



בס"ד Intro

Today we will בע"ה learn קס סך סך מסכת נדרים מסכת נדרים פו learn בע"ה Some of the topics we will learn about include.

We'll continue our discussion of שותפין שנדרו הנאה זה מזה

Partners who forbade each other to benefit from their property - The Mishnah lists various communal areas and determines which ones the partners may continue to use.

The Mishnah then offers practical solutions how a person can benefit from something that was forbidden to him through a נדר. Essentially, he needs to involve an intermediary, so that he will only benefit indirectly. The Gemara discusses how this may be done.

Through its discussion, the Gemara also references the following important ideas:

דבר של אותה העיר

Municipal property is owned collectively by all of the residents of a city, and can only be sold with their agreement. Therefore, when one uses city property he is benefiting from every individual's share.

מתנה על מנת להחזיר שמה מתנה

A gift is valid even if it's given with the condition that the recipient must eventually return it. If the owner has no intention of giving the item away, even for a specific period of time, then it's a

הערמה, a ploy to take advantage of a legal technicality, and the gift is not valid.

The criterion we use to decide the validity of the gift is whether the recipient has the ability to be מקדיש it.

קני על מנת להקנות

It's possible for someone to own something only in the sense that they have certain rights to its usage. The Gemara debates whether one can sell something קני על מנת להקנות

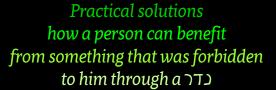
So that the recipient owns the property only insofar that he will sell it to another.

קנין סודר

A purchase only becomes legally binding when done with a proper קנין, an act that has the power to effect a transaction. A method commonly used is חליפין

Exchanging one object for another - This is sometimes done with a סודר, a kerchief that the buyer gives to the seller. His objective is not to actually exchange the סודר for the property, but merely to use it symbolically to affect the purchase. The Gemara debates whether the סודר does, in fact, become his.













So let's review...

## Zugt di Mishnah:

If someone says;

הריני עליך חרם

המודר אסור

The מודר may not benefit from the גודר.

This is an acceptable form of גדר, because it is understood to mean that YOU shall be forbidden to benefit from ME, as from

הרמי בדק הבית, objects sanctified for use in the בית המקדש. Similarly, if someone says;

הרי את עלי חרם

הנודר אסור

The מודר may not benefit from the מודר.

## If he says

הריני עליך ואת עלי

שניהם אסורין

They are both prohibited to benefit from each other.

## The Mishnah continues;

ושניהם מותרין בדבר של עולי בבל

They both may benefit from

דבר של עולי בבל

Which the Mishnah describes;

ואיזהו דבר של עולי בבל

כגון הר הבית והעזרות

והבור שבאמצע הדרך

These are areas that were set aside for public use, and include

The Har Habayis,

The courtyard of the Beis Hamkidash, and

The water cisterns that were used by the עולי רגלים

Since each individual only has the right to use these places, but does not actually own a share in them, the מודר is not deriving benefit from the מדיר.

## However,

ואסורים בדבר של אותה העיר

They may NOT benefit from the communal areas, which the Mishnah describes;

ואיזהו דבר של אותה העיר

כגון הרחבה והמרחץ

ובית הכנסת והתיבה והספרים

The town square, bathhouses, and the Shul and its contents;

Since these areas are jointly owned by all of the residents of the city as partners, the מודר IS deriving benefit from the מודר.





Dedicated By: \_





The Mishnah continues:
The only way to benefit from these items is
כותב חלקו לנשיא

The מדיר writes over his portion in the communal assets to the Nasi. This way, the מודר benefits from the Nasi, NOT from the מדיר

רבי יהודה אומר אחד כותב לנשיא ואחד כותב להדיוט שהכותב לנשיא אין צריך לזכות להדיוט צריך לזכות

While he can theoretically give his share to anyone, R' Yehuda says the advantage of giving it to the Nasi is that it is effective immediately upon writing the document. However, if he gives to a קנין, they must make a קנין.

וחכמים אומרים אחד זה ואחד זה צריכין לזכות לא דברו בנשיא אלא בהוה

The חכמים disagree, and maintain that even the Nasi must make a קנץ. However, the Mishnah referred to a Nasi simply because he was the usual, trustworthy choice.



רבי יהודה אומר אין אנשי גליל צריכין לכתוב שכבר כתבו אבותיהן על ידיהן שכבר כתבו אבותיהן על ידיהן אנשי גליל קנטרנין היו והיו נודרין הנאה זה מזה עמדו אבותיהם וכתבו חלקיהן לנשיא











The next Mishnah continues;

המודר הנאה מחבירו

ואין לו מה יאכל

If someone is prohibited by a נדר to benefit from his friend, and he does NOT have what to eat;

נותן לאחר לשום מתנה

והלה מותר בה

The מדיר may give food to another person as a gift, and that person in turn may give the food to the מודר, because the מודר benefits from the other person, NOT from the מדיר.

The Ran points out that this Halachah was already taught in the Mishnah on דף מ"ג. However, it is repeated here to teach that which the Gemara says that this is only permitted if the gift is given sincerely. However, אם הוכיח סופו על תחילתו

אסור

If he later says something that indicates that he never really intended to give it away, it is forbidden, because it is only a הערמה, a tactic to avoid the Halachah, and the gift is not effective.









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This is learned from a story which the Mishnah relates: מעשה באחד בבית חורון שהיה אביו מודר הימנו הנאה

והיה משיא את בנו

A father was forbidden to benefit from his son, but the son wanted to invite his father to his son's wedding.

ואמר לחברו

חצר וסעודה נתונים לך במתנה

והינן לפניך אלא כדי שיבא אבא ויאכל עמנו בסעודה

He said to a friend, I am giving you the courtyard and the entire wedding feast as a gift, but only so that my father can participate.

אמר אם שלי הם

הרי הם מוקדשין לשמים

The friend was מקדש all the food.

He protested and said;

א"ל נתתי לך את שלי

שתקדישם לשמים

Did I give it to you for the purpose of being מקדש it? Upon which the friend answered;

אמר לו נתת לי את שלך

אלא שתהא אתה ואביך אוכלין ושותין ומתרצין זה לזה

ויהא עון תלוי בראשו

Did you give it to me only to circumvent the Neder - which would not be effective - and the sin will then be on my head?

Regarding this incident;

אמרו חכמים

כל מתנה שאינה שאם הקדישה תהא מקודשת

אינה מתנה

A gift that does not allow the recipient to be מקדש it is not effective.

This incident is an example of הוכיח סופו על תחילתו

The end of his statement clearly indicated that he never intended to give it away. Therefore, אסור, it's forbidden, because it is only a הערמה, a tactic to avoid the Halacha, and the gift is not effective.





Dedicated By: \_





This is certainly true if he says
והינן לפניך אלא כדי שיבא אבא
דהוי תנאי גמור
דהוי תנאי גמור
It's clearly a stipulation;
However, according to one version, if he said
שיהו לפניך שיבא אבא
מדעתך הוא דא"ל
As the Ran explains;

דלאו תנאה הוא ומתנה גמורה היא אלא דאי בעי עביד הכי

In this case it's not a condition, but a request for the recipient to invite the father.

According to the second version, even these words indicate a תנאי, because סעודתו מוכחת עליו

One does not unconditionally give away such a lavish feast.

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A man had two sons, one of whom was not behaving properly, and he initially wanted to cut him out of the inheritance. After reconsidering, he said; ליקני הדין איקני הדין ואי הואי בר ברי צורבא מרבנן לקנייה He shall acquire it only to the extent of eventually passing it on to my grandson - if he will be a Talmid Chacham. The חכמי פומבדיתא ruled

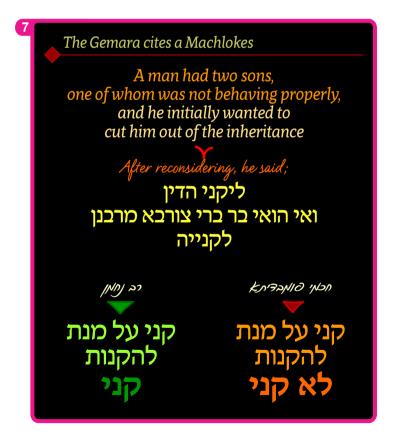
The Gemara cites a Machlokes in the following incident:

תכני פומבדיתא ruled קני על מנת להקנות לא קני He did not acquire it at all. רב נחמן ruled

קני על מנת להקנות הוי

رادر

He did acquire it to the extent of passing it on to his son.









The Gemara first wants to prove קני על מנת להקנות

קני

From the Halachah of a typical קנין סודר

The seller symbolically exchanges the item being sold with the buyer's kerchief. Here too, the סודר is given to the seller only as a means to affect the sale, yet it is קני?

The Gemara differentiates in two ways:

1.

... ומאן לימא לן דסודרא אי תפיס ליה לא מיתפיס Perhaps the סודר is also part of the sale, and the seller may indeed keep it. If so, it's not merely קני על מנת להקנות.

2.

Even if he may not keep it, it is קני מן השתא

The קנץ is effective immediately.

However, in this case the father's intention is for the grandson to inherit only at a later date, and at that point מדרא למריה, it's too late for the קנין to take effect.

The Gemara first wants to prove

קנין על מנת להקנות קני

from the Halachah of

קנין סודר

The 170 is given to the seller
only as a means to affect the sale

The Gemara differentiates

[2]

Even if he may not keep it קני
אי תפיס ליה קני
אי תפיס ליה קני
לא מיתפיס?

However, in this case the father's intention is for the grandson to inherit only at a later date

The Gemara next wants to prove קני על מנת להקנות לא קני על מנת להקנות לא קני א קני על מנת בית חורון From the case of מתנת בית חורון Where the Mishnah rules that the gift is not effective - we see 'לא קני?









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Rav Nachman points out two differences:

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As we said earlier, סעודתו מכוחת שליו, we see from the context of the story that he never meant to affect a קנין at all.

2.

Alternately, we find that the Halachos of נדרים have other stringencies. Therefore, although generally קני על מנת להקנות

קני

Regarding Nedarim we're מחמיר, and קני על מנת להקנות, קני על מנת להקנות

לא קני

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הדרן עלך השותפין

We have B"H completed the Fifth Perek of מסכת נדרים, and will begin the Sixth Perek, הנודר מן המבושל, in the next Daf, B'ezras Hashem.





