

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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SHIUR #21: THE PROHIBITION OF *BAL YACHEL*

The Torah, (*Bamidbar* 30:3) describes the violation of a *neder* as a defilement of a halakhic declaration: “*lo yachel devaro*.” If the violation of a *neder* occurs through activity (i.e., a person “prohibited” an item through a *neder* and then actively drew benefit from the banned item), *malkot* are administered. Is the problem of *bal yachel* then, primarily a prohibition of defiling a previous commitment?

This question is pivoted on a famous debate surrounding a scenario in which there is difference between the author of the original *neder* and the active **violator** of the *neder*. If Reuven bans Shimon from benefit of his item and Shimon partakes, who violates *bal yachel*? The Rambam (*Hilkhot Nedarim* 10:12-13) claims that the author of the *neder* violates the prohibition and is even liable for *malkot* if he plays an active role in the transgression, such as feeding the second party. This confirms the notion that the *issur* consists of “defiled” declarations. As the author of the declaration, one is liable when that commitment is broken, even if it was not through his own primary action.

By contrast, many other *Rishonim* (cited by the Ran, *Nedarim* 15) claim that the second party is guilty, since that second party drew benefit from the prohibited item. Evidently, in their view, the violation of *bal yachel* is not primarily a defilement of a declaration, but rather defined as partaking of prohibited items. Although the Torah articulates the prohibition through a term that connotes violation of **speech**, the core of the prohibition consists of partaking of a “personally” banned item. A *neder*, in particular affects the halakhic status of the item, creating an “*issur cheftza*” (an item that is inherently prohibited); partaking of such an item violates *bal yachel*. Consequently, the partaker – and not the author of the declaration – is in violation.

This fundamental question regarding the nature of *bal yachel* affects multiple details surrounding the prohibition. Would *bal yachel* apply to a banned item that was not verbally prohibited? If *bal yachel* consists of violating a declaration, perhaps it should not apply in such a case. If, however, *bal yachel* entails partaking of a forbidden item, perhaps it should. A rare application of this question surrounds a *nazir* who verbally declares abstinence from wine. As stated in a [different shiur](#), the nature of *nezirut* determines that one who makes such an oath is transformed into a complete *nazir*, who is prohibited not only from drinking wine, but also from contacting *tuma* and removing hair (at least according to the Rabbanan cited in the *mishna*, *Nazir* 3b). The *Minchat Chinukh* questions whether, in such a case, *bal yachel* would be violated through *tuma* contact or hair removal. Even though these are halakhically banned, they were not part of the original verbal declaration. This question spotlights the above stated query surrounding *bal yachel*. If *bal yachel* entails violation of a verbal declaration, perhaps the *Minchat Chinukh* is correct that items forbidden without direct formulation would not yield *bal yachel* violation.

What about a converse situation, in which violation of a declaration occurs without partaking of a banned item or experience? For example, if a person articulates a *neder* that he is incapable of fulfilling, has *bal yachel* been violated? Based upon a peculiar syntax in *Nedarim* 15, Tosafot (*Shavuot* 29a, s.v. *ba-omer*; *Gittin* 35a, s.v. *ve-noderet*) claim that this *neder* is in immediate violation of *bal yachel*; *malkot* is administered immediately. For example, if a person takes a *neder* not to sleep, he violates *bal yachel* and receives *malkot*. Then – ironically – he may immediately sleep without further *bal yachel* violation and without attempting to execute the impossible. Presumably, these positions view *bal yachel* as a violation of verbal declaration and **not of** partaking of a banned item or experience. If the latter were true, *bal yachel* would not be violated until the person actually slept. Since, however, *bal yachel* entails violation of asserted oaths, it may be instantly violated when stipulated about an impossibility. (This is the approach adopted by R. Elchanan Wasserman, *Kovetz He'aros* 18:2.)

A parallel case of a *neder* that does not obligate further adherence but may be in violation of *bal yachel* presents in an interesting position of the Rambam. The *gemara* in *Nedarim* (20b) delineates four “fraudulent” *Nedarim* that are not accompanied by corresponding intent. For example, a “*neder ones*” that was articulated to escape illegal persecution, was not taken

earnestly and therefore does not mandate compliance. Similarly, a “*neder zeruzin*” was not taken with sincere intent; a potential guest, having been invited but sensitive not to overburden a host, takes a “flamboyant” *neder* that he won’t derive benefit from the potential host. Without corresponding intent, the *neder* is vacant and no compliance is necessary. Amazingly, however, the Rambam comments that although no compliance is demanded, *bal yachel* has been violated in these cases! This scenario is so peculiar that many claim that is only a Rabbinic violation of *bal yachel*. If the Rambam does intend a Biblical violation, this case would constitute an additional example of a non-binding *neder* in violation of *bal yachel*. This would strongly support the notion that *bal yachel* entails violation of a verbal declaration, as opposed to failure to comply with the *neder*’s mandate. This *neder* has no halakhic validity no compliance is necessary and yet since the verbal declaration was immediately untrue, *bal yachel* has been perpetrated.

Interestingly, this logic would reflect consistency in the Rambam's position that *bal yachel* entails violation of a verbal oath. As discussed above, the Rambam maintains that the author of an oath violates *bal yachel* when the person described in the oath partakes of the forbidden item. The author is responsible for the violation of the declaration since it was **his** statement.

An additional manifestation of *bal yachel*'s nature may be the question of *hitztarfut*, fusing two different *nedarim* into one *bal yachel* violation. A *neder* banning eating is only violated if a *kezayit* is consumed. That *kezayit* can be consumed from one singular *neder*-banned item, or alternatively may be assembled from particles of different *neder*-banned items. As the *gemara* in *Shavuot* (22a) asserts, “*shnei konamot mitztarfin*” – two different *neder* items can combine to produce one *kezayit* with *malkut* liability. Presumably, if *bal yachel* entailed violation of a verbal declaration, the *kezayit* would only constitute violation if it came from one item. Since different *neder* items were designated by different verbal oaths, each declaration is independent and self-contained; only a *kezayit* from each independent item would constitute verbal violation of the original declaration. By contrast, if *bal yachel* consists of partaking of prohibited items, a *kezayit* could be aggregated from multiple items, all of which are forbidden under the same rubric of a *neder*.