



שבת קודש פרשת נצבים | מסכת נדרים דף מז'

INSIGHTS FROM OUR CHABUROS

Exchanged items (חליפין) of prohibited benefit

אמר קונם פירות האלו על פלוני מהו בחלופיהן ובגידוליהן

Tosafos and ר"ן write that the question of Rami bar Chamma is not only in reference to fruits which are prohibited due to an oath, but his inquiry is in regard to all cases of forbidden benefit in the Torah (איסורי הנאה). Does the prohibition of benefit apply only to the item itself which is אסור, or does it apply to any items exchanged for it as well. The proof that this matter applies to all cases of איסורי הנאה is from the Gemara itself, which references a case of betrothing a woman with fruits of ערלה, which is a general prohibition and not a case of a neder.

Rambam holds that there is a difference between items prohibited due to oaths and those which are general cases of prohibited benefit. If a person sells a meat/milk mixture, Rambam rules (Hilchos Ma'achalos Asuros, 8:16) that the money is permitted, even for the person who sold it herself. On the other hand, in reference to oaths (Hilchos Nedarim 5:16), he rules that if Reuven declares his fruit to be prohibited upon Shimon, there is a doubt whether any fruits exchanged or which subsequently grew from these are also prohibited. In other words, Rambam holds that the question of Rami bar Chamma remains unresolved. And this is despite his having ruled that exchanged items for standard cases of איסורי הנאה are permitted. Obviously, Rambam holds that the cases are distinct. Lechem Mishnah asks how Rambam would understand our Gemara which brings a case of ערלה in reference to the question of neder, and Lechem Mishnah leaves this unanswered.

The ביאור הגר"א (O.C. 433:#3) explains how Rambam understood our Gemara (47b) which brings the halacha of ערלה in reference to neder, although Rambam holds that the cases have different rules regarding exchanges. The Gemara originally felt that it could prove its point by citing the rule by ערלה, where the money obtained by selling it is permitted. However, the Gemara rejects this proof. The words of the Gemara are בד עבד עבד, ואי עבד דלא, הכא נמי לכתחילה הוא דלא, ואי עבד עבד. Rambam understood that regarding neder, the exchanged items are prohibited just as the fruit itself, but if the person already derived benefit, it is allowed. In regards to all other areas of prohibited benefit, the exchanged items are permitted outright.

REVIEW AND REMEMBER

1. Is it possible for a person to prohibit an object that is in his possession after it leaves his possession?
2. What are the two sides of the question of whether a person who is prohibited to derive benefit from fruit is permitted to derive benefit from items that were exchanged for them?
3. How does a woman seek support if her husband takes a vow prohibiting her from benefiting from him?
4. What items are permitted for benefit for two people who are prohibited from benefiting from one another?

STORIES OF THE DAF

The new Shul

קונם לבית זה

A certain community shul was slated to be destroyed and then rebuilt. As the repairs were in the final stages, the members wondered whether they needed to make a blessing of הטוב והמטיב. It was really a compound question, though: is one required to make such a blessing on the construction of a new shul, and if so, does a rebuilt shul have the same status as one that is new?

They posed these questions to the Halachos Ketanos, zt"l who replied, "A community that has built a new shul definitely needs to make such a blessing on it. The שליח ציבור should stand up in front of everyone and make the blessing out loud. The same certainly holds true regarding a shul that was destroyed or demolished and then rebuilt from scratch. The proof is from the Ran in Nedarim 47a who writes that if one vowed never to enter a certain house and it subsequently collapsed and was rebuilt he may enter the rebuilt house. This is because it is considered like an entirely new structure.

He continued, "The source for this is the Midrash in Koheles Rabbah: This could be compared to a king whose son had angered him. The king was so infuriated that he drove the boy out and swore that he would never again be allowed entry into the royal palace. What did the king do when he finally calmed down? He ordered the palace demolished and rebuilt. In this manner he was able to have his son rejoin him in the palace without violating his oath!"

HALACHA HIGHLIGHT

Is the requirement to immerse utensils Biblical?

בעי רמי בר חמא אמר קונם פירות האלו על פלוני

Rami bar Chama asked: If a person declares, "Konam these fruit upon so-and-so."

There is a disagreement amongst the Rishonim whether the obligation to immerse metal utensils acquired from non-Jews is a Biblical or Rabbinic obligation¹. Rav Yosef Karo in Shulchan Aruch presents contradictory rulings on this matter. In Yoreh Deah² he rules that if one receives a metal utensil from a non-Jew as collateral and there is a possibility that the non-Jew may not redeem this utensil it must be immersed without a beracha. The rationale behind the ruling is that since there is a doubt whether this utensil will become the property of the Jew he should immerse it based on the principle of *דאורייתא לחומרא ספק*. On the other hand, in Orach Chaim³ he indicates that although there is a dispute whether it is permitted on Shabbos to immerse a utensil purchased from a non-Jew the primary opinion is that it is permitted. The rationale behind this ruling⁴ is that immersing new utensils is only a Rabbinic requirement and therefore it is not considered *מנתקן מנא*—fixing a utensil, and the immersion may be done Shabbos.

Rav Ovadiah Yosef⁵ suggests that Shulchan Aruch's ruling in Yoreh Deah is not necessarily a proof that immersing utensils is a Biblical requirement. Another rationale for the ruling that one must immerse a utensil received as collateral is the principle of *דבר שיש לו מתירים*—an item that is presently prohibited but will become permitted. The halacha regarding *דבר שיש לו מתירים* is that it does not become nullified when mixed with permitted items. Thus if one mixes a utensil that was not immersed with utensils that were immersed one is required to immerse all the utensils since immersing all the utensils will assure that all the utensils were immersed without having to rely on *ביטול*. Therefore, if one was given a utensil as collateral from a non-Jew the reason it should be immersed is that it qualifies as a *דבר שיש לו מתירין* since it could be easily immersed, and the ruling is not based on the assumption that immersing utensils is a Biblical requirement. A difficulty with this approach is that Rav Akiva Eiger maintains that concerning Rabbinic prohibitions one could be lenient even when dealing with a *דבר שיש לו מתירין* and he bases himself on the commentary of the Ran⁶ in our Gemara where he discusses rules of halachos which are rabbinic. Accordingly, if Shulchan Aruch maintained that immersing utensils was only a Rabbinic obligation one would not be required to immerse the utensil, nonetheless, the majority opinion maintains that even regarding Rabbinic prohibitions the principle of *דבר שיש לו מתירין* applies even to Rabbinic prohibitions and this is a possible resolution to the contradictory rulings in Shulchan Aruch.

1. ע' שו"ת יביע אומר ח"ב י"ד ס' ט' אות א'

2. שו"ע י"ד ס' ק"כ סע' ט'

3. שו"ע א"ח ס' שכ"ג סע' ז'

4. ט"ז שם סק"ה

5. שו"ת יביע אומר הנ"ל

6. ד"ה ולענין הלכה וע"ש בשו"ת רעק"א ס' ס"ק שמדייק בן מדברי הר"ן.

PARSHA CONNECTION

In this week's daf the Gemara discusses a person's ability to effect the future even after his *פטירה*. For example, one can be *מדייר* his son while he is alive and the vow remains even after his death. We have a very similar concept in *ניצבים* whereby Klal Yisroel entered into a *bris* with Hashem and this *bris* is binding on all future generations. The Possuk

כי את־אשר ישנו פה עמנו עמד היום לפני: (דברים פרק כט)

The מפרשים discuss how it is possible for our forefathers to enter into a covenant which will be binding on future generations. The מלבי"ם explains that since keeping Torah and Mitzvos is a *זכות*, we can rely on the rule of *לאדם שלא בפניו*. The Parsha starts with the following Possuk: אתם נצבים היום כלכם לפני ה'

The אלקים ראשונים שבטיכם וזקניכם ושטריכם כל איש ישראל. The points out that the end of the Possuk seems to contradict the beginning. The beginning speaks in the plural אנשי ישראל, etc, yet the end says "איש ישראל" and not אנשי ישראל. The explains that when everyone is doing the will of the Hashem we are considered as one body. This too is the reason why "ואהבת לרעך כמוך" encompasses the entire Torah, because when we are all together we fulfill the *תכלית*. He adds that for this reason חז"ל teach us that ראש השנה we should be very careful and ensure *shalom* between one another. Being באחדות will provide that all are blessed with a *שנה טובה*!

POINT TO PONDER

The Gemara says that a person can make a *נדר* not to benefit from someone else's fruits. Since these fruits do not belong to him, and a *נדר* is a *איסור חפצא*, how could he effect someone else's fruits?

Response to last week's Point to Ponder:

The Gemara 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.

Although the *חצר* is divisible and each partner will have enough space for most uses, there can be occasional situations when this arrangement will not work. For example, if one partner's animal wanders into his partner's section and by going to retrieve it, this would violate the *נדר*. (See משמרת כהונה and אור שמח).