

שבת קודש פרשת משפטים | מסכת נדרים דף יז'

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## INSIGHTS FROM OUR CHABUROS

### A second nezirus applying upon a first nezirus

אין חלה נזירות על נזירות

**R**ambam (Hilchos Shevuos 4:10) rules that if a person vows that he will not eat that day, and he then declares another oath that he will never eat a particular loaf, and he eats the loaf on that day, he is liable for only one violation. The ראב"ד questions this ruling of Rambam, as he notes that the first oath only covered prohibiting the loaf for that one day. The second oath added to that restriction, as it prohibited the loaf for all subsequent days, as well. Why, then, is the second oath not binding?

Kesef Mishnah and Radbaz explain the opinion of Rambam. Usually, we do not allow one violation to add to a second violation — אין איסור חל על איסור. One situation where this is allowed, however, is where the second sin adds to the first condition (איסור כולל), which is apparently happening here, as the person is extending the prohibition to beyond that first day. Rambam, however, holds that a situation only qualifies as being an additional step when more prohibitions are added during the very time during which the original state of restriction is in effect. Here, the second oath does nothing to change the first statement. The speaker is merely adding more days to the איסור beyond the first day, but the situation for the first day itself remains unchanged. Therefore, no additional restriction is being placed upon the first limitation, and we are only left with the first oath.

Our Gemara teaches that everyone holds that if a person says, "I will be a nazir today," and then he says, "I will be a nazir tomorrow," both oaths are valid. ר"ן explains that after the first nezirus is finished on the thirtieth day, he will then observe one more day for the second nezirus which was declared to begin a day after the first one. However, this second nezirus only has a one-day observance, while the minimum time for any nezirus is thirty days. Therefore, the person must actually observe a full thirty day nezirus for the second oath beginning with that day (day 31).

The קרן אורה asks that the second commitment has an element of כולל, as it encompasses the first nezirus and it adds an additional day. Why, then, can't the second vow to be a nazir apply concurrently with the first nazir period, and then extend one extra day, rather than require its own full thirty days, only beginning on day 31? We should note that this question is only valid according to ראב"ד, who explains that איסור כולל applies in this circumstance. However, according to Rambam this is not an איסור כולל, as the additional day of the second nezirus has no effect upon the existing nezirus.

## POINT TO PONDER

**The גמרא says** in connection with המצות על לעבור that we need two פסוקים, one is to exempt him from the לאו and the other to exempt him from a קרבן. Since what triggers the obligation to bring a קרבן is לאו and we have a פסוק that the לאו doesn't apply, why would we need another פסוק for the קרבן?

### Response to last week's Point to Ponder:

The Mishna says "קונם סוכה שאני עושה", why is this considered a נדר on a מצוה? The חיוב is to sit in a סוכה but he doesn't have to build a סוכה?

The assumption is that he means to make a vow against sitting in the סוכה but he expressed it in terms of making a סוכה. The חידוש is that we don't say that his words don't match his intent. (See שלמי נדרים).

## STORIES OF THE DAF

### The chain of oaths

שבועה שלא אוכל שבועה שלא אוכל

**A** certain person had a bad middah and wished to uproot it. He heard of one path that reputedly worked and wanted to try it. The path is suggested by Ba'alei Mussar to this day and is often very effective. The tool is that one must pay a small fine for every misdemeanor until the bad behavior is eradicated. Unfortunately, the man actually made a שבועה saying, "I swear that every time I do such and such, I will pay a penny to tzedakah."

The man was not wealthy and immediately regretted his rash act. Not surprisingly, he found it very hard to stop. The very first time he fell in this regard he decided to go to a Rav and express his regret. "I would never have made the שבועה if I had realized how challenging it would be to have it annulled!"

The Rav decided to approach was the Maharam, זת"ל. The Rav answered, "I am not sure at all that you can be released from your oath since it does not take effect until you violate it. Although it is possible that once the Chacham annuls it once, the שבועה is nullified entirely, it is also possible that only that time is annulled but not the oath itself, which would remain in force. Perhaps you need to go to a Chacham every time you violate it!"

The Maharam Minz, זת"ל, explained, "He means that perhaps this is similar to the Gemara in Nedarim 17 which describes the case of one who makes a שבועה not to eat something and then makes another one regarding the same object. The second oath doesn't take effect unless he annuls the first. Similarly, since he explicitly said 'every time,' perhaps he created a chain of many שבועות waiting to take effect, one after another. If that is the case, there is no recourse but to ask a שאלה about each one as it comes. On the other hand, perhaps it counts as only one oath. In that case, once one asks about even one time it is completely uprooted."

The man was left without a lasting היתר. It is not surprising that Chazal exhorted us to steer clear of making nedarim. They are very hazardous and can cause great difficulty!

## HALACHA HIGHLIGHT

### An oath to transgress a Rabbinic mitzvah

יצא נשבע לבטל את המצוה

*Thus excludes one who took an oath to transgress a mitzvah*

**S**hulchan Aruch<sup>1</sup> rules that an oath (שבועה) that was taken regarding a Rabbinic mitzvah is binding. Thus if a person takes an oath that he will not light Chanukah candles or he will not read the megilla, the oath is in force. Similarly, if a person takes an oath to fulfill a Rabbinic mitzvah he is in violation of his oath if he does not fulfill that mitzvah. Additionally, those mitzvos that, although are Biblical, are derived from expositions rather than explicit pesukim, are treated the same as Rabbinic mitzvos and an oath taken that pertains to this category of mitzvah is also binding. Thus, for example<sup>2</sup>, if one takes an oath to not study Torah the oath is binding since one fulfills his obligation to study Torah with the recitation of Krias Shema in the morning and evening. The additional obligation to study is derived by an exposition and is therefore subject to a vow. Shulchan Aruch<sup>3</sup> concludes with one qualification to all these halachos, and that is that the oath is binding only if it is to fulfill or not fulfill a mitzvah but if the oath is to violate a mitzvah, even if the mitzvah is only Rabbinic, it is not binding.

Shach<sup>4</sup> challenges this last qualification from an earlier ruling. How can Shulchan Aruch rule that one cannot take an oath to violate even a Rabbinic mitzvah when earlier Shulchan Aruch<sup>5</sup> ruled that one who takes an oath to eat less than a kezayis of neivlah is responsible for his oath? These ruling seem contradictory. One resolution suggested by Shach is that Rabbinic matters are treated more stringently than Biblical matters that are derived from Biblical exposition. Another resolution is that the ruling that the oath does not apply does not mean that it is to be completely disregarded rather it means that we force the vower to have the oath annulled. As a matter of practical halacha Aruch Hashulchan<sup>6</sup> rules that in all cases one should annul an oath that involves transgressing a prohibition or restricts one from fulfilling a mitzvah.

1. שו"ע י"ד סי' רל"ט ס' ו'
2. ע' צחידושי רעק"א שם בשם הר"ן
3. שו"ע שם
4. ש"ך שם סק"ב
5. שו"ע שם סי' רל"ח ס' ד'
6. ערוה"ש שם ס' ל"ד

## MUSSAR FROM THE DAF

### Creating Shleyumus through eating

תלמוד לומר: "להרע או להיטיב". מה הטבה רשות, אף הרעה רשות. יצא נשבע לבטל את המצוה ולא ביטל – שאין הרשות בידו!

**T**he Gemara teaches us from the the possuk (Vayikra 5, 4) that just as the term הטבה refers to actions that are discretionary, so too the word להרע refers to actions that are optional. This interpretation excludes someone who makes a vow to transgress a מצוה, since fulfilling a מצוה is not optional. Rather, we are obligated to keep מצוות, and thus a vow to violate a מצוה does not trigger the obligation to bring a קרבן. Rashi explains that the discretionary action is referring to eating.

The Ohev Yisrael (in Likutim) explains the possuk in Yermiyahu 4:22, חכמים המה, להרע או ולהיטיב, based on the pasuk our Gemara quoted: להרע או ולהיטיב, which is referring to eating. He explains that the pasuk in Yermiyahu is telling us that it is understood how to create shleyumus through the mida of להרע (which is achieved through fasting) However, through the mida of ולהיטיב (which refers to eating), people don't know how to create shleyumus. What does the Ohev Yisrael mean by this?

The Magen Avraham (in Shulchan Aruch Siman תקע"א) writes that if a person holds themselves back in the middle of a meal while still having a ta'ava (desire), this can be viewed as a great סיגוף (self-affliction or self-denial). While it is certainly true that having a ta'anis (fast) serves as an atonement, the Magen Avraham teaches that if one holds back in the middle of a meal, one can achieve even greater levels of spiritual growth. (Ayin Rabbeinu Yonah Yosede HaTeshuva where he discusses Taynis HaRayvid)

Preishus (asceticism) is certainly admirable and difficult. Yet, if one can hold back while in the middle of satisfying one's ta'avahs, it requires an even greater effort. We see this clearly in other areas of life. It is much easier to abstain from things that are inherently dangerous (such as drinking or smoking) than it is to partake in a permissible pleasure, but to do so in a holy and moderate way.

This is the explanation of the Ohev Yisrael. He is teaching us that creating shleyumus through eating is not a simple matter; it takes a deeper level of restraint and self-control.

## PARSHA CONNECTION

**In this week's daf** the Mishna נדר בתוך נדר which the ר"ן explains is a double נדר and uses the term כפל to describe it. The term כפל is also found in פרשת משפטים with respect to a גנב who pays back double the amount that he stole. The פסוק says: כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ כֶּסֶף אֶל־כֻּלָּם לְשֹׁמֵר וּגְבוּל מִבֵּית הָאִישׁ פָּסוּק: "If one gave his friend money or vessels to watch and they were stolen etc.. if the thief is found he pays two." The אלשיך הקדוש offers a beautiful insight into this פסוק by suggesting that in addition to the literal meaning of the words, there is an additional important message in these words as follows: אִישׁ refers to הקב"ה and רֵעֵהוּ refers to ישראל. כלל ישראל is teaching us that when הקב"ה gives someone money, it is לשמור meaning it's his responsibility to act as a fiduciary over these assets on behalf of הקב"ה who gave him money so that he can support the needy. If he sees that the money is gone, he should try and figure out what he did wrong which caused הקב"ה to take away the פקדון.

Since a גנב pays back what he stole, why does he need to double it? The אלשיך explains that it's כנגד מידה, his intent was to enrich himself by the amount of the גנבה, for example \$100 and to make his victim \$100 poorer, therefore to reverse his intention, he pays \$200 resulting in his now becoming \$100 poorer and his friend becoming \$100 richer than he was before the theft.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, [dafaweek.org](http://dafaweek.org), or download the app

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