

*Disclaimer: I've chosen to exclude from the Kitzur notes some of the ra'ayas Rebbe brought in shiur and some of the more tangential points. The goal is to focus on Rebbe's main and most relevant ideas.*

### Kiddushin Kitzur Shiur Notes #3 (16a-23a)

#### Shiur 60 (16a)

- Who are Hukash lekarkaot? **Rashi 7a:** Even בני חורין. **Tosfot ibid:** only Avadim.
- Does Tosfot think Eved Ivri is also Hukash Lekarkaot? **28a** is mashma עבד עברי is Hukash since a Shvuah is only Shayach על ידי גלגול.
  - **Pnei Yehoshua:** this can't be since we should learn all the kinyanim from karka like we do by עבד כנעני?! **Rav Velvella:** Pnei Yehoshua's premise is incorrect: When one is sold as an Eved Ivri, he isn't yet an Eved Ivri! You can only learn kinyanim from Karka to Eved Kenani since he's already someone else's עבד כנעני before you do the kinyan.
  - Can I sell my Eved Ivri? **Rambam Avadim 4:10** -- no. **כו"מ in Avadim 2:12** quotes the **Ralbag** for the mekor.
- Definition of Pilegsh: **Most Rishonim:** Kiddushin but no Kesubah. **Rambam Melachim 4:4:** Neither Kiddushin nor Kesubah.
- Shitas Harambam by Kedeisha: **Ishut 1:4:** Issur Kedeisha to sleep with woman without קידושין+כתובה. **Ra'avad** argues it's only if מזומנת ומופקרת לכל. **Kesef Mishnah Na'ara 2:17:** Rambam thinks there's only malkut if she's מזומנת, meaning he actually holds like the Ra'avad. **Rebbe:** Being Bo'el a woman who isn't mufkeret is still an Issur Zonah, but it's a חצי שיעור, so you don't get malkus.
  - **Meiri:** Carrying 2 amot in רה"ר isn't even assur חצי שיעור since this is חצי מדין חצי שיעור שם הוצאה unless it's moved 4 amot. Why not say the same thing by a Zonah who isn't Mufkeret? Unclear.
- In what case does the Rambam mattir a pilegsh? **Melachim 4:4** Only for a king; a pilegsh is an issur kedeisha for a hedyot with the one exception of אמה עבריה after Yi'ud
  - **Rabbeinu Yonah:** a king is muttar to be with a pilegsh since he can take property from people and it becomes his automatically, so too he can take the woman and be koneh her without any Ma'aseh Ishut.
  - How does Yi'ud work? **Reb Chaim Beda'as HaRambam:** Adon's shifchus changes into ishush without any ma'aseh ishut (that's why she's a pilegsh of sorts -- since there was מעשה אישות no). **Tosfot Harosh + Rashi 19a** disagrees and thinks the Kiddushin works למפרע since the original money is now the Kesef Kiddushin.
- **Nodah Biyehuda's Q:** If a Kattan can be Koneh מקנה אחרת, why can't a kattan marry a Gedolah since she's giving the אחרת? **A:** Problem of תקח ולא כי יקח.
- Machloket Amoraim whether the master or father writes the shtar kinyan for the Amah Ivriah. Does this machloket apply to Eved Ivri as well? **Rebbe:** No. **Tosfot Rid:** Yes. [Tosfot Rid has to cross out a line in our gemara to make this work.]
- What's pashut pshat in העבדים? **Rashi/Gemara:** Amah Ivriah doesn't leave בראשי איברים. **Tur:** you can't make an אמה עבריה do work that's חוץ לבית since כל כבודה בת מלך פנימה.

- Does Chazaka work on Eved Ivri? No -- אותם בחזקה ולא אחר
  - Stirah in Rashis: Here, **Rashi** reads חזקה ולא אחר to mean that they aren't חזקה ולא אחר. On **28a** though, **Rashi** learns ע"ע is Hukash Lekarka'ot. **Rebbe** said a possible answer is that Rashi means that *despite* the Hekesh, there's a mi'ut saying that Chazaka still isn't shayach to an Eved Ivri.
- Stirah: **Our gemara** says that עבד עברי גופו קנוי. **Bava Metziah 99a** says the exact opposite! **Ba'al Hameor in BM**: It's a machloket Amoraim. **Tosfot ibid.**: You own the Eved Ivri with respect to his מעשה ידיים, like a Dekkel Lepeirosav. But you don't own an eved Ivri like a שור וחמור.
- Can an Eved Ivri use a shtar chov to redeem himself? **Gemara**: Yes. **Rashba**: No - that was only a הוי"א. Lemaskana, it doesn't work since it's אגידא גביה.

#### Shiur 61 (16a-16b)

- Examples of קם תחתיו (different than Yerusha): 1) Son is koneh an Eved Ivri שש בתוך (but not a daughter); 2) Yi'ud of an Amah Haivriyah 3) A son can be נזירות אביו and 4) a son can be פודה a אחוזה from Hekdesh and it remains in his possession at 5. **Yerushalmi** (יובל) has a deiah that an amah ivriyah is inherited only by daughters, not sons [we don't paskin this way.]
  - Is there a din of פי שנים לבכור by dinnim of Kam Tachtav? **Gemara Nazir** says no עבד עברי על נזירות אביו; **Minchat Chinuch** isn't sure if this is also true for מגלח על נזירות אביו.
- We paskin that one isn't a gadol until two hairs grow *after* a boy is 13 years old. If they were there from beforehand, it's meaningless.
- **Tosfot Harosh on 59b** says there's an umdena that the amoraim knew all the mishnayot, so if you ever do have a tiyuvta from a Mishnah, then it must be they had a different interpretation. That's why the gemara always brings תיובתא from braisas.

#### Shiur 62 (16b-17a)

- **Rebbe's difficulty** with Reish Lakish's ק"ו: Why does he consider מיתת האב -- "יציאה" -- it's ממילא -- it's like a גר שמת ואין לו יורשין that there's no yerushah?! **Possible precedent**: In the machloket Tanna Kamma + Abba Shaul, the Tanna Kamma learns that an Eved Kenani of a גר שאין לו יורשים is Koneh himself even with regards to the kinyan issur just as a woman who is given a *get*; you see the ת"ק views the מיתת האדון as a יציאה like a Get.
- **Otzar Hageonim** claim there's three levels of gadlus by a boy just like by a girl: Kattan, Na'ar, and Boger. The only din that's relevant to Na'ar is בן סורר ומורה which has to be when he's סמוך לאיש (first 3 months after he becomes 13).
- Is Garmi chayav Mideoraitah: **Ramban**: Yes. **We paskin**: No
- Does a Melamed who misses two years get paid in full? **Tosfot**: No since not גופו קנוי
- Why can we pay a melamed if he has a chiyuv to teach for free? **Nedarim 37**: We're paying him for שכר שימור or פיסוק טעמים. We paskin in **YD 246** trop is deoraitah so you can only pay him for שכר שימור (if he's a מלמד תינוקות) or שכר בטלה.

#### Shiur 63 (17a-17b)

- Who gives Ha'anaka when the father dies? Presumably this means the yorshim pay from the father's nechasim, but the **Acharonim** are bothered since this assumes that שעבוד דאורייתא when this is really a big Machloket? The **Ketzos 39:1** argues that this has

nothing to do with שעבוד נכסים — the children are chayav to pay Ha'anakah from their own Nechasim, not the father's.

- "כל בן נכר לא יאכל בו" -- Mumar to ע"ז can't eat Pesach. What if he's Chozer Bitshuvah? **Tosfot**: He *would* eat. **Meiri**: Still can't eat. What would Meiri say about a Ger who used to serve Avdoah Zara? **Rebbe** suggested that he can eat since שונלד דמי is only shayach to inyanei kurvah/yichus.
- Source for גר קקטן שונלד דמי? **Rebbe Beda'as HaMeiri**: Ger can eat even though a Mumar can't. 2) **Chiddushei Chasam Sofer Avodah Zarah 64a**: Can't be from הגר גזל since it could just mean you can't find the Yorshim. 3) **Meshech Chochma Devarim 5:27** - learned from Har Sinai where people weren't assur to their Krovim wives since they were all מתגייר [this is against **Gur Aryeh Breishit 46:10** that there's שונלד דמי חו by Har Sinai. 4) **Rav Soloveitchik - Tosfot** reads a gemara that it's impossible for a Jew and a non-Jew to be related. At some point, when a non-Jew converts, one's a Jew and his krovim are non-jews, so the Kurvah is severed at that point.
- **Tosfot 17b** asks why our gemara can learn from the fact that a Ger can take a share of the Yerusha Kenegged the other brother's share of ע"ז that it's מדרבנן; Why don't we just say this Braitah is according to the Shitah that יש ברירה? **The Rashash** quotes **Rashba + RAE** and others who ask: Even if you say יש ברירה, there's a Befeirush gemara in Temurah that Breirah doesn't help when it's מינים! Meaning, when you're taking a share of something which isn't the same as the item the brother is taking, then Breirah won't help!

#### Shiur 64 (17b-18a)

- **Tosfot [somewhere?]** implies there might be a problem to be a שכיר for more than 3 years. This gets quoted as שוי"ע in י"א, despite that it seems against גמרא בפירוש.
- Why can one sign a lifetime contract if there's a problem of לעבדים לעבדים? **Gra**: Since יכול לחזור אפילו בחצי היום.
- The **Mishnah Lemelech** quotes the **Maharit** who suggests that you only have to give Ha'anaka if the Eved was given שפחה כנענית since that's pashtei dikra שכר "כי משנה שכר". **Rebbe** pointed out this is difficult since we give הענקה even to an Ammah Ivriyah who doesn't work at night at all!
- **Lomdus of Ger's Yerusha: Rashi + Tosfot Yeshanim**: the Takanna was only made that he should yarshin hetter, and not that he should yarshin של איסור. Meaning, when the non-Jewish brother gives you a chelek של איסור, it's a gift and not midin yerusha. The **Gilyon Maharsha (R Shlomole' Eiger) YD 146:4** quotes **Rashi quoted by Tosfot on Chagiga 25b + Bartenura on Demai** that the kulla is that you say יש ברירה even by מינים over here. According to this, you're getting the hetter midin yerusha and not because the non-Jewish brother is giving you a mattanah.
- If a goy has kids and then converts, is he Yotze פרי"ו? **Yevamot 62a**: R' Yochanan (=how we paskin): Yes. Reish Lakish: No.
  - What's behind R' Yochanan if they aren't even your children? **Chiddushei Hagriz**: Since non-Jews are already shayach to the din of פרי"ו since they were מצווה before מתן תורה, and also have a din of שבת nowadays, שונלד דמי doesn't apply with regards to pru urvu. **Rebbe** didn't like this since 1) Who cares

that they were metzuveh before מתן תורה -- lema'aseh they have no chiyuz טענה? Also, 2) non-Jews are also shayach to arayot; why do we still say כקטן שנולד by issurei kurvah?

- In the machloket in Yevamot, do the children have to be megayer as well? **Rambam Ishut 15:6** says the case is that the children were מגייר too. **Maggid Mishnah ibid.** Says this is a דבר פשוט since the Mitzvah is about passing Judaism on to the next generation. **Shut Maharil 196** says the opposite: It's pashut the Rambam's telling you the bigger Chiddush that you're yotze *even if* the children are megayer despite that now there's two degrees of כקטן שנולד דמי.
- Are non-Jews chayav in יצרה? **Tosfot Gittin 41b** assumes yes, although some reread the Tosfot.
- What's the point of Pru Urvu? **One Tanna:** To bring about Mashiach. **How we paskin:** To transfer yiddishkeit to the next generation.
- Returning money to a Ger Ben Ger; when is it recommended and when not? **Rashi:** Recommended when הורתו שלא בקדושה לידתו even though בקדושה. **Tosfot:** Bad if לידתו שלא בקדושה; recommended when בקדושה דאתי למיחלף בישראל.
  - Tosfot's Kashya on Rashi: Rava in **BB 149a** didn't return the money to איסור גיורא's son, Rav Mari, even though he was בקדושה לידתו. **Rebbe's (and Tosfot Harosh's) answer:** **Rashbam** says Rav Mari wasn't a Ger, but Rav Mari Bar Rachel, Shmuel's daughter, who was raped by איסור when taken into captivity.
    - **Rashbam** though is difficult since the gemara explicitly says רב מרי was הורתו שלא בקדושה.
- If a woman is tovel leshem Geirut without telling Beit Din she's pregnant, the tevillah doesn't work for the kid. Can she do tevilla a 2nd time specifically to convert the kid? **Rebbe + Rav Elyashiv:** No. **Garzan:** Yes (but he may have been חוזר later).

#### Shiur 65 (18a-b)

- Ganav is only sold for the Keren, not the Kefel. Can the Nignav establish the money he's receiving to be for the Kefel instead of the Keren so that the ganav will be sold? **Minchat Chinuch** is mesupak; concludes it's probably impossible to pay kefel before the keren.
- What's the standard understanding of יש אם למקרא או למסורת and why is **18b** different? There's a קרי and a כתיב -- which one do we darshin/focus on? In our gemara, there is no קרי וכתוב! Of course you follow the Keri when it fits with how it's written?! **Ba'al Hameor** in ספר הצבא explains that this use of יש אם למסורת means that in every language, it's understood that there are phrases which leave out key words. Since you can't make a verb from the noun Begged (clothing) into בבגדו, R' Eliezer thinks there must be a mesorah to understand the pasuk "בפרסו בגדו עליה," and *does* refer to clothing; R' Akiva thinks יש אם למקרא and there's never any missing words from the phrase, so we're forced to understand בבגדו as the verb form of בגידה (treachery), which *does* exist.
- [Infamous **Radak** at the end of his hakdama: Kri Ukesiv is the result of multiple texts floating around (printing errors). Rebbe's not a fan since it's against the gemara].
- Is Safek Deoraitah Lechumra a din Derabanan or Deoraitah? **Rambam + Ra'avad** both hold Safek דאורייתא Lechumra is only a din דרבנן (see **Kilaim 10:27; Tumat Met 9:12**). The **Ran** (commenting on Kiddushin 29a), **Ramban + Rashba** think it's a דין דאורייתא.

### Shiur 66 (19a)

- Who does the Yid when you marry the amah off to your son? **Rashi on Chumash: son** says “Harei At Meyuedet li.” **Rambam 4:7** - the father says “you are meyuedet to my son.”<sup>1</sup> The **Lechem Mishnah** says maybe it’s not really a machloket and the Rambam is specifically talking about a case where the son was מונה him to be a shaliach.
  - **Rav Menachem Zemba’s** Kashya on Rashi: How can it be that the son does the y’ud if our gemara is mesupak קטן לבנו אותה ליעד -- a Kattan doesn’t have דעת to effect a Kiddushin! This only makes sense if the father is saying it.
- By Biah, we say איש פרט לקטן. What’s this mean? **Some Rishonim:** If the kid is less than 9, the woman won’t be chayav for having biah with him. **Tosfot 19a:** I would have thought we should kill the kid like we kill a בהמה הרובע -- since the woman is killed, the kid should be too, קמ”ל. **Ritva 19a** suggests that פרט לקטן means that a Kattan isn’t even chayav to bring a Chatas if he did it Beshogeg: I would have thought that a kattan’s actions are like מתעסק, which is chayav a korban by arayot or Chalavim, קמ”ל from איש פרט לקטן that he’s pattur.
- By Yibum, we learn פרט לאשת קטן. What does this mean? **Rashi:** Even though a קטן is Koneh מדאורייתא, if someone sleeps with her, they still won’t get סקילה. **Tosfot:** The gemara says a woman still needs Chalitza if a Kattan does Yibum since יבום של קטן יבום בגדול -- clearly, Yibum only works Miderabanan!
  - **Defenses for Rashi: Ramban Yevamot 96:** The gemara is just saying that it has the same *din* as מאמר בגדול which requires Chalitza and a Get. After a Kattan does Yibum, she also needs Get and Chalitza, but this time the Get is mideoraitah and the Chalitza is miderabanan, since really the Yibum works. **Rav Soloveitchik:** Rashi just meant that יבום בקטן creates *partial* Ishut; therefore, a Get and Chalitza are *both needed Mideoraitah*. The Get takes care of the partial ishut and the chalitza takes care of the leftover zikah.

### Shiur 67 (19a-19b)

- **Rav Soloveitchik** argued the shiurim of gadlus and raii lebiah are הלי”מ and unrelated to biological metzius based on a Machloket Rav + Shmuel in Sanhedrin whether a Nishkav by משכב זכור has to be 3 or 9 to be מחייב the בעל.
- By צאי וקבלי קידושך, it makes sense that she can be Koneh the object for herself based on **תוספות סנהדרין סח** that a kattan can be Koneh with דעת מקנה, but how can she then be makneh that object to her father? **Rashba:** She’s just being koneh for herself, and then the father is koneh from her automatically similar to עבד קנה רבו כל מה שקנה עבד קנה רבו.
- **המקדש במלוה שעל המשכון: Tosfot:** The Kiddushin works through Hana’at Mechilat Milveh *despite* that you still have the mashkon and you might think she isn’t דעת סומכת. **Rambam + most other Rishonim:** Kiddushin works through מחילת מלוה, and only works *because* you’re giving her the mashkon as well. [Rambam is לשיטתו that you need כסף הנאה] שיש בו הנאה]

<sup>1</sup> וכיצד מייעדה לבנו: אם היה בנו גדול, ונתן רשות לאביו ליעדה לו--הרי האב אומר לה בפני שניים, הרי את מקודשת לבני

- Why do the other Rishonim think this works? [*I'm not sure what the question is?*] “They say” mekadesh bemaleveh doesn’t work since it’s not בעין, but now that you have a mashkon, it’s more בעין so it works. **Rebbe** difficult since her body has been there the whole time -- when I give “herself” back to her, why is that בעין if the mashkon vanishes into thin air. He’s not really “giving” her anything?!
- Why don’t we need 2 Eidim Lekiyum Hadavar when the father sells the daughter if we hold מעות הראשונות לקידושין ניתנו עדים לקיום הדבר? **Rebbe based on Reb Chayim**: strengthen da’as so they’re only needed at the time when the da’at is expressed (=yi’ud), Shiur 68 (19a-19b)
  - In צאי וקבלי קידושין, does this work for Kiddushei shtar or only Kiddushei Kesef? **Ra’avad** [apparently -- couldn’t find]: Only Kesef. **Rosh**: Shtar as well.
  - Rosh’s Q on צאי וקבלי: Doesn’t the Ma’aseh Hakiddushin have to be done by the father when the girl is a Ketanna? Over here, she can’t be his שליח since she doesn’t have da’as, so how does this work? Rosh’s A: There’s no problem of אין שליחות לקטן if the shaliach is doing the ma’aseh for themselves. [Big Chiddush.]
  - Is Chatzer Koneh שליחות משום יד או משום שלוחו? **Gemara/Rashi/Tosfot**: משום שלוחו. **Rambam + Sfardim**: It’s משום שלוחו by a קטן, but משום יד for a קטנה. Peledik. Nafka Minah for if a Kattan/Ketanna can be Koneh through their Chatzer (only if יד; can’t set up שליח)
    - Does a Goy have a kinyan Chatzer? **Maharshak**: No since it works מטעם שליחות לגוי ואין שליחות לגוי. **Ketzos**: This is against the Gemara! **Rebbe**: Why, then, is the Maharshak wrong? מטעם שליחות doesn’t mean actual shelichus, but is an independent kinyan (“כלי”), which we view *as if a kinyan was done on one’s behalf*. Although goyim can’t set up a שליח, a kinyan on their behalf (not done by a שליח) does work. In contrast, a Kattan is unable to do kinyanim for other and kinyanim cannot be done on his behalf.
  - Is there Zechiyah for a Shoteh? **שו”ע**: Yes. Unclear if this is mideoraitah or miderabanan.
  - **Rashash**: If you have a chiyuv to pay \$x and you pay \$x minus משי”פ פחות, then you’re yotze and don’t need to give any more.
  - Is feeding one’s wife and providing her clothes mideoraitah or miderabanan? Machloket Tannaim in **Kesubos 47b**. **Rambam, Rashi (Shemot 21:10), Onklos, Ibn Ezra + Rashba**: Deoraitah. **Ramban Shemot 21:9** -- Miderabanan. [c.f. **Maggid Mishnah**]
  - Why do you make the tenai on שאר כסות ועונה if the Chiyuv doesn’t kick in until Nissuin? **Rav Soloveitchik**: Tenai can’t be made on Nissuin since da’as isn’t required and you therefore aren’t the ba’alim (**Tosfot Kesubos 74a**)
  - Is a Tenai on דבר שבממון Kayam? **R’ Yehuda**: Yes. **R’ Meir**: No
    - Is “Onah” included in דבר שבממון? **Rashi (+ most Rishonim)**: No. **Ritva + Mordechai** based on Yerushalmi: Yes. [See **Mishnah Lemelech Ishut 6:10**]
  - **Griz’s Q**: Why isn’t every תנאי considered מתנה ע”מ שכתוב בתורה if the Torah never made it’s chaluyos contingent on your tenai? The Chiddush of בני גד ובני ראובן is that this works; תנאי ע”מ שכתוב בתורה means God prevents you from expressing דעת that is *against* the דיני תורה.

- What defines something as “against the תורה?” **Shitah Mekubetzet BM 94a:** Any time the Torah says “don’t do x,” you can’t be matneh that you will do it (e.g. לא תגוש, שארה כסותה ועונתה לא יגרע, וכו’). If there’s no *lav* then you *can* be matneh to change the terms of a stam case.

#### Shiur 69 (20a) (The Ger Toshav Shiur)

- If an Eved Ivri doesn’t have אשה ובנים, the Adon can’t force him to be with a שפחה. Is he *muttar* to a Shifcha though? **Rashi 20a [based on a diyuk] + Rambam acc. To Mishnah Lemelech Avadim 3:4:** Yes. **Rebbe: Tosfot Yevamot 70b** would say no since there’s no kinyan issur; **Ramban** would say yes since there *is* a קנין איסור. [Another nafka minah to if there’s a kinyan issur is whether he’d still need a גט שחרור if I’m mafkir him]
- Can I sell Peirot Shevi’it at a small scale? **Tosfot Sukkah 39a:** Yes.
- Rebbe’s Yesod by Mitzvot Bein Adam Lechavero: You’re only chayav to do a mitzvah for others if the relationship is reciprocal.
- Is there a chiyuv to give Tzedaka to non-Jews? No. Yes to Geirei Toshav (“להחיותו”).
- What’s the mitzvah of להחיותו toward Geirei Toshav? Pashtus: Give him Tzedakah. **Ramban עשין טז שכתת עשין טז:** You’re מפקח גל בשבת for him.
- What level issur is Amirah Lenchri to a Ger Toshav? **Tosfot Yevamot 48b:** Deoraitah.
- Is Melacha חוה”מ Mideoraitah or מדרבנן? **Shulchan Aruch:** דרבנן. **Rema:** דאורייתא.
  - Nafka Minah to all sfei’ot חוה”מ (pointed out by רע”א)
- Why does a Ger Toshav have to accept the 7 mitzvot if he was already מצווה beforehand? **Rav Yosef Engel:** A *goy* gets schar for the 7 as a מצווה ועושה while a גר תושב gets שכר as a מצווה ועושה -- he’s being mekabel this new status.
- Do we have גרי תושב nowadays? **Pashtus:** No, since there’s no Yovel. **Rav Kook שו”ת נה** **משפט כהן סימן נה** – We just aren’t mekabel geirei Toshav unless there’s Yovel, but Muslims *are* Geirei Toshav since they’re מקובל ועומד as monotheists.
- Why isn’t hetter mechirah a problem of תחנם? **Minchat Chinuch 426:** If the sale is temporary, not a problem. **Rav Kook:** Sell it to Muslims, and they’re Geirei Toshav.

#### Shiur 70 (20b-21a)

- **Maharal:** Geulah means returning to original state (See בעקבי הצאן Siman 33)
- In which of the 13 מידות שהתורה נדרשת בהן is Mah Matzinu subsumed? **Pri Megadim:** **Some Rishonim** say it’s a weak kal vechomer, **others** say it’s a Binyan Av (that the Torah is consistent) by ideas instead of words.
- If a dayan is טועה בשיקול הדעת, the psak stands. What’s defined as שיקול הדעת? **Sanhedrin:** the סוגיא דעלמא is a certain way. **Tosfot:** Meaning, the gemara says “את”ל” that everyone holds x” when it could have said “את”ל” that everyone holds y.”
- What defines a “city” in halacha? Three Chatzeirot of three houses each, and 100 people. **Maharsham:** Three chatzeirot or 100 people (**Rebbe’s** not a fan)

#### Shiur 71 (21b)

- Do we paskin מיעוט or ריבוי in darshining? Machloket Tannaim. **Mishnah Lemelech Avadim 3:9** points out the Rambam is Soter himself which way we paskin. The **Ritva** argues that the shitot aren’t mutually exclusive and each holds there are exceptions to which way we darshin. The **Mishnah Lemelech** rejects this based on a

gemara in Shvuos, and points out **Tosfot Niddah 30a** clearly disagrees. [Note *Tosfot ibid.* says *we paskin* כלל ופרט]

- Gemara says a Kohen isn't Nirtza since that would make him a בעל מום. **Mishnah Lemelech Avadim 3:9 Q:** But he's not a ba'al mum unless the hole is the size of a כרשינה?! **Yerushalmi:** It's a Gzeirah derabanan lest you make the hole too big. The **Mishnah Lemelech** proves the Bavli doesn't hold this way. Rather, **Rambam** must hold like the **Ritva** that "המרצע לרבות המרצע הגדול" means lemaskana you can *only* use a מרצע הגדול, which creates a big enough hole. **Rebbe** called this is a chiddush.
- What level issur is sleeping with a Shifcha? **Pashtus/Rashi/Tosfot:** Issur Deoraitah of Kadesh. **Rambam Issurei Biah 12:11:** it's only miderbanan, והראיה that an ע"ע is muttar to her. Claims **Onklos'** translation of kadesh to sleeping with a שפחה is an asmachta.
  - [What's the definition of a Chiddush? **Tosfot Yevamot 7a:** דבר הסותר את הכלל]
  - Still, why doesn't Rambam say this is an issur Deoraitah of Kedeisha based on **Ishut 1:4** by הפנויה על הבא? **Rav Soloveitchik:** Kedeisha is a problem because you're choosing to sleep with someone זנות דרך when you could have a proper relationship. Since אין קידושין תופסין בשפחה, it's not a problem of קדישה.
- By Yefat Toar, can you have Biah Rishona prior to Giyur? **Tosfot/Rambam/Ramban:** Yes. **Rashi:** No. According to Rashi, what's the chiddush of Yefat Toar then? You can have biah after giyur despite that it's giyur ba'al Korchah.
- Who can't read Parshat Zachor? **Sefer Hachinuch 603:** Women since they aren't drafted into the army. **Minchat Chinuch + Rav Chayim Kanievsky** disagreed.
- Does a Kohen go to war? **Binyan Shlomo** thought not; **Mordechai Gittin 432** proves from our gemara's question of Kohen with Yefat Toar that they do go to war.
- When do we count two Issurim from the same pasuk as separate Lavin? **Behag:** If there's different punishments (3 different lavin for 3 different mitot by תנאף). **Rambam** [as explained by **Zohar Harakia** quoted in the **Megillat Ester**]: When one punishment is chamur and the other is kal (punching friend and punching parent; "blessing" friend and "blessing" God).
- Why isn't buying a Kohen as an Eved Ivri isn't against the **Yerushalmi** that המשתמש בכהן מעל? Total of 5 answers (the two Rebbe didn't quote I put in italics):
  - **Mishnah Lemelech Avadim 3:8** gives 3 answers: 1) **Smag:** Muttar if you're paying the Kohen. 2) **Maharash Yafeh:** *Muttar if he isn't Meyuchas.* 3) **Rivash:** *You can be Mishtamesh from a Kohen Am Ha'aretz.*
  - **Mordechai Gittin 461: Rabbeinu Tam** to Rabbeinu Peter (#1): Only a problem if he's wearing the Bigdei Kehuna. **Rabbeinu Tam** (#2): OK if the Kohen is mochel his kavod.
    - Although Rabbeinu Tam was Chozer from his first answer, **Aruch Hashulchan OC 128:67 + Rav Soloveitchik** argue he was correct -- משתמש בכהן מעל is only a problem when he has his Bigdei Kehunah, but the other dinnim of Kehunah (such as issur to become tamei and וקדשתם) apply without them. [**Rema OC 128:45** only quotes hetter of Mechilah; **Beur Halacha** adds hetter of כהן עם הארץ]



- What level issur is it to sleep with a Goyah? **Ran Sanhedrin 82a**, and followed by the **Bach, Perisha, and Beit Shmuel EH 16:5**: Issur Deoraitah.
  - Would you have to give up your life if it wasn't Befarhesya? **Orchos Chayim**: No. **Nimmukei Yosef/Shach YD 157:12**: Yes.
  - Is it considered Befarhesya if you're living together? **Shach 157:4**: as long as 10 Jews know about it, it's considered פרהסיא; proof from Ester in **Sanhedrin 74b**.
- If a woman is a goyah sleeping with a Jew, should we convert her despite that we know she won't keep Taharat Hamishpacha? **Maharam Shik EH 37**: Yes, since Karet of Goyah is worse than Karet of Niddah. **Rebbe**: No; you're being מכשיל her since there's no issur from her side to sleep with a Jew until she converts!
- If a ger says he'll keep all the Mitzvot but we know there's something he won't, does the giyur work? **Maharam Shik (implied)**: Yes. **Rav Chayim Ozer (שו"ת אחיעזר ג:כו)**: No.
- If in war, can you eat טרפות? **Ramban Devarim 6:11**: Yes -- lechatchila! **Rambam Melachim 8:1**: Only if very hungry.
- What level issur does אישות בנכרים create? **Tosfot 21b**: Issur Asseh.
- If you marry a non-Jewess, is that ishut in any way meaningful? **Rav Yosef Engel** quoting an Acharon: You get her Nichsei Melog. **Beis Meir**: There's a din of איסור סוטה ולבועל if she's Mezaneh. [**Rebbe** rejects both of these]

#### Shiur 72 (21b-22b)

- How does Rashi defend from Tosfot's kashya that Tamar was a בת יפת תואר and therefore was muttar to Amnon? **Tosfot**: Machalah was pregnant with Tamar before David took her as a wife. **Ritva**: David was her father, but the giyur of a Yefat Toar only works as a hetter biah, not to actually consider the mother Jewish.
- Bassar Shehorah Bah Chacham: Chumrah not to eat it. **Rav Moshe**: If it's a בפרוש פרי, מגדים, it's not חכם בה שהורה -- just your הארצות עם.
- Does Retziah have to be done while the Eved Ivri is still an Eved? **Rav Itziler Ponovitcher**: Yes -- in the last prutah of time. **Chazon Ish**: No, even afterwards works based on gemara shekalim that Beis Din would convene in Adar to be רוצע. The Eved just has to say he wants to be a נרצע while he's still an Eved. [See main notes for the **Radash's** hearot on this sugya.]
- Does one have to put a Mezuzah on an attic/horizontal door? **Chayei Adam**: No since our gemara says Mezuzah by Nirtza needs to be "me'umad." **Other Acharonim**: Yes -- "מעומד" just means it's on its hinges.

#### Shiur 73 (22b)

- Is the institution of kinyanim Deoraitah? **Sefer Chinuch 336**: Yes [specifically challipin and maot]
- How high does kinyan hagbahah have to be? **Rashi**: 3 Tefachim. **רי"ת**: One Tefach
- **Rebbe's** Yesod by כח אחר מעורב בו: When you harness a כח אחר, it's as if it's your own ma'aseh in כל התורה כולה. Examples: 1) By Kinyanim, whistling to a beheimah to make it come is a kinyan Meshicha, having an Eved tie my shoe is a kinyan chazaka, and having an elephant jump by waving food above it is a kinyan hagbahah [**Tosfot 23a**] 2) By Nezikkin, both R' Yochanan + Reish Lakish agree that if I commit intentional arson, then I'm chayav and אשו משום חיצו (and it's not gramma). 3) By Shabbos, Zoreh is chayav

when he utilizes the wind. **Rebbe/Rav Soloveitchik** argue based on this that changing the times on a Shabbos timer isn't gramma but is as if I did the Ma'aseh בידים. Grama is only when my Ma'aseh didn't set in motion the melacha's existence.

- **Rebbe's Chumrah based on על מסכת שבת**: Rambam says Beit Hillel is only mattir כלים to do melacha on Shabbos if they were already doing so from before Shabbos; if the Melacha doesn't start until after התחלת שבת, then it's assur. [This would make shabbos clocks and timers problematic]
- If I commit arson unintentionally, am I chayav? **BK 22a: R' Yochanan**: Yes (חצו). **Reish Lakish**: No (משום ממונו)
- *[Can elephants jump? Machlokes Tosfos 23a + Rabbi Slifkin]*
- **BB 21a** says that if fish swim into my baited net trap and someone takes those fish with their own net, that's an issur Derabanan of Hasagas Gevul. **Ketzos' Q**: Why isn't that Gzeilah Mamash since I was koneh them with a משיכה the moment they swam to the bait like Tosfot's case of the jumping elephant? **Nesivos**: Kinyan Meshicha (or any כח only applies when my action leads to immediate action in response. In this case, the fish didn't swim into my net immediately after I set it up, so I wasn't Koneh.

#### Shiur 74 -- (22b-23a)

- The **Minchat Chinuch** quotes a **Piskei Tosfot in Bechorot** that Chazaka is Koneh by Metaltelin as well. He points out this is against a befeirush gemara in **Gittin 22a**.
  - The **Nesivos** quotes the **Pnei Yehoshua** that kinyanei karka don't work on metaltelin and vice versa. The only exception is chalipin.
- Does Chazaka mean the same thing in all places? **Pri Megadim** points out the word Chazaka is a homonym with 6 independent meanings with nothing to do with each other.
- Where does Meshicha work? What about Hagbahah? Meshicha only in a simta, tzidei reshut harabbim, or my reshut. Hagbahah works בכל מקום.
- Why does the Tanna Kamma think Hagbahah on an Eved Kenani doesn't work, but Meshicha does? **Rashbam BB 53b**: Hagbahah is abnormal here so TK thinks it wasn't instituted. **Rebbe based on Kovetz Shiurim 202**: In general, doing things כלאחר יד is meaningless (mideoraitah), so it makes sense that the abnormal kinyan here doesn't work. *[Not sure I understood Rebbe correctly; please comment if this is lacking]*
- Does Hagbahah need a ma'aseh? No, so long as you're hands are above 3 or 1 Tefachim [Rashi/Tosfot], you're koneh without moving.
- Why does the ת"ק on 23a think a Kattan can be Koneh himself if a kattan generally doesn't have קנינים mideoraitah? **Rebbe**: The ת"ק thinks that that a Kattan does have a kinyan yad, since Yad and Chatzer are קונה שלא מדעתו (don't need דעת). When no one owns the עבד כנעני, he's Birshut Atzmo and is Koneh himself.
  - Is there a Kinyan Yad Shelo Mida'ato? **Ketzos 268:2** claims this is talui on a machloket **Rashi and Tosfot in Kesubos 31a**. **Rebbe** thinks of course it works since that's the whole case of ונתן בידה by Gittin. *[See main notes for defense of Ketzos]*
  - **Tosfot Sanhedrin 68b** thinks a Kattan/ketanna doesn't have a Yad unless there's דעת אחרת מקנה. The **Shach CM 243:6** disagrees and thinks a

Kattan/Ketanna have a Yad *even without מקנה דעת אחרת מקנה*. **Pnei Yehoshua Gittin 39a** defends Tosfot's understanding.

- **הבשיעית תשמטנה ונטשתה**. Is Shmitah automatically mafkir my fruit or is it that I have a mitzvah to be mafkir them? **Mabit/Chazon Ish**: automatic. **Beit Yosef**: Mitzvah [this may be the mekor that hefker exists].

Chazara Shiurim (from Efraim Tepler's Notes)

- How do we ensure girls get a chelek of the Yerusha nowadays? **Rema**: Shtar Chatzi Zachar (gets half as much as a boy). **Rav Shlomo Zalman**: Should give equal share to daughters nowadays. **Rogotchover**: Don't make a takana to give equally since that's too similar to the Christians.
- Were the avos Jewish (לענין טומאת מת)? **Tosfot**: No. **Ramban**: Yes. **Rav Soloveitchik**: Partial kedushat yisrael; with each mitzvah it got increased.
- What's R' Eliezer שמותי mean? He was one of the Talmidei Beit Shamai. **Mekuballim**: Since we'll paskin like Beit Shamai during המשיח, R' Eliezer paskined that way to bring the Mashiach. R' Akiva, who was his talmid, also tried to hasten the Mashiach through the בר כוכבא revolt. Other tannaim knew **gemara Sanhedrin** that Mashiach won't come until after year 4000.
- We do we kill an ox that kills a human?
  - **Moreh Nevuchim**: It's a punishment to its owner.
    - **Ramban** rejects this because we paskin even a shor shel hefker is punished! Rather, Ox is responsible for its actions because it has enough seichel to not kill people.