

שבת קודש פרשת כי תבוא | מסכת נדרים דף מו'

**INSIGHTS FROM
OUR CHABUROS**

**In which case does the partner have to
sell his portion of the yard?**

וכופין את הנודר למכור את חלקו

The Mishnah presents the case of two people who own a yard in partnership, but then one of them, Reuven, pronounces an oath to restrict Shimon, his partner, from receiving benefit from him. The halacha is that the one who declared the neder must sell his portion in the yard. The Rishonim discuss how to understand this halacha, when we require a sale, and who it is that must sell his portion. Ramban and ר"ן learn that the case is where the neder of Reuven was that he prohibited upon himself to benefit from Shimon. Now that Reuven cannot enter the yard, we are afraid that he will not observe this restriction carefully, and we therefore penalize him by instructing him to sell his portion in the yard so that he will not come to enter the area of his friend which is now prohibited. However, if Reuven had declared in his neder that Shimon may not benefit from him, we do not issue a penalty against Shimon to sell out, because although Shimon may not enter the part of the yard that is not his, Shimon did not create the problem. ר"ן adds that in case Reuven prohibits benefit upon Shimon, we also do not penalize Reuven to sell his own portion to minimize the risk that Shimon will violate the neder. Although Reuven caused the problem for Shimon, we only penalize a person who causes a risk for his own self. Therefore, the case is where Reuven declared that he himself may not benefit from Shimon's property.

Rambam (Hilchos Nedarim 7:5) learns the case in the Mishnah as the reverse of the case as stated by ר"ן. The case where Reuven must sell out his portion is where he declared that Shimon may not benefit from him. In this case, Reuven has caused an obstacle for his neighbor, Shimon, and as long as Reuven remains living there, Shimon is at risk of entering his land. Therefore, we compel Reuven to sell his portion of ownership and to move away so as to no longer threaten Shimon. If, however, Reuven prohibited upon himself to benefit from Shimon, Reuven must deal with his own limitations, and we do not impose upon him any requirements to sell out. Rosh (סימן א') and Tur (Y.D. #226) explain that the case of the Mishnah which requires that Reuven sell his portion of the yard is dealing with either case. Whether Reuven prohibits benefit to Shimon or from Shimon, in either case we demand that Reuven sells his partnership in the land. When he cannot receive benefit we are afraid that he might lapse and enter the forbidden area, and when Shimon cannot benefit from Reuven, we are concerned that Reuven not pose a threat to Shimon on a regular basis.

PARSHA CONNECTION

In this week's daf the גמרא, discusses a חלוקה שיש בה כדי חלוקה, meaning that this property is large enough, so that it can be split amongst the two partners leaving each of them a useable property. The concept of חלוקה is related to the mitzvah of ביכורים as רש"י writes on the possuk that this mitzvah starts only after Bnei Yisrael captured and divided Eretz Yisrael to the various tribes. This is in contrast to מעשר for example which started right away. (See קידושין דף לו'). We read פרשת כי תבוא every year before ראש השנה and the primary reason given is that the קללות are meant to remind us to do teshuva. But is there also a connection between ביכורים, קללות, and ראש השנה? Harav אדם הראשון in his ספר חומת אנך writes that perhaps the mitzvah of ביכורים is meant as a כפרה for the sin of אדם הראשון. Rashi in בראשית writes that אדם was cursed as a result of his sin the land was cursed. By bringing ביכורים we are expressing our appreciation and correcting the sin of being a טובה. By saying thank you we avoid, the tragic consequences that befell אדם הראשון which is represented by the קללות which follow in the parsha. In addition the מדרש תנחומא writes that when people brought ביכורים a קול used to announce "הבאת ביכורים כן תזכה לשנה הבאה" (see רש"י פסוק טז). By reading both ביכורים and the קללות and acknowledging all of the goodness that we received from the Hashem, will hopefully merit the same bracha of לשנה הבאה!!

**STORIES
OF THE DAF**

**Dividing up
a synagogue**

**הרי בית הכנסת כדמי שאין
בו כדי חלוקה דמי**

There was a certain shul in which two groups of mispallelim were not getting along. One of the groups decided to break away from the main group. However, money was short and the group which was splitting off wished to arrange a halachic sale of the shul and divide the proceeds with the rival faction in an equitable way based on the number breaking off. The main group categorically refused. They exclaimed, "Who ever heard of a splitting up a shul to accommodate one of its groups! Even breaking away from the main group of a shul is a halachic question. Why should we have to pay for this?"

They decided to ask a local Rav and were told that they definitely did not have to sell. He answered, "Although the Maharshdam, zt"l, discusses the question of dividing a shul at great length, the Knesess Hagedolah states that this is not a question at all. There is a clear gemara in Nedarim 46b which makes this a non-issue. The Gemara states clearly that a beis hakeneses doesn't have a law of chalukah. Obviously the halachah is that we don't divide a shul." However, when Rav Yisrael of Shklov, zt"l, consulted the Chasam Sofer, zt"l, regarding a similar question, he disagreed. "There is no proof whatsoever from Nedarim 46, since there the Gemara is discussing dividing someone's seat in shul—something that physically cannot be divided into two for it only suffices for one person. A shul is certainly not in this category. So the Gemara has no bearing on the question!"

HALACHA HIGHLIGHT

Retaining one's name on a building that was sold

קונם בית זה שאני נכנס

"Konam that I will enter this house."

There was once a Torah institution that made plans for a major expansion project which would render the old building unusable and it would either be torn down, sold or converted into apartments. This raised the question of what should be done regarding the name of the old building. A family had paid money to have their name on the old building and even had a contract that stipulates that they bought the right to the name of building forever, לעולם ועד. Since the administrators already had people prepared to donate significant funds to put their name on the new building, the question was whether the first family has any rights to put their name on the new building.

The Shevet HaLevi¹ addressed a number of issues involved in this inquiry and one of them was the contract between the institution and the first family granting rights to the family to put their name on the building forever. Shevet Halevi ruled that it is obvious that the stipulation is in force only as long as the building still serves its purpose. Once the building falls, is sold under permissible conditions or becomes too small to serve its purpose the family loses their rights. This is similar to the ruling in our Mishnah that if a person declares, "Konam that I will enter this house," he is prohibited to enter the house even if the owner dies or the house is sold but once the house is torn down he may derive benefit from a new house that is built on that same location.

Shevet Halevi takes note that although the physical structure of the building donated by the first family will not last forever, their merit for bringing the institution into existence will last forever. Therefore, it is proper and upright (כן הדין והיושר) for the institution to transfer the name of the first family onto the new building, subject to the following condition. If by transferring the first family's name to the new building other benefactors will refrain from donating the needed funds for the new building, it is not necessary to transfer their name.

1. שו"ת שבט הלוי ח"ט סי' ר"ה

REVIEW AND REMEMBER

1. What is the underlying dispute between Chachamim and R' Eliezer ben Yaakov?
2. When does property prohibited by a vow remain prohibited even after the vower died?
3. What size property is considered כדי חלוקה?
4. Explain the dispute between R' Nachman and Abaye concerning the definition of תפיסת יד.

MUSSAR FROM THE DAF

Unique abilities

הרי בית הכנסת, דכמי שאין בו כדי חלוקה דמי, ותנן: שניהן אסורין בדבר של אותה העיר

"A shul belongs to the entire public and is therefore considered like a courtyard in which there is not sufficient area in it to be divided, and we learned in a mishna later in the chapter (48a) both are prohibited from deriving benefit from an entity belonging to that city such as a synagogue.."

The Ran on daf 48 raises a kasha on the Rambam. In Perek 7 of Hilchot Nedarim, the Rambam rules like R' Eliezer ben Yaakov: in a case where two people make a neder (vow) not to benefit from each other regarding a courtyard that cannot be divided, R' Eliezer ben Yaakov holds that they can both benefit from that house.

However, the Rambam also rules that in the case of a בית הכנסת, which is considered שאין בו כדי חלוקה דמי, if two friends make a neder to forbid each other from entering, it is indeed prohibited for them to enter.

Why the difference? Why, regarding a house, is the neder not effective, but regarding a shul, it is? It seems that in the case of a house, the limitation is primarily physical: there simply may not be enough space for both to claim exclusive rights. In contrast, a shul is communal property; no one has an exclusive claim to a particular area. Nevertheless, even in communal spaces, there is a concept that each individual still has some level of ownership or influence—over their seat, etc. From this, we can derive a profound lesson about one's service of Hashem. While there is a central, unifying, communal way in which we all serve Hashem, each person also has a unique expression of that service. Just as one has some "personal domain" even within a communal space, each person can serve Hashem in their own distinctive way, contributing their individual spark to the collective service.

One must not merely follow whatever the tzibur does. Rather, one needs to constantly examine their unique abilities (kochos) and determine how to use them to carve out their own role in serving Hashem, fulfilling their personal mission within the communal framework.

POINT TO PONDER

The Gemara says suggests that our Mishna is talking about a case where the חצר is divisible. If that's the case, than why would the Mishna write that we force the נודר to sell his half? Let them divide it.

Response to last week's Point to Ponder:

The ר"ן brings the הלכות נדרים in רמב"ם who writes that רמב"ם must be in front of three people. Why would the רמב"ם put this in הלכות נדרים; this is a monetary question which belongs in הלכות משפטים?

The Rambam writes that הפקר is like a נדר regarding חזרה, which means that one is not allowed to go back on a הפקר declaration. (See also חושן ח"מ סימן ער).

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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