

A בס"ד
Intro
Today we will learn בע"ה מ"ו of נדריים, and begin פרק השותפין.
Some of the topics we will learn about include.

In the last Perek we learned the Halachos of a מוֹדֵר הַנָּאָה מִחֲבֵירוֹ
One who is אֶסוֹר to benefit from his friend due to a נֶדֶר;
This Perek begins by discussing how this Halachah applies to
הַשּׁוֹתְפִין שֶׁנִּדְרָהּ הַנָּאָה זֶה מִזֶּה
If two people own a חֲצֵר, a courtyard, in partnership, and each one made a נֶדֶר prohibiting himself from benefiting from the other. There is a Machlokes whether they may continue using the yard. They might not be allowed to continue to use the yard, because they would also be benefiting from their partner's share of the property.

In its discussion of this case, the Gemara introduces several important ideas.

We have learned that
אִין אָדָם אוֹסֵר נֶכְסֵי חֲבֵירוֹ עַל חֲבֵירוֹ
One cannot use a נֶדֶר to prohibit others from using their own possessions. However,
קוֹנְמוֹת מִפְקִיעִין מִיָּדֵי שִׁיעֲבוּד
A נֶדֶר does have the power to override a lien on a property.
If someone only has a שִׁיעֲבוּד - the right to use a property, the owner of the property can make a נֶדֶר, forbidding him to exercise his rights.

B חֲצֵר שִׁישׁ בּוֹ דִּין חִלּוּקָה
When two people buy a חֲצֵר together, each owner can only dissolve their partnership without the other's consent if this won't result in a loss for his partner.
This depends on the size of the property.
One can only force his partner to divide the חֲצֵר if each one will end up with a large enough area to continue to use the yard in its usual way - which is 4 Amos by 4 Amos.
The Gemara will discuss how the Mishnah's Halachos may depend on whether the property is a
חֲצֵר שִׁישׁ בּוֹ דִּין חִלּוּקָה
A courtyard which one has a right to split; or a
חֲצֵר שֶׁאִין בּוֹ דִּין חִלּוּקָה
A smaller courtyard that does not have that right.

A

הַשּׁוֹתְפִין
שֶׁנִּדְרָהּ הַנָּאָה זֶה מִזֶּה

אִין אָדָם אוֹסֵר
נֶכְסֵי חֲבֵירוֹ עַל חֲבֵירוֹ

קוֹנְמוֹת מִפְקִיעִין מִיָּדֵי שִׁיעֲבוּד

B

חֲצֵר שִׁישׁ בּוֹ דִּין חִלּוּקָה
4 Amos by 4 Amos.

1 So let's review...

Zugt di Mishnah:

השותפין שנדרו הנאה זה מזה

If two people own a חצר, a courtyard, in partnership, and each one made a נדר prohibiting himself from benefiting from the other, there is a Machlokes whether they may continue using the yard.

The תנא קמא says

אסורין ליכנס לחצר

They may not enter the yard.

רבי אליעזר בן יעקב אומר

זה נכנס לתוך שלו וזה נכנס לתוך שלו

Both may enter and use the חצר, because each partner is simply using his own property.

1

השותפין

השותפין שנדרו הנאה זה מזה

If two people own a חצר in partnership, and each one made a נדר prohibiting himself from benefiting from the other

רבי אליעזר בן יעקב אומר

זה נכנס לתוך שלו

וזה נכנס לתוך שלו

Because each partner is simply using his own property

תנא קמא

אסורין ליכנס

לחצר

2

Based on the Gemara, the Ran explains that the key issue in this Machlokes is in how we understand the shared use of the same property.

רבי רבי אליעזר בן יעקב

יש ברירה

And therefore understands that a partnership is an agreement to divide the time of when they use the property. When one partner uses the yard, it is retroactively considered as if they had agreed for him to own the entire property at that time. Therefore, when each partner uses the חצר he is not benefiting from his partner's share at all, and so they may continue to use the חצר.

This understanding utilizes the concept of

ברירה

A means of retroactively deciding the nature of a past event;

However, the תנא קמא argues with this approach, because he holds

אין ברירה

We do not use such retroactive methods.

He therefore understands that at all times each partner only owns half of the property, and merely has the rights to the use of his partner's half. Therefore, every time he uses the חצר he IS benefiting from his partner, and so they may NOT continue to use the חצר.

2

The Ran explains. . .

The key issue is how we understand the shared use of a property

רבי אליעזר בן יעקב

יש ברירה

A partnership is an agreement to divide the time of when they use the property

Therefore, when each partner uses the חצר he is not benefiting from his partner's share at all.

יש ברירה
A means of retroactively deciding the nature of a past event

תנא קמא

אין ברירה

Each partner only owns half of the property, he merely has the rights to the use of his partner's half

Therefore, when each partner uses the חצר he is benefiting from his partner's share.

3 The Gemara also considers another way of understanding the Machlokes:

The תנא קמא generally agrees that יש ברירה, and therefore, ומדינא שרי, they would be allowed to continue using the חצר. However, as the Ran explains;

דרבנן סברי קנסין להו

ורבי אליעזר בן יעקב סבר דלא קנסין

The תנא קמא holds that they were penalized and forbidden by the Chachamim to use the חצר, so that we do not have to utilize ברירה to allow them to use the חצר.

And רבי אליעזר בן יעקב holds that we do not penalize them.

However, this explanation, and the קנס, applies only if נדרו הנאה זה מזה

Each partner made a נדר prohibiting HIMSELF from benefiting from the other. Therefore, the Chachamim penalized the מוודר to indeed be prohibited to use the חצר, because they brought this problem upon themselves.

However, in a case of

הדירו זה את זה

Each partner made a נדר forbidding the OTHER from benefiting from him; the Chachamim would not penalize the מוודר, because he did not bring this problem upon himself. He was forbidden to use the חצר by his partner.

However, according to the first explanation, the Machlokes would apply both in a case of

נדרו הנאה זה מזה

And in a case of

הדירו זה את זה

Because, they are both מעיקר בדין, because ברירה אין

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3 Another way of understanding the Machlokes. . .

רבי אליעזר בן יעקב

יש ברירה

לא קנסין

We do not penalize them

תנא קמא

יש ברירה

ואינא לי

However,

דרבנן סברי קנסין אבו

They are penalized and prohibited to use the חצר so that we do not have to rely on ברירה to allow them to use the חצר

This explanation, and the קנס, applies only if

נדרו הנאה זה מזה

Each partner made a נדר prohibiting himself

because

they brought this problem upon themselves

However, in a case of

הדירו זה את זה

Each partner made a נדר forbidding the other

there is no קנס,

because he did not bring this problem upon himself

However, according to the first explanation the Machlokes would apply to both cases

הדירו זה את זה and נדרו הנאה זה מזה

Because, they are both מעיקר בדין, because ברירה אין

4 The Gemara continues to delve into ברירה as it applies to our case; and makes a distinction between חצר שיש בה כדי חלוקה
A courtyard large enough to divide adequately - which means that after division they will each be left with an area of at least 4 Amos by 4 Amos;
AND
חצר שאין בה כדי חלוקה
A courtyard NOT large enough to divide adequately - which means that after division they will each be left with an area of less than 4 Amos by 4 Amos;
As the Ran explains;
The problem with applying ברירה is that we must retroactively apply a later determination of something which was not determined at the outset when the קנין was made.

5 However, a lesser ברירה needs to be applied in a case of חצר שאין בה כדי חלוקה
Than in a case of חצר שיש בה כדי חלוקה
As the Ran explains;
In a חצר שיש בה כדי חלוקה, at the time the partnership was formed it was not yet determined how they will use it. Actually, they will probably divide it, because it's more practical for each one to have a specific property. Therefore, now that they decided to keep it whole and use it in an alternating manner, we must apply a full ברירה and say הוברר הדבר למפרע; we retroactively determine that this property was meant to be used this way with each one owning the entire property while using it. Therefore, in this case, we would be more inclined to say אין ברירה

However, in a חצר שאין בה כדי חלוקה, at the time the partnership was formed it was clear that they will use it in an alternating manner, because it's too small to be divided. Therefore, we only need to apply a partial ברירה while each one is using it to say למפרע; we retroactively determine that at this time that he's using the חצר, it is entirely his property. Therefore, in this case, we would be more inclined to say יש ברירה

4

ברירה

<p>חצר שאין בה כדי חלוקה</p> <p>Each will NOT be left with an area of at least 4 by 4 Amos</p>	<p>חצר שיש בה כדי חלוקה</p> <p>Each will be left with an area of at least 4 by 4 Amos</p>
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As the Ran explains...

The problem with applying ברירה is that we must retroactively apply a later determination to something which was not determined at the outset when the קנין was made

5

However...

<p>A lesser ברירה needs to be applied in a case of חצר שאין בה כדי חלוקה</p> <p>יש ברירה</p> <p><i>At the time the partnership was formed it was clear that they will use it in an alternating manner</i></p> <p>We only need to apply a partial ברירה and say הוברר הדבר למפרע that at the time that he's using the חצר, it is entirely his property.</p> <p>Therefore, in this case, we would be more inclined to say יש ברירה</p>	<p>Than in a case of חצר שיש בה כדי חלוקה</p> <p>אין ברירה</p> <p><i>At the time the partnership was formed it was not yet determined how they will use it</i></p> <p>We must apply a full ברירה and say הוברר הדבר למפרע that this property was meant to be used with each one owning the entire property while using it.</p> <p>Therefore, in this case, we would be more inclined to say אין ברירה</p>
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As the Ran explains...

6 Based on this reasoning, we have the following Machlokes:

אמר רבה אמר זעירי
 מחלוקת כשיש בה כדי חלוקה
 Where the תנא קמא holds
 אין ברירה
 אבל אין בה כדי חלוקה
 דברי הכל מותר
 Because the רבי אליעזר בן יעקב תנא קמא agrees with רבי אליעזר בן יעקב that יש ברירה

However, רב יוסף אמר זעירי says
 מחלוקת שאין בה כדי חלוקה
 Where רבי אליעזר בן יעקב holds ברירה
 אבל יש בה כדי חלוקה
 דברי הכל אסור
 Because רבי אליעזר בן יעקב תנא קמא agrees with the תנא קמא that אין ברירה
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6 *Based on this reasoning, we have the following Machlokes...*

<p>רב יוסף אמר זעירי</p> <p>מחלוקת</p> <p>שאין בה כדי חלוקה</p> <p>תנא קמא רבי אליעזר בן יעקב</p> <p>אין ברירה יש ברירה</p>	<p>אמר רבה אמר זעירי</p> <p>מחלוקת</p> <p>כשיש בה כדי חלוקה</p> <p>תנא קמא רבי אליעזר בן יעקב</p> <p>אין ברירה יש ברירה</p>
<p>אבל יש בה כדי חלוקה</p> <p>דברי הכל אסור</p> <p>תנא קמא רבי אליעזר בן יעקב</p> <p>אין ברירה אין ברירה</p>	<p>אבל אין בה כדי חלוקה</p> <p>דברי הכל מותר</p> <p>תנא קמא רבי אליעזר בן יעקב</p> <p>יש ברירה יש ברירה</p>

7 We'll now go back and continue the Mishnah:

ושניהם אסורים להעמיד ריחים ותנור ולגדל תרנגולים
 Both the תנא קמא and רבי אליעזר בן יעקב agree that neither partner may set up a mill or oven, or raise chickens in the חצר. The Ran explains that since each partner has the right to object and prevent the other from using the חצר for one of the above uses, therefore, when he does allow it, the other partner is benefitting from him.
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היה אחד מהם מודר הנאה מחבירו
 If only one partner made a נדר prohibiting himself from benefitting from the other;
 לא יכנס לחצר
 רבי אליעזר בן יעקב אומר
 יכול הוא לומר לו
 לתוך שלי אני נכנס
 ואיני נכנס לתוך שלך
 This is basically a repetition of the original Machlokes, but it is repeated to teach the next Halachah:
 וכופין את הנודר
 למכור את חלקו
 The one who made the Neder is compelled to sell his part, because the Chachamim were concerned that he will become jealous of the fact that his partner has no restrictions while he does, and he will transgress the Neder and use the חצר.

The Gemara explains that this גזירה applies only to נדרו, where HE restricted himself, but does not apply to הדירו, because we cannot compel him to sell because his partner restricted him.
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7 *ושניהם אסורים להעמיד ריחים ותנור ולגדל תרנגולים*

As the Ran explains...
 Since each partner has the right to prevent the other from using the חצר for one of the above uses
 When he does allow it, the other partner is benefitting from him

היה אחד מהם מודר הנאה מחבירו

<p>רבי אליעזר בן יעקב</p> <p>יכול הוא לומר לו</p> <p>לתוך שלי אני נכנס</p> <p>ואיני נכנס לתוך שלך</p>	<p>תנא קמא</p> <p>לא יכנס לחצר</p>
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וכופין את הנודר למכור את חלקו

Because we are concerned that he will become jealous that his partner has no restrictions while he does, and he will transgress the Neder and use the חצר

הדירו

because we cannot compel him to sell because his partner restricted him

נדרו

where he restricted himself

8 The Mishnah continues:
 היה אחד מן השוק מודר באחד מהם הנאה
 If a stranger was forbidden by a Neder of one partner;
 According to the תנא קמא
 לא יכנס לחצר
 רבי אליעזר בן יעקב אומר
 יכול לומר לו
 לתוך של חבירך אני נכנס
 ואיני נכנס לתוך שלך
 =====

8 *משנה*

היה אחד מן השוק מודר באחד מהם הנאה

רבי אליעזר בן יעקב	תנא קמא
יכול לומר לו	לא יכנס לחצר
לתוך של חבירך אני נכנס	
ואיני נכנס לתוך שלך	

9 The Mishnah now teaches several Halachos of an individual owner - not partners:
 המודר הנאה מחבירו
 ויש לו מרחץ ובית הבד מושכרין בעיר
 If the מודר has a bathhouse or olive press leased out to a third person, may the מודר use it?
 It depends;
 אם יש לו בהן תפיסת יד
 אסור
 If the מודר retains a holding in it, the מודר may NOT use it.
 אין לו בהן תפיסת יד
 מותר

9 *Several Halachos of an individual owner...*

המודר הנאה מחבירו
 ויש לו מרחץ ובית הבד מושכרין בעיר
 If the מודר has a bathhouse or olive press leased out to a third person, may the מודר use it?

אין לו בהן תפיסת יד מותר	אם יש לו בהן תפיסת יד אסור
אפי"ל	רב נמיאן
אפילו בבציר אסור	למחצה לשליש ולרביע אבל בבציר לא

היכי דמי דשרי דמקבל בטסקא
 תפיסת יד A flat rental fee is not considered

There's a Machlokes in what is considered תפיסת יד
 According to רב נחמן
 תפיסת יד is למחצה לשליש ולרביע
 אבל בבציר לא
 He gets at least 25% of the income. Anything less is NOT considered תפיסת יד.

According to אב"י;
 אפילו בבציר אסור
 Any percentage of income is considered תפיסת יד

היכי דמי דשרי דמקבל בטסקא
 A flat rental fee is not considered תפיסת יד

The final Halachah of the Mishnah is explained in the next Daf.