against the Rambam’s shita.

However, the Machneh Efraim answers that our Gemara has no relevance to what the Rambam said. All the Rambam meant to say was that if the person forces the other person to violate the neder, then he transgresses the lav of bal t’yachel (do not desecrate your words). The reasoning of the Rambam is that even though the lav is mutur to him, if he causes his neder to be violated then he has caused his words to ‘be desecrated’. However, our Gemara is discussing a different question, it is discussing the question of who is ma’al. Being ma’al is defined as using hekdesh (or something that is assur like hekdesh) for your own purposes. Therefore, since the person who made the neder is not forbidden to eat this loaf of bread, there is no way he can be ma’al with it. But he most certainly can still be held accountable for causing the neder he made to be violated.

The halacha is that any time a person uses something that belongs to hekdesch, his usage removes the object from hekdesch and the person is ma'al. If so, in this case as well this will be the halacha. That although it is true that this person's mere receiving

of the object will not cause him to be ma'al (as this receiving was done under false pretense), if the receiver then goes ahead and uses the object, he will be ma'al even if he did not realize that it belonged to hekdesch.

משנה

Additional Actions that Are Not Considered as 'Actions of Benefit'

And he can take off his terumah **וְתוֹרֵם אֶת תְּרוּמָתוֹ**
and his maasros **וּמַעֲשָׂרוֹתָיו**
with his knowledge **לְדַעְתּוֹ**

If Reuven is assur to get benefit from Shimon, Shimon can still take off terumah and maaser for Reuven (the exact case that the Mishna is referring to will be discussed in the Gemara) and this is not considered that Reuven is benefitting from Shimon.

And he can bring for him **וּמְקַרֵּב עָלָיו**
the bird-korbanos for zavim **קִינֵי זָבִין**
(or) the bird-korbanos for zavos **קִינֵי זָבוֹת**
(or) the bird-korbanos **קִינֵי**
for a woman who gave birth **יֹלְדוֹת**
(Or this person can bring) a (korban) chatas **חֲטָאוֹת**
(or a korban) asham (for this other person) **אֲשָׁמוֹת**

A zav (a man who sees a certain type of tuman), a zavah (a woman who sees a certain type of tumah), or a woman who gives birth (if she is poor) brings birds as their korban. Our Mishna tells us that Shimon can bring all of these and a korban chatas and a korban asham for Reuven (Reuven is the one who is forbidden to receive benefit from Shimon). The reason why this is permitted will be explained in the Gemara.

The Mishna continues:

And he can teach him Medrash **וּמְלַמְדוֹ מִדְּרָשׁ**
halachos **הַלְכוֹת**
and Aggados **אֲגָדוֹת**
but he cannot teach him **אָבֵל לֹא יְלַמְדֵנוּ**
Mikra (i.e., Chumash) **מִקְרָא**

The Mishna says that Shimon is allowed to teach Reuven everything except for Mikra. The Ran explains that even though one could have thought that it should be assur for Shimon to

³² Why is the Teaching of One's Son Not Considered a Forbidden Benefit?

The Rosh explains that any time that the person who is forbidden to receive benefit, benefits as a result of someone else benefitting, any reason (even a weak one) can be used to explain why this benefit is not considered a benefit, as we see in our case.

In our case, Reuven benefits when Shimon teaches his son, and yet we say that it is mutur as it is possible that Reuven could have found someone else to teach him.

Now this argument that it is not considered a benefit because he could have found someone else is a weak one, because at the end of the day because of

teach Reuven, as Reuven gains from this new knowledge, this is not considered as a benefit for Reuven because of the rule of **מִצְוֹת נִתְּנָן לְאוֹ לִיהְנוֹת נִתְּנָן** - that mitzvahs were not given in order to benefit from them. That is, the benefit of doing a mitzvah is not considered as a benefit and therefore in our case as well this rule would apply. That even though there is a mitzvah to learn Torah, when a person does learn Torah, it is not considered as a benefit to him. Therefore, there is no problem with Shimon teaching Reuven because even though it is assur for Reuven to benefit from Shimon, this is not considered a benefit and is therefore mutur. The Gemara will explain why teaching Mikra is different and is assur in this case.

The Mishna concludes that even though it is assur to teach this person Mikra:

But he can he can teach **אָבֵל מְלַמֵּד הוּא**
his sons **אֶת בָּנָיו**
and daughters **מִקְרָא מְקַרְא**

The Rosh explains that even though there is a mitzvah to teach one's son (and one would have to pay someone to teach his son if he couldn't do it himself), Shimon can still teach Reuven's son. This is true because even though Reuven benefits from Shimon teaching his son, it is possible that Reuven could have found someone else to teach him (see footnote).³²

גמרא

הֲנֵי פְּהֵינֵי שְׁלוּחֵי דִידָן הוּוּ אוֹ שְׁלוּחֵי דְשָׁמַיָא
(are the Kohanim in the Bais Hamikdosh our S'luchim or Hashem's S'luchim)?

They asked a question **אִיבַעֲיָא לְהוּ**
these Kohanim (that serve in the Bais Hamikdosh) **הֲנֵי פְּהֵינֵי**
are they our messengers **הוּוּ שְׁלוּחֵי דִידָן הוּוּ**
or (are they) messengers of Shamayim **אוֹ שְׁלוּחֵי דְשָׁמַיָא**
'What halachic difference does it make' **לְמַאי נִפְקָא מִינָהּ**

The Gemara answers that the answer to this question makes a difference:

For someone who is under a neder **לְמוֹדָר**

Shimon, Reuven did not have to get someone to teach his son, and yet the Mishna says that this argument is sufficient to say why it is mutur.

The Rosh explains that this is true because Reuven is not benefitting directly from Shimon and therefore any argument will be sufficient to explain why it is not considered a benefit that is assur as a result to the neder.

(forbidding) benefit (from a particular Kohen) הנאה

If you say אי אמרת
they are our messengers דשליחי דידן הו
he is benefiting him הא מהני ליה
and (would therefore be) assur ואסור
and if you say ואי אמרת
they are messengers שליחי
of Shamayim (Hashem) דשמייא
it will be mutur שרי

A regular Jew is not allowed to bring a korban in the Bais Hamikdosh and he must give it to the Kohanim to do so. But how do you view these Kohanim? Do we understand that they are 'working' on behalf of Hashem, or is the understanding that they are working on behalf of the people who are bringing their korbanos?

The halachic difference between these two possibilities is the case in which the person bringing the korban is assur to benefit from a particular Kohen. If that Kohen is viewed as 'working' for Hashem, then it will be mutur for him to bring this person's korban. The Ran explains that even though by the Kohen bringing this korban, this person will now be allowed to eat kodshim, i.e., this person benefits by this Kohen bringing his korban, this is only considered as an incidental benefit (דרך גרמא), as the main objective of this Kohen is not to benefit this person but rather it is 'to do his job'.

But if we view the Kohanim as 'working for us, that is, since we cannot bring korbanos ourselves, we have the Kohanim bring them on our behalf, then when the Kohen does bring this person's korban, it will be considered as if the Kohen is directly benefiting the person and it will therefore be assur for the Kohen to bring this person's korban.³³

What (is the halacha) מאי
Come and hear תא שמע
as we learned in the Mishna דתנן
he can bring for him מקריב עליו
'the bird-korban' etc. קיני זבין כו'
(but) if you say אי אמרת
they are our s'luchim שליחי דידן

he is benefiting him! לקא מהני ליה

The Mishna clearly says that if a person is assur to benefit from a particular Kohen, that Kohen is still allowed to bring this person 'bird-korbanos'. But why? By this Kohen bringing this person's korbanos, this person benefits from the Kohen? It must be that the reason that it is mutur is because we understand that the Kohen is not the shliach of the person bringing the korban but rather he is the shliach of Hashem.

But on this proof the Gemara asks:

And according to your reason וליטעמך

let the Mishna say ליתני

he brings for him מקריב עליו

his korbanos (i.e., all his korbanos) קרבנות

If it is really true that the Kohanim are the s'luchim of Hashem and that is why a Kohen is allowed to bring the korban of someone that is not allowed to benefit from him, why does the Mishna limit this to just specific korbanos? The Mishna should say a blanket rule that a Kohen is allowed to bring all of this person's korbanos. And yet it doesn't, and from the fact that the Mishna does not give a blanket rule for all korbanos leads the Gemara to conclude:

Rather (you must say) אלא

the 'mi'chusrei kapparah' מחוסרי כפרה

are different שאני

as R' Yochanan said דאמר רבי יוחנן

all (korbanos) הכל

need knowledge (i.e., consent) צריכין דעת

except חוץ

for the 'mi'chusrei kapparah' ממחוסרי כפרה

for a person שהרי אדם

can bring a korban מביא קרבן

for his sons and daughters על בניו ועל בנותיו

who are minors (and cannot give consent) הקטנים

as it says שנאמר

this is the law of the zav זאת תורת הזב

(the word zos implies) בין גדול (whether he is an adult)

or a minor בין קטן

³³ Why Does Our Gemara Ask this Question if this Question Has Already Been Resolved Elsewhere?

The Ran in points out that the Gemara in meseches Yoma and in meseches Kiddushin already answer this question. There is a rule that the only time one person can act on behalf of another person (i.e., as his messenger שליח) is when the person can do the act that he wants his messenger to do. But if this person cannot do a certain act, then he cannot make a messenger to the act instead of him. But if so, how can a Kohen act on our behalf and bring our korbanos? If we can't bring the korban, how can we ask the Kohen to do so for us? The Gemara

there concludes that indeed it must be that the Kohanim are not acting on our behalf as in reality they are 'working for Hashem' and not for us (i.e., they are the s'luchim of shamayim and not our s'luchim).

But if so, why is our Gemara asking a question that was already resolved by a different Gemara? The Ran answers that although it is true that the Gemara over there has already proved why logically we must say that the Kohanim are not our s'luchim, our Gemara wants to prove this point from either a Mishna or Baraisa.

The Gemara points out that the Mishna only allows certain types of korbanos to be brought by this Kohen. Why are only these allowed?

The Gemara answers that it must be that in reality a Kohen cannot bring a person's 'regular' korban (see footnote) and these korbanos are an exception. That is, we see from the Mishna that the Kohanim are our s'luchim, and as such, if a person is forbidden to get benefit from a particular Kohen, that Kohen will not be allowed to bring this person's korbanos. But although this would be true that the Kohen would not be allowed to bring this person's korbanos, there would be exceptions, the mi'chusrei kapparah.

All of the korbanos listed in the Mishna are what are known as mi'chusrei kapparah, lit. those missing a kapparah. That is, these people are missing a kapparah (i.e., the bringing of the korban) and as such they are not allowed to enter the mikdosh or eat kodshim (the parts of the korbanos that are mutur to a Yisroel). That is, these korbanos are not brought to bring forgiveness for the person, rather the purpose of the korban is just to allow the person to eat kodshim and to enter the mikdosh.

With regard to all of these korbanos (the mi'chusrei kapparah) the posuk uses the term תּוֹרַת – the law, and R' Yochanan says that the word תּוֹרַת teaches us that a person can even bring one of these korbanos for a minor, i.e., for a person who cannot give consent.

The Gemara concludes that if we see that we can bring one of these korbanos for a minor, even though he cannot give his consent, it must be that in reality we never need a person's consent in order to bring one of the mi'chusrei kapparah on his behalf.

The Ran explains that since the mi'chusrei kapparah are not coming to bring forgiveness for the person, this is why they can be brought without the person's knowledge or consent. But if the korban is being brought in order to get forgiveness, then this will obviously require the knowledge and consent of the person (as asking for forgiveness for another person without that person's knowledge is meaningless).

And if so, perhaps this is why the Kohen can bring these korbanos for this person. That is, the Gemara understands that if the Kohanim are viewed as being our s'luchim, then it would be impossible for the Kohen to bring this person's korban. And yet, although the Kohen would not be able to bring this person's

korbanos, the mi'chusrei kapparah would be an exception. Since they do not need the person's consent, when the Kohen would bring them, it would not be considered as if he is doing so on behalf of this person, and as such, it would not be considered as if he is benefitting him.³⁴

Applying R' Yochanan's Drasha that the Word 'Toras' Comes to Include Even Children

R' Yochanan said that since the posuk says the word תּוֹרַת – 'Toras' this comes to teach us that a person can bring this korban on behalf of a katon (minor). And on this the Gemara asks:

But now אֲלֵא מַעֲתָה according to R' Yochanan לְרַבִּי יוֹחָנָן (this that the posuk says) "תּוֹרַת הַיִּלְדָּת וְגו' is the law of the yoledes (woman who gave birth) בֵּין קְטָנָה (does this mean) whether she is a minor or an adult! וּבֵין גְּדוּלָה

The Gemara quoted R' Yochanan as saying that since the posuk used the word 'toras' with regard to the mi'chusrei kapparah, this means to include that these korbanos can be brought on behalf of even minors. And on this the Gemara asks that if so, when the posuk uses the word 'toras' with regard to the korbanos that a yoledes has to bring, this should come to include a minor-girl as well. And on this the Gemara asks:

(Can you really say that) a minor קְטָנָה is someone who can give birth! בַּת לֵידָה הִיא But Rav Bivi taught וְהָא תַנִּי רַב בִּיבִי in front of Rav Nachman קַמֵּיה דְּרַב נַחֲמָן three woman שְׁלֹש נָשִׁים 'do the marriage act' מַשְׁמָשׁוֹת with a moch (a cloth) בְּמוֹךְ a minor קְטָנָה and pregnant woman וּמַעֲוֵבָרָת and a nursing woman וּמְנִיקָה

Rav Bivi taught that when any one of these women live with their husbands, they must use a cloth. Using a cloth prevents

34 Does Our Mishna Prove that the Kohanim are Our S'luchim?

Seemingly the conclusion of our Gemara is that the Kohanim are our s'luchim and not the s'luchim of Hashem. This is seen from our Mishna that allows the Kohanim to bring the mi'chusrei kapparah, i.e., and nothing else. Now if it would be true the Kohanim are viewed as the s'luchim of shamayim, why can the Kohanim not bring all of the korbanos? It must be that indeed the mi'chusrei kapparah are the exception.

However, the Ran says that this is not necessarily true. It could be that in reality the Kohanim are the s'luchim of shamayim, and they would be allowed to

bring any korban of this person. And the reason why the Mishna specifically chose to list the mi'chusrei kapparah is because this includes a bigger chiddush. One could have thought that it is the mi'chusrei kapparah that the Kohen is not allowed to bring for this person, as the mi'chusrei kapparah offer the tangible benefit of being able to eat kodshim and enter the mikdosh. Therefore, the Mishna listed the mi'chusrei kapparah specifically in order to teach us the chiddush that the Kohen is allowed to bring even these. As such, we are left without a proof to our question.

them from becoming pregnant. The Gemara now explains why a minor has to do this.

A minor (has to use a cloth) קטנה
(because if not) maybe שָׁמָא
she will become pregnant תתעבר
and die ותמות

Rav Bivi taught that a minor has to use a cloth in order to prevent her from becoming pregnant. Because if she would become pregnant, her pregnancy would cause her to die.

From here we see that a minor does not have the ability to become pregnant and deliver a baby (as her pregnancy will kill her first). If so, how does R' Yochanan explain the posuk using the term 'toras'? It can't be as he explained previously that the term comes to include a minor, as a minor can never give birth.³⁵

The Gemara answers:

This (posuk of) ההיא
“This is the ‘Torah’ of the yoledes” זאת תורת הילדת
(is referring to) whether she is sane בין פקחת
(or) whether she is insane בין שוטה
for a person שכן אדם
can bring a korban מביא קרבן
for his insane wife על אשתו שוטה
(and this is) like the words of R' Yehuda כדברי רבי יהודה
as we learned in a Baraisa דתניא
R' Yehuda said רבי יהודה אומר
a person אדם
brings a ‘rich man’s korban מביא קרבן עשיר
for his wife על אשתו
and (the husband brings) all korbanos וכל קרבנות

35 What is the Status of a Minor Who Gives Birth (is it really true that every child that gives birth will die?)

The Ran points out that the Gemara in meseches Yevamos just says that a child has to use a cloth because if not she might become pregnant and the pregnancy might end up killing her. That is, the Gemara in Yevamos does not say that the pregnancy will certainly kill her but rather it says that the pregnancy might kill her. Therefore, even though she has to use a moch (cloth) in order not to put herself in a danger, since the Gemara does leave open the possibility of a minor giving birth, why can that not be the subject of the posuk. That is, the posuk will be referring to a case that the minor survived, and the word 'toras' will be needed to include this case.

she is obligated in שחייבת
for so he wrote to her (in the kesubah) שָׁכַךְ כּוֹתֵב לָהּ
“And the responsibility ואחריות
that you have on me עלי לך דאית
from before” מן קדמת דנא

When a person gets married, he has to give his wife a kesubah. This is a document that outlines the various obligations that he has to her. One of the things that the husband agrees to, is to pay for any korban that she is obligated in. Therefore, when the wife gives birth, the husband is obligated to bring a korban on her behalf. And since it is the husband's responsibility to bring this korban, the korban is determined by his financial status and not hers. That is, if he is rich, he will have to bring a 'rich man's korban', even though in theory his wife is a poor person (since she has nothing as everything she has goes to her husband).

And we now have the answer as to what R' Yochanan does with the word 'Toras'. R' Yochanan had learned that the word 'Toras' comes to include the bringing of a korban on behalf of someone the does not have daas (i.e., a person who does not have the ability to give consent to the korban). But the example that R' Yochanan previously used of such a person was a katana, and as the Gemara asked, this would not be applicable with regard to a katana that is a yoledes as a katana cannot give birth to a child.

To which the Gemara answers, that now that R' Yehuda tells us that a husband can bring a korban on behalf of his wife, R' Yochanan will learn the word 'toras' in the parsha of a yoledes' korban to include an insane woman (i.e., a woman that does not have the ability to give consent to having a korban being brought on her behalf).

The Ran answers that the very fact that she bore children will tell us that although we thought that this girl was a minor, in fact she is really an adult. And if so, we return to the Gemara's question. What is the word 'toras' coming to teach us? It cannot be that it is teaching us that one can bring a korban for a minor who has a child, because there would be no reason why you would not have to bring a korban for her. The moment that she gives birth, we will be able to determine that she is an adult, and as such, she will need a korban like every other adult.