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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

**Nullified in Part**

Ravina challenged Rava from the following braisa: Rabbi Nassan said: A vow may be partly permitted and partly forbidden. What is an example of that? If one vowed not to derive benefit from a basket (of figs), among which were *bnos shu’ach* figs (which are superior to the ordinary figs), and then declared, “Had I known that *bnos shu’ach* figs were among them, I would not have vowed,” the basket of figs is forbidden, but the *bnos shu’ach* figs are permitted. [This was the law] until Rabbi Akiva came and taught: A vow which is partially nullified is entirely nullified.

Now, does it not mean that he declared, “Had I known that *bnos shu’ach* figs were among them, I would have vowed as follows: ‘The black figs and white figs are forbidden, but the *bnos shu’ach* figs are permitted’”? Yet it is only Rabbi Akiva’s view, but the Rabbis dispute it. [This contradicts Rava, who said that whenever the vower would have changed the wording of his vow, everyone agrees that a vow which is partially nullified is entirely nullified!?!]

Rava answers: No. This refers to one who declared, “Had I known that *bnos shu’ach* figs were among them, I would have vowed as follows: ‘All the figs are forbidden, but the *bnos shu’ach* figs are permitted.’” [This would enter into the dispute between R’ Akiva and the Rabbis whether we take hold only of his first words, or must we take hold of his concluding words as well, in which case it would be an example of a vow which is partially nullified, and therefore it would be entirely nullified). (26b2 – 27a1)

The *Gemora* asks: Who is the *Tanna* that taught the following *braisa*? If one vowed (*at one time*) not to derive any benefit from five people, if he was permitted to one of them, he is permitted to all of them. If he excludes one of them (*the neder in essence stayed the same; he only added “except for this one”*), he is permitted and the rest of them are forbidden.

If we would explain this *braisa* according to Rabbah, the first part of the *braisa* would be in accordance with Rabbi Akiva (*it would be referring to a case where the vower would have altered his neder had he known that his father was included in the group and only Rabbi Akiva would rule that if the neder is partially nullified, it is completely nullified*) and the second part of the *braisa* would be in accordance with everyone’s opinion (*even if he would have known, he would not have altered his neder; he would have only added the exception; even Rabbi Akiva would agree that the neder remains in force*).

If we would explain this *braisa* according to Rava, the second part of the *braisa* would be in accordance with the Rabbis (*it would be referring to a case where the vower would not have altered his neder had he known that his father was included in the group and only the Rabbis would rule the neder is partially nullified*) and the first part of the *braisa* would be in accordance with everyone’s opinion (*it would be referring to a case where the vower would have altered his neder had he known that his father was included in the group and everyone agrees that if the neder is partially nullified, it is completely nullified*). (27a1)

### **Mishna**

The *Mishna* now discusses the case of an unavoidable *neder* (which we learned before that the *neder* is automatically permitted): What is an unavoidable *neder*? If a fellow made a *neder* that he (*the invitee*) should dine with him, and then, he or his son fell sick, or a river prevented him from coming to him (*the neder* is ineffective). (He never meant to invoke a *neder* against him if the invitee would be prevented from coming because of circumstances beyond his control.) (27a2)

### **Unavoidable Circumstance**

The *Gemora* relates an incident: A man once deposited his rights (to a certain property) to *Beis Din* (he asked *Beis Din* to give him time to obtain further proof that the property was indeed his; *Beis Din* was concerned that he was only saying this to procrastinate and they required him to leave his documents by them as a surety) and declared: "If I do not appear within thirty days, these rights shall be void." Subsequently, he was unavoidably prevented from appearing within the allotted time. Thereupon, Rav Huna ruled: His rights are void. Rava asked Rav Huna: Why are his rights voided? He was unavoidably prevented, and the Torah exempts one from liability in such cases! For it is written (regarding a betrothed girl who was violated) [Devarim 22:26]: *But unto the girl you shall not do anything.* (Reb Elchanan explains: It emerges that an unavoidable action is regarded as if it happened by itself, and not committed by the person. The same can be said with respect to a condition fulfilled unavoidably; he did not fulfill his condition.)

And should you perhaps suggest that the death penalty is different (and only there is he not held responsible), but we learned in a *Mishna*: What is an unavoidable *neder*? If a fellow made a *neder* that he (*the invitee*) should dine with him, and then, he or his son fell sick, or a river prevented him from coming to him (*the neder* is ineffective). (We see that since circumstances beyond his control prevented him from coming, it is not regarded as

if the condition was fulfilled.) (Rav Huna does not respond to Rava's question. The *Rishonim* explain Rav Huna's reasoning.) (27a2 – 27a3)

### **Rava's Opinion**

The *Gemora* questions Rava: Why is this case different than that which we learned in the following *Mishna*: If a man said to his wife: Behold this is your bill of divorce effective from now if I do not come back within twelve months, and he died within the twelve months, the divorce is valid. Why is the divorce valid? The husband did not return with the allotted amount of time because of circumstances beyond his control (*namely, his death*)?

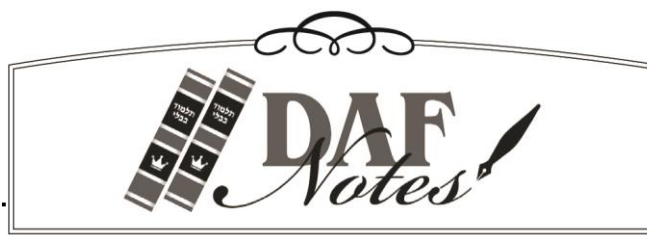
The *Gemora* answers: Perhaps it is different there because if he would have known that he would die, he would have divorced her immediately (*without any condition, since his intent was to ensure that she does not fall for yibum*).

The *Gemora* questions Rava from a different case: A man said to his wife that if he does not return within thirty days the *get* should be valid. He arrived at the end of the thirty days, but the river prevented him from arriving back (*on time, as the ferry was not present at the time*). He was saying "You see that I am coming! You see that I am coming!" Shmuel said that this is not called that he reached the city (*and therefore the get takes effect*). (Here we see that it is regarded as if the condition was fulfilled even though it transpired through an unavoidable circumstance!)

The *Gemora* answers that a forced circumstance that is common is different, as he should have made a condition beforehand (*that if he comes back but cannot cross the river in time it is not included*). The fact that he did not is his own loss. (27a3 – 27b1)

### **Asmachta**

The *Gemora* now questions Rav Huna: Why are his rights voided? Surely, the commitment he made was only an



*asmachta* (he never expected to void his rights, for he thought he would return), and Rav Huna is of the opinion that an *asmachta* is not legally binding?

The Gemora answers: In this case, the *asmachta* is binding for the documents are being held by *Beis Din* (and therefore, we presume that his commitment was a sincere one).

The Gemora asks: But even if the documents are being held by *Beis Din*, isn't his commitment still regarded as an *asmachta*? But it was taught in a Mishna: One who paid a portion of his debt and gave his document to a third party, and (*the borrower*) said to him, "If I do not give it (*the remaining portion of the debt*) to you from today until Such-and-such a day, give him (*the lender*) his document (*and he may collect the entire debt*); if the date arrived and he did not pay, Rabbi Yosi says: He may give it to the lender. Rabbi Yehudah says: He may not give it. And Rav Nachman said in the name of Rabbah bar Avuha, who said in the name of Rav: The *halachah* is according to Rabbi Yosi.

The Gemora answers: Here it is different, for he said that his rights should be nullified.

The Gemora concludes: The *halachah* is that an *asmachta* is binding as long as he wasn't unavoidably prevented from fulfilling the condition, and only if there was a legitimate *kinyan* with him in a prominent *Beis Din* (one that has the ability to confiscate property). (27b1 – 27b2)

#### Quick Summary

\* What is another type of *neder* that is automatically nullified?

An unavoidable *neder*.

\* From where is it derived that one is not liable for being a victim of circumstances beyond his control?

For it is written (regarding a betrothed girl who was violated) [Devarim 22:26]: *But unto the girl you shall not do anything.*

\* What was the *halacha* in the case where he deposited his rights by *Beis Din* and he did not return in the allotted time?

Rav Huna says that his rights are voided and Rava disagrees.

\* In what case will Rava agree that one has fulfilled his condition even though it was through unavoidable circumstances?

When a husband says: Behold this is your bill of divorce effective from now if I do not come back within twelve months, and he died within the twelve months.

\* Why does he agree?

If he would have known that he would die, he would have divorced her immediately.

\* In what other case will Rava agree?

When the husband was prevented by coming because of a river without a ferry.

\* Why does he agree?

Since this case is common, he should have foreseen that it might happen.

\* When does Rav Huna hold that an *asmachta* is binding?

If the documents are being held in a prominent *Beis Din*, and a legitimate *kinyan* was done, and as long as he wasn't unavoidably prevented from fulfilling the condition.

#### INSIGHTS TO THE DAF

##### *The Ra"n Elucidated*

**Nullified in Part** - As for the *halachah*, we accept the opinion of Rabbi Akiva according to Beis Hillel, that a

*neder* of which part is released is released entirely. And in the disagreement between Rabbah and Rava, since it could be argued that Rabbah's opinion should be accepted because he was Rava's teacher, and it could be argued that Rava's opinion should be accepted because he was later, we adopt the opinion of Rabbah when it is stricter, that if he upholds his original expression they are all forbidden and his father is permitted, and if he changes, whether from specific to general or from general to specific, they are all permitted. This is also the conclusion of the Ramban.

However, there are some who say that when it says that if he upholds his original expression the others are all forbidden, it is only in cases similar to this *Mishna*, where he didn't know that his father was among them. Since he upheld his original expression, it is not a *neder* of which part was released, because his father was never included in the *neder*. But in a case where they were all originally included and he requested release for one of them, as in the *Mishna* (66a) of "we open by means of *Shabbos* and *Yom Tov*", once one of them has been permitted by means of a release, they are all permitted.

But that is not the opinion of the Ramban. He holds that even in such a case, the principle of "a *neder* of which part is released, is released entirely" only applies if he changed, but not if he upheld his original expression. And it seems to me that the greater support is for his opinion. For if the *Mishna* of "We open," where the *Yomim Tovim* are permitted by means of release, where talking about cases where he upheld his original expression as well as those in which he changed, then when Rava said that everyone agrees that they are all permitted in a case where he changed, he was referring only to the disagreement of Beis Shamai and Beis Hillel, not to the disagreement of Rabbi Akiva and the Rabbanan, since we said that the *Mishna* of "We open" is even about one who upholds just as one who changes, yet the Rabbanan disagree.

If so, why did Ravina object to Rava that in the *Mishna* about a basket it said that it was only Rabbi Akiva's opinion, and that the Rabbanan disagreed with him? Let him answer, "Indeed, they do," because according to him, the Rabbanan in the *Mishna* of "We open" certainly do not hold, even in a case where he changes, that a *neder* of which part has been released is released entirely. For if they held it in a case of changing, in the *Mishna* of "We open" they would have to permit it even where he keeps his original expression, since he said that keeping the original expression in "we open" is like changing, as in the *Mishna* about the figs.

Rather, Rava would certainly only be referring to the disagreement of Beis Shamai and Beis Hillel, and not the disagreement of "we open", because Rabbi Akiva disagrees even about one who changes, and if so, why does he object to Rava that it says it is only Rabbi Akiva's opinion and the Rabbanan disagree? Let him answer, "Indeed, they do!"

Rather, certainly the *Mishnah* of "we open" is like the *Mishna* about figs, each Amora interpreting it according to his own opinion, and for this reason, when Rava says that in a case where he changes, everyone agrees that they are all permitted, it refers to the disagreement of Rabbi Akiva and the Rabbanan too. For this reason, Ravina's objection is well taken. So it seems to me.

The Ramban, also wrote that even in a case where he changed, it is only in a case of a *neder* that has been released by means of an opening, which is somewhat similar to mistaken *nedarim*. Since there is a mistake in the *neder*, it is completely null. But if they released him by means of regret, the *neder* is not entirely released; only what he regrets. But Tosfos wrote that even if it was released by means of regret, since a sage uproots a *neder* from its inception, once part of it has been released, it is released entirely.

The principle of “if part of it has been released, it is released entirely” applies only where he included them all together, as for example, if he said, “all of you,” or “of this one and of this one,” with the conjunction “and.” But if he said, “of this one, of this one,” if one is released, he alone is permitted and the rest of them are forbidden. For it is like saying, “Konam of each one of you,” as is clear in Meseches Kiddushin (46a) concerning “with this and with this” and in Meseches Shevuous (38a) concerning an oath, “not of yours, not of yours.”

And it is only concerning the release of a sage that it says that a *neder* of which part has been released is released entirely, because the sage uproots the *neder* from its inception, but in the release from a *cheirem* or *nidui*, if ten people were put into *cheirem* or *nidui* and one was released, he alone is released and the rest are still banned. The same is true of the terminating of a husband, because we conclude that a husband cuts off the *neder* from that moment on.

## DAILY MASHAL

### *Asmachta* by Har Sinai

It is written in Parshas Yisro [24, 9 – 11]: And Moshe and Aaron, Nadav and Avihu, and seventy of the elders of Israel ascended, and they perceived the G-d of Israel etc., and they perceived G-d, and they ate and drank.

Rashi cites the *Medrash* Tanchuma: They gazed and peered and because of this were doomed to die, but the Holy One, blessed be He, did not want to disturb the rejoicing of this moment of the giving of the Torah. So He waited to kill Nadav and Avihu until the day of the dedication of the Mishkan, and for the elders until the following incident: *And the people were as if seeking complaints... and a fire of Hashem broke out against them and devoured at the edge (the leaders) of the camp.*

We can ask: What happened by the sin of the complainers that precisely then, Hashem chose to destroy the elders?

The Chasam Sofer answers based upon a *Gemora* in Bava Metzia (66a): Rav Pappa said: An *asmachta* is sometimes binding and sometimes not. If the lender found the borrower (*on the date that the loan was due*) drinking beer (*at a tavern*), it is binding (*for he clearly does not care about the forfeiture of his field*); if, however, he was trying to procure money, it is not binding. Rav Acha from Difti asked Ravina: Perhaps he was drinking to dismiss his anxiety (*that he could not pay the loan*), or perhaps someone else had assured him of the money (*to repay it*)?

Similarly, it can be said regarding the Jewish people’s acceptance of the torah when they said, “we will do and we will listen.” Seemingly, this should be regarded as an *asmachta*, and therefore not binding – they were coerced into saying that by the fact that the mountain was placed on top of them.

Accordingly, we can say as follows: when the elders ate and drank, this was a demonstration that they were completely at ease with their decision; they were displaying happiness and joy with the acceptance of the Torah, and that it wasn’t an *asmachta* at all. So, on the contrary – they were acting properly, and not deserving of a punishment at all! However, by the sin of the complainers, it is written: *They travelled from the mountain of Hashem.* Rashi explains that they ran away like a child runs when he is leaving school. They were fleeing in order not to receive any more laws. This would then indicate that when they were eating and drinking by Mount Sinai, it was not a sign of happiness, but rather, they were dispelling their anxiety. This was a cause for their demise, and that is why Hashem waited until the time that they demonstrated what their true intentions were.