



Bechor of a Sefek Kohen

The *Mishnah* (11:5) considers a case where a *kohen's* baby was mixed up with a *shifcha's* baby. The *Mishnah* discusses the various limits placed on each of the children due the doubts regarding their status. Even after the children grow up and eventually free one another, a doubt remains whether each of them is a *kohen* or *yisrael*. Consequently, the *Mishnah* addresses the further legal consequences of their questionable status. One of those listed relates to a *bechor* – a first born *kosher* animal.

Ordinarily, a *bechor* is brought to the *Beit HaMikdash*, given to a *kohen* and offered as a *korban*. The *kohen* that offers the *korban* can consume it. If however it develops a *mum* (blemish) that prevents it from being offered as a *korban*, it is still given to a *kohen*. Nevertheless, when slaughtered it can be consumed by anyone. The *Mishnah* explains that if one owned a *bechor*, since there is a doubt whether he is a *kohen*, he waits till it develops and *mum* and he can keep it.

The *Gemara* (*Temura* 8a) asks at what point does a *kohen* have rights to the *bechor*. Is it as soon as he is given the *bechor* or only after it is offered? The *Gemara* brings our *Mishnah* as part of the discussion and asks, what time does the law relating to the *bechor* in our *Mishnah* apply? Only after the destruction of the *Beit HaMikdash* or even during the time *korbanot* can be offered? The *Gemara* first suggests that if the case only relates to nowadays, then the law would be the same for anyone that owns a *bechor* and not just in the unique situation in our *Mishnah*. Everyone needs to wait for the *bechor* to develop a *mum* before a *bechor* can be consumed. Consequently, it must refer to the times of the *Beit HaMikdash*. If so, the *Gemara* reasons that the *bechor* must be considered as belonging to the *kohen*, otherwise the *gizbar* (treasurer of the *Beit HaMikdash*) could forcibly take the *bechor* for it to be offered. Ultimately, the *Gemara* rejects this case as a proof, since the *Mishnah* could be referring to nowadays only. The novelty of the *Mishnah* is that while normally, once the *bechor* develops a *mum* it would still need to be given to a *kohen*, in this case, since each of the individuals may be the *kohen*, we cannot force him to give it to another *kohen* based on a doubt.

The *Tosfot Yom Tov*, citing *Rashi*, explains that the rule in our *Mishnah* applies even in the times of the *Beit HaMikdash*. Since he may be *kohen* we cannot force him to

give it to another *kohen*. If he would offer the *korban*, he would lose it, as he might not be a *kohen* and therefore not able to consume the *korban*. The *Tosfot R' Akiva* however cites the above *Gemara* that argues if the *kohen* only merits the *korban* after it is offered (as the *Tosfot Yom Tov* reasons in *Maaser Sheni* 1:3) then the *gizbar* could take the *korban* to be offered. If so, why could they retain the *korban* till it develops a *mum*? Furthermore, he cites the *Korban HaEida* that questions how we can delay offering the *korban*, violating the prohibition of "*ba'al te'acher*" (do not delay) when doing so, based on financial motivations.

The question of the *Korban HaEida* also applies to the *Gemara*. Recall that the *Gemara* reasoned that if the *bechor* already belonged to the *kohen* prior to its offering, then the ruling of the *Mishnah* would make sense even in the times of the *Beit HaMikdash*. The *Gemara* did not appear to be bothered by the potential issue of *ba'al te'acher*. Why?

The *Shita Mekubetzet* (8a, s.v. *chelek*) provides two answers. The first is that the individual in our *Mishnah* can wait for the *bechor* to develop a *mum*, but for no longer than a year so that the prohibition is not violated. The *Shita Mekubetzet* also suggests that prohibition of *ba'al te'acher* only applies in the case where it is clear it belongs to an *Yisrael*. Since our case, the status of the owner is in doubt, the prohibition would not be violated if we wait till it develops a *mum*.

The *Chazon Yechezkel* (*Rosh Hashana* 1:2) notes that the *Rambam* (*Maaseh Korbanot* 14:13) rules that *ba'al te'acher* only applies to *korbanot* that are offered voluntarily. The *Chazon Yechezkel* therefore understands that the regular *ba'al te'acher* that applies to offering a *korban* does not apply to a *bechor* since its *kedusha* is automatic. Since however it must be consumed within a year ("*tochlena shana be'shana*") the prohibition however would be violated if it was not consumed within the year (*Bechorot* 1:13). In our case however, no prohibition would be violated. If he is an *Yisrael*, we already explained that the prohibition of *ba'al te'acher* does not apply. Furthermore the *mitzvah* to consume the *korban* with a year does not apply to him since, as an *Yisrael* he is not allowed to eat the *korban*. Even if he is a *kohen*, since the doubt regarding his status prevents him from consuming it, the prohibition would not be violated since the *mitzvah* only applies one that can consume the *korban*.

Revision Questions

יבמות י: ה' – י"ב: ג'

- What does the *Mishnah* mean when it says: (י: ה')
- Regarding the previous question, is there a difference between the *ben tesha* and the brother in regards to when that principle applies? (י: ה')
- What is the law if a *ben tesha*:
 - Performed *yibum* then one of the brothers also did? (י: ה')
 - Performed *yibum* and then performed *yibum* on the *tzarah*? (י: ה')
 - Performed *yibum* and then died? (י: ה')
 - Got married and then died? (י: ה')
 - Performed *yibum*, and then when he grew up married another, then died (without any children)? (י: ט')
- Is one allowed to marry the relative of his *anusa*? (י"א: א')
- Can one marry *anusat aviv*? (י"א: א')
- Do two brothers, one of which was in its mother's stomach when she converted and the other was conceived and born after the mother converted, perform *yibum* or *chalitzah*? (י"א: ב')
- Regarding a case where five baby boys were mixed up, such that we don't know who their mothers are, and each grew up and got married and died without any children, describe how *yibum* is performed to each of their wives? (י"א: ג')
- What is the law regarding *yibum* and *chalitzah* if a woman's child and her daughter-in-law's child got mixed up, grew up and then: (י"א: ד')
- What is the law regarding a case where the child of the wife of a *Kohen* and her maid-servant's child got mixed up with regards to: (י"א: ה')
- What is the law regarding a case where a woman remarried immediately after divorce and we are not sure about the paternity of her child, with respect to *yibum* and *chalitzah* if:
 - His mother had sons from both marriages?
 - Both of the husbands had sons from other marriages? (י"א: ו')
- Regarding the previous question, what is the law if one of the father's was a *Kohen* and the other was a *Yisrael*? (י"א: ז')
- Regarding the previous question, what if both father's were *Kohanim*? Which *mishmar* would he serve in? (י"א: ח')
- Where is *chalitzah* performed? (י"ב: א')
- What type of *sandal* can be used for *chalitzah*? (י"ב: ב')
- Which of the following is acceptable for *chalitzah*: (י"ב: ב')
- What are the three components of *chalitzah*? (י"ב: ג')
- Which of the three components: (י"ב: ג')

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11 March כ"ד אדר	12 March כ"ה אדר	13 March כ"ו אדר	14 March כ"ז אדר	15 March כ"ח אדר	16 March כ"ט אדר	17 March א' ניסן
Yevamot 12:4-5	Yevamot 12:6-13:1	Yevamot 13:2-3	Yevamot 13:4-5	Yevamot 13:6-7	Yevamot 13:8-9	Yevamot 13:10-11

