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Chapter 3

Mishnah 1. When are these words said?¹ When the Kohen asks advice;² but in the case of a Kohen who does not seek advice, and one [pair] belongs to one [woman] and one to another, or two [pairs] to one and two to another, or three [pairs] to one and three to another,³ and he offered⁴ all of them above [the red line]. Then half are valid and half invalid.⁵ [Similarly], if [he offered] all of them below, half are valid and half are invalid. If [he offered] half of them above and half of them below,⁶ then of those [offered] above, half

are valid and half are invalid, and also of those [offered] below, half are valid and half are invalid.⁷

Mishnah 2. If one [pair] belonged to one woman and two [pairs] to another, or [even] three [pairs] to another, or [ten] pairs to another or a hundred to another,⁸ and he offered all of them above, then half are valid and half are invalid. [Similarly], if he offered all of them below, half are valid and half are invalid.⁹ [If he offered] half of them above and half below, then the [number of birds as there is in the] larger part are valid.¹⁰ This is the general principle: Whenever you

¹ A reference back to the principles enumerated in the previous chapter, that in the case of a chatas getting mixed up with an olah, or vice versa, both must be left to die; or that if one pair belonging to one woman gets confused with ten pairs or one hundred pairs belonging to another, only the lesser number of the two groups confused is valid.

² The passages above quoted speak of a case where the Kohen comes to consult the Sanhedrin as to the procedure in such cases of confusion; this chapter deals with cases of ‘de facto’ where the Kohen acts on his own initiative.

³ These birds are unspecified, and accordingly of the half that are valid, half can be brought as chatas and half as olos.

⁴ I.e., sprinkled the blood.

⁵ Since only half of the half that are valid can be offered above as olos, and half below as chatas.

⁶ The case is of detached birds that had become confused and which the Kohen now takes to offer up half as chatas and half as olos; for had the birds of each pair been bound together and then got mixed up with other pairs, and then offered up one bird as a חטאת and the other as an עולה, all would still have been valid.

⁷ The main fear is lest the Kohen offer up all the pairs of one woman above and all those of another below; and though this fear may be too extreme, yet the principle is ‘any doubt concerning a Biblical command is to be interpreted rigorously’. Since only half of the birds are valid and these are mixed up, so that one knows not whether they belong to one woman or

another, the two women are advised to bring another pair of birds in joint-ownership, and make the condition that these be the birds for the woman whose sacrifice has not been offered up. If the Kohen had separated the birds, offering up half as chatas and half as olos (instead of a whole pair together above the red line) all the birds would have been valid on the plea that the Kohen, when he begins to sacrifice the unassigned birds, has the right to define the kind of sacrifice intended.

⁸ Though we were told previously that only the lesser number in such a case is valid, our present chapter deals with ‘de facto’ cases, in which the Kohen sacrifices without consulting as to the procedure.

⁹ For in both cases half of the birds had been sacrificed in their proper places.

¹⁰ In all such cases, where half are disqualified, the women, to fulfill their obligation, must bring other kinnim in partnership, and condition these as the sacrifices of her whose kinnim have been disqualified. An illustration will clarify the statement (the number of birds as there is in the) larger part are valid. If the one pair belonging to Rivka gets confused with the two pairs belonging to Baila, altogether six birds, and the Kohen offered three above and three below, then four birds are valid, for if we are to assume that all the three birds that were offered above belonged to Baila, then two of them are valid; and if on the other hand, we are to assume that two of the three offered above belonged to Rivka, then these two birds are also valid, and the same applies to the three birds offered below, so that we have four birds, corresponding to the number belonging to Baila, valid. And

can so divide the pairs [of the birds] so that those belonging to one woman need not have part of them [offered] above and part [offered] below,¹¹ then half of them are valid and half are invalid;¹² but whenever you cannot so divide the pairs [of birds] without some of those belonging to one woman being [offered] above and some below,¹³ then [the number as there is in] the larger part are valid.¹⁴

Mishnah 3. If the chataos belonged to one and the olos to another,¹⁵ and the Kohen offered them all above, then half

the same applies to the case where the confusion arose among the pairs belonging to a larger number of women. If the one pair belonging to Rivka gets confused with the two pairs belonging to Baila, and then with three other pairs, or ten pairs or a hundred other pairs belonging to others — a hundred and sixteen pairs altogether — and the Kohen offered up half of these birds above and half below the red line, then a hundred pairs are valid and sixteen pairs invalid. Why? If the one hundred and sixteen birds offered above belong to her who brought a hundred pairs, then a hundred birds are valid above, and sixteen invalid; but even if thirty-two of these hundred and sixteen belong to the other women, who brought these between them (one plus two plus three plus ten pairs), eighty-four birds are still valid since they belong to her who brought a hundred pairs, and of the thirty-two birds belonging to the others, sixteen would be valid above and sixteen below, thus still leaving a hundred birds valid, whether offered up above or below. This Mishnah differ from that previous in the fact that whereas the former cited the case of two women bringing an equal number of birds, the reference here is to women bringing each more than the other, the last one even bringing more than all the others put together.

¹¹ Since the Kohen offers up half of all the birds confused above and half below, it may be possible that all those birds offered up above belonged to one woman, or some to one and some to another. Here is an illustration: if Rivka brings one pair, and Baila two pairs and Chaya three pairs (together six pairs), and the Kohen offers half above, it is possible that either the six birds belong to Rivka, Baila, or all to Chaya. In this case, the Kohen may not have offered up half of the kinnim belonging to each woman above and half below.

¹² Whenever the number of the kinnim brought can be divided equally, as in the instance cited in a former note of a bringing one pair, Baila two pairs and Chaya three pairs. In which case one plus two is three; or in the case of one, two, four or five pairs being brought, when one plus four is five, and the Kohen offers half of all the confused birds above and half below, then half are valid and half are not.

¹³ If one pair gets confused with two pairs, and then with four pairs (together seven pairs), the kinnim cannot so be divided as to make any of them equal the largest number brought; as a result, it is possible that the

are valid and half disqualified.¹⁶ If he offered them all below, half are valid and half disqualified. If he offered half of them above and half below, then both of them are disqualified, because I can argue that the chataos were offered above and the olos below.¹⁷

Mishnah 4. If a chatao, an olah, an unassigned pair of birds and an assigned¹⁸ pair [became mixed up], and he offered

Kohen offers some of the birds of one woman above and some below. Even in the case of three plus four plus five kinnim that get mixed up, though the total of twelve kinnim can be divided equally into two parts, yet of the numbers of the birds themselves no division can be made without one of the birds of a pair being above and the other below. Similarly, though the total number is a hundred and sixteen kinnim, one plus two plus three plus ten plus a hundred, yet the numbers cannot so be arranged as to make any equal the greatest number, with the result that the Kohen may be offering up part of the birds of one woman above and part below.

¹⁴ Thus if one pair gets confused with two or four pairs, then four pairs are valid, to be offered up half above and half below. The numbers one plus two plus four cannot be so divided as to make any of the smaller numbers equal the larger number. So also of the numbers mentioned before (one plus two plus three plus ten plus a hundred), of which the smaller only combine to make sixteen. Thus the principle here stressed is that the greatest number brought (if more than all the other kinnim put together), is the number still valid after the mixing has taken place.

¹⁵ This Mishnah further elucidates the principle stated previously. When do we say that 'if a chatao gets confused with an olah, then all must be left to die'? Only 'de jure', that is when the Kohen seeks guidance on the procedure. This chapter, however, deals with 'post facto' cases, in which case half of those he sacrificed above and below the red line are valid.

¹⁶ Evidently the number of chatao offerings equals that of olos and, moreover, the birds have all been designated as to the nature of their offering; hence half must be valid.

¹⁷ Since the birds had been designated, it may easily be that he just offered up the wrong ones above or below.

¹⁸ An amplification of the previous Mishnah. Rashi explains that the case here is of two women, one of whom brings two chatao offerings and one olah and the other two olos and one chatao. These three kinnim they bring in partnership. One pair they specify at the time of purchase that one bird should act as the עולה for the one and as the חטאת for the other. Concerning the other pair they stipulated nothing while the third pair they again condition which should be a chatao and which an olah, but without specifying on whose behalf the respective sacrifice be made. The Kohen

them all above, then half are valid and half are invalid;¹⁹ [also] if all of them below, half are valid and half invalid. If he offered half of them above and half below, none is valid except the unassigned pair,²⁰ and that must be divided between them.²¹

Mishnah 5. If [birds assigned as] chataos were confused with [unassigned birds that were] obligatory offerings, then only the number of chataos among the obligatory offerings are valid.²² If the [unassigned] obligatory offerings be twice as

then offers up the three kinnim, unaware of the nature of each in the manner above narrated. The olah and the chatas have to be brought in the name of the owner, but the Kohen could 'de facto' do so without this knowledge. The same ruling would have applied to the case of an assigned pair with an unassigned pair only, without further mention of a עולת וטאת. Concerning these last three Mishnahs of our chapter, all commentators agree that they are the most difficult in the whole Talmud, since they not only deal with a most complicated subject, but they also demand a knowledge of permutation. i.e., the variation of the order of a set of things lineally arranged.

¹⁹ Let A be the specified chatas of Rachel and B the olah of Leah, and let CC stand for the unspecified pair (each bird being called C), and let D and E symbolize the chatas and olah respectively in the third pair, which differs from the first pair in that though the sacrifice be specified, yet it be not known on whose behalf it is offered. Each pair is then tied together separately, thus AB, CC, DE. The Kohen, under the impression that all are unspecified, offers up from each pair one bird above and one bird below the red line.

²⁰ A and B are invalid, since it is not known which was offered above and which below, and for the same reason, D and E are invalid; only CC are valid, since it is within the power of the officiating Kohen to specify the nature of the offering.

²¹ D and E being disqualified, it is for the women to arrange between them which bird in the unspecified pair (that is valid) should act as a substitute for each of their offerings that had been rendered invalid as a result of their offerings getting mixed up. Rachel must further bring another chatas in lieu of A that was disqualified and Leah another olah in lieu of B that was disqualified.

²² Whether the birds unassigned equal or double the number of those assigned, only the number of unspecified chataos among the obligatory offerings are valid. This rule is in the case of a Kohen who comes to consult the Beis Din.

²³ For instance, if four unspecified birds, of which half are chataos and half are olos get confused with two others which are designated chatas, and the Kohen offers up half above and half below.

many as the chataos,²³ then half are valid and half invalid;²⁴ but if the chataos are twice as many as the [unassigned] obligatory offerings,²⁵ then the number [of chataos] among the obligatory offerings are valid.²⁶ So, too, if [birds assigned as] olos were mixed up with [unassigned] obligatory offerings, only the number of olos among the obligatory offerings are valid.²⁷ If the [unassigned] obligatory offerings are twice as many as the olos,²⁸ then half are valid and half disqualified,²⁹ but if the olos are twice the number of

²⁴ That is two chataos and one olah. Of the three birds offered below, two are valid for both in the two assigned and in the two unassigned kinnim there must be two chataos; and of the three offered above, one is still valid as an olah. Since if two were chataos. The third is an olah. (Some commentators will not have these two chataos and one olah sacrificed, though not actually disqualified, lest the Kohen eventually offer them for a purpose other than that originally intended.)

²⁵ Four chataos get confused with two unspecified obligatory offerings.

²⁶ Only two are valid as chataos. Why? The three offered above are invalid lest they be of the four specified chataos; but two of the three offered below are valid, either because they may all be or because even if two of the three birds are the unspecified obligatory offerings, two are still valid as chatas, since one bird is a chatas in any case. The number thus valid corresponds to the number of chataos among the unspecified obligatory offerings. The same principle holds good in all cases where the number of unspecified obligatory offerings is double the number of chataos. Should, however, the number of specified chataos double that of the unspecified offerings, then instead of half being valid and half not, only a third of all the birds confused are still valid, that is, the amount corresponding to the number among the unspecified pairs. The Bertinoro cites this example: the woman can only offer one chatas of her two kinnim. She cannot offer two as olos, lest they be the two chataos that became confused; neither can she offer two as chataos, lest one be the specified עולה. Accordingly, less than half are valid, that is, according to the least number among the obligatory offerings.

²⁷ If olos became mixed up with obligatory offerings; but whereas the first chapter deals with cases where the Kohen comes to ask advice, this chapter deals with 'de facto' cases.

²⁸ I.e., if four unspecified obligatory offerings get confused with two olos, and the Kohen offers three birds above and three below the red line.

²⁹ Of the three offered above (as olos) at least two are valid, even if all the three were unspecified; and of the three offered below (as chatas) one is valid, since there are only two specified olos. Thus only half of the birds are disqualified.

[unassigned] obligatory offerings, then the number [of olos] among the obligatory offerings are valid.³⁰

Mishnah 6. If a woman says: 'I vow a pair of birds if I give birth to a male child';³¹ and she does give birth to a male child, then she must offer up two pairs — one for her vow and one for her obligation.³² If [before she assigned them] she gave them to the Kohen,³³ and the Kohen who ought to offer three birds above and one below³⁴ does not do so, but offers two above and two below, and does not seek guidance,³⁵ then

³⁰ The following example can serve as an illustration: four olos get confused with two unspecified birds and the Kohen offers up half above and half below, then all those offered up below are invalid, lest they be of the four olos; whereas of those offered above, at least two are valid, whether all the three birds be of the olos or only one be of the specified olos and the other two of the unspecified, of which one must be an olah. Thus of all the six birds, only two are valid — according to the number of olos among the obligatory offerings.

³¹ The two birds brought as a result of her vow must both be olos since a voluntary offering cannot consist of a chatas. Our instance is of a poor woman, for a rich woman was required to bring a lamb as her olah and a bird as her chatas.

³² 'And when the days of her purification are fulfilled, for a son or a daughter, she shall bring a lamb of the first year for an olah and a young pigeon or a turtle-dove for a chatas, unto the door of the tent of meeting, unto the Kohen'. The point to be noted is that whereas her obligatory offering had to be brought at the end of forty days for a male, and eighty days for a female child, her vow-offering had to be brought immediately at birth.

³³ Of these two pairs, three birds are olos and one a chatas; the Kohen offers the four birds up as if they were two pairs of obligatory offerings.

³⁴ As already stated, no voluntary offering can consist of a chatas, whereas the obligatory offering consists of a chatas and an olah.

³⁵ Under the impression that these two kinnim represent two obligatory offerings.

³⁶ A turtle-dove if the others had been turtledoves, or a pigeon if the others had been pigeons.

³⁷ Since of the four birds, three were olos and the Kohen only offers up two above, another bird of the same kind to which the four belonged must be brought as an olah.

³⁸ I.e., one turtle-dove and one pigeon; since one kind cannot be substituted for another and the two pairs consisted of a pair of pigeons and a pair of turtle-doves, a bird of each kind must be brought and offered, as an *olah*, to replace the one olah that was disqualified. In such cases the birds brought to replace those disqualified are regarded as her vow-

she must bring another bird [of the same kind]³⁶ and offer that above.³⁷ [This is if the birds she brought] are of one kind. If they were of two kinds, then must she bring two others.³⁸ If she had expressly defined her vow,³⁹ then she must bring three other birds.⁴⁰ [This is if the birds she brought] are of one kind, for were they of two kinds, she must bring four others.⁴¹ If she made a definite fixture at the time of her vow,⁴² then she must bring another five birds — [that is, if those she originally brought] were of one kind.⁴³ If they were

offering, though. As already stated, the 'vow' had to be brought at child-birth and her obligatory offering at the expiration of her period of purification.

³⁹ At the time of the vow or even later, she had made clear the kind she would bring as her vow-offering, and after child-birth she brought two pairs of birds of the same kind, and the Kohen, without any investigation, offers two birds above and two birds below, and the woman does not recollect now of which kind she had specified for her vow-offering.

⁴⁰ Two of the birds already offered are treated as her obligation offering, consisting of one chatas and one olah. Of the second pair, brought in fulfillment of her vow, one is invalid since it was treated as a chatas. Besides substituting for this disqualified bird, two others must be brought as olos, lest the two offered be not of the kind she had defined in her vow. The Mishnah deals with the more common case.

⁴¹ She brought each pair of a different kind, but has forgotten the kind she vowed to bring for each offering. Accordingly, two birds became disqualified, lest they be not of the kind specified in her vow, and two birds must now be brought of each kind as olos. With the stipulation that the two birds which are of a different kind to her original vow must be considered as voluntary offerings.

⁴² At the time of her vow, she had planned to bring both her offerings of the same kind and at the same time. This she did, but did not tell the Kohen the circumstances. And as a result he offers two birds above and two below. The woman had now forgotten the kind she had defined as her vow-offering, only remembering of what kind she had brought the two pairs.

⁴³ Though the birds she brought are all of one kind, the fear is lest those she had vowed were of a different kind; consequently, the two birds in fulfillment of her vow are invalid. Again, since she had vowed to bring both her offerings at the same time, and one of the offerings became invalid, her vow remains unfulfilled. Accordingly, she must now bring another two pairs of both kinds, and yet another bird of the same kind as that already offered as a chatas in fulfillment of her obligatory offering. These five birds must be sacrificed together. The principle behind all this is the rule laid

of two kinds, then she must bring six others.⁴⁴ If she gave them to the Kohen and it was not known what she gave,⁴⁵ and the Kohen performed the sacrifice, but does not know how he performed it,⁴⁶ then she must bring four other birds for her vow,⁴⁷ and two for her obligation⁴⁸ and one for her chatas.⁴⁹ Ben Azzai says: [she must bring] two chatas.⁵⁰ Rabbi Yehoshua said: to this applies what [the sages] have said: 'when [the animal] is alive it possesses one sound, but when it is dead its sound is sevenfold'.⁵¹ In what way is its sound sevenfold? Its two horns [are made into] two trumpets,⁵² its two leg-bones into two flutes, its hide into a drum, its entrails for lyres and its large intestines for harp strings; and there are some who add that its wool is used for the blue [pomegranates].⁵³ Rabbi Shimon ben Akashiah says: Uninstructed persons, the older they become, the more their intellect gets distracted, as it is said: he removes the speech of men of trust and takes away the sense of the elders',⁵⁴ whereas of aged scholars, it is not so. On the contrary, the older they get, the more their mind becomes composed, as

it is said: 'with aged men there is wisdom, and understanding in length of days'.⁵⁵

down that any votive offering surrounded by doubt cannot be considered as a valid sacrifice.

⁴⁴ Four birds to fulfill her vow — since she has forgotten which kind had been offered — and two others to fulfill her obligation.

⁴⁵ She had forgotten the kind she had defined at the time of her vow and also the kind she had brought to the Kohen, and the latter also was unaware of the kind she had offered; accordingly, she must now bring seven other birds — four for her vow (two of each kind), two for her obligation offering and one as an additional chatas in case the other had been offered above. This would satisfy all doubts, since the slightest doubt concerning a sacrifice does not avail to render it valid.

⁴⁶ Did he offer all above or all below, or two above and two below? Accordingly, the woman cannot be said to have fulfilled any of her obligations.

⁴⁷ For she may have vowed all birds to be of one kind, whereas she has brought of two kinds, or the reverse. To allay doubt, let her bring a sacrificial pair of each kind.

⁴⁸ One of each kind, both of which must be offered as olos, lest all the four birds had been offered below. The עולה of her obligatory offering must be of the same kind as her חטאת, the kind itself being immaterial.

⁴⁹ This can be of any kind she wishes, for she can pair the chatas to any olah she wishes to bring with it and she brings the olos of both kinds.

⁵⁰ True to his principle that one is guided by what was first. Since all the four birds may have been offered above, she has fulfilled the עולה of her

obligation and she must now only bring the חטאת of the same kind as the olah; but the kind being unknown, two birds of different kind must be offered up as chatas. The birds offered as chatas, whether according to the first Tanna or Ben Azzai, cannot be eaten, lest she had already offered her chatas and a chatas cannot be brought as a voluntary offering. Ben Azzai, it would seem prescribes that two chatas be brought in all cases where the first Tanna of the Mishnah prescribes one to be brought.

⁵¹ Symbolic of the number of additional birds prescribed by the Tanna of our Mishnah in consequence of the many doubts that have arisen. Thus one sacrifice is magnified sevenfold, and according to Ben Azzai, even eightfold.

⁵² Another name for shofar is, חצוצרה. Those used by the Kohanim were of silver, whereas those used by the Levites were of horn.

⁵³ Attached to the robes of the Kohen Gadol.

⁵⁴ Refers to the ignorant in the torah.

⁵⁵ This forms a fitting conclusion to the whole order of kodashim, of which kinnim is the last tractate, since the talmud refers to kodashim as 'wisdom'. Though this verse occurs earlier in the biblical text than the one cited first, the compiler of the mishnah thought it better to conclude with a statement on the scholar, the policy of bible and talmud being to conclude any prophecy or discussion on a joyful and optimistic note.