

24 Tammuz 5775
July 11, 2015



Nedarim Daf 48

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Daf Notes is currently being dedicated to the neshamot of

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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

Mishna

The *Mishna* states: If one said, “I a *cheirem* to you,” the person to whom the vow was referring to is forbidden to derive pleasure from the vower. If one said, “You are *cheirem* towards me,” the vower is forbidden to derive pleasure from the person to whom the vow was referring. If he said, “I a *cheirem* to you and you are *cheirem* towards me,” they are both forbidden to derive pleasure from each other.

They are both permitted to derive benefit from those things belonging to those who ascended from Bavel. (*The people who came up to Eretz Yisroel from Bavel relinquished ownership of these things.*) They are forbidden to derive benefit from those things belonging to the residents of that city. (*These are owned by all the people living in the city and it will therefore be regarded as benefiting from his fellow.*)

The *Mishna* lists those things that were from the people who ascended from Bavel. For instance, the Temple Mount, the Courtyards and a well that is in middle of the road. (*These are properties that are shared equally by all Jews, and which does not belong only to the residents of a specific place, but rather to all the Jewish people, of which not every Jew is regarded as being a partner, rather it is hefker and may be used by any Jew. Every Jew has the right to access the Temple Mount and the Courtyards on the Festivals. The wells for drinking water built by the returnees during the time of Ezra were used by those ascending from Bavel to Eretz Yisroel on the Festivals.*)

The *Mishna* then lists those things belonging to the residents of that city. For instance, the town square, the bathhouse, the synagogue, the Ark and the books.

One may write his portion over to the *Nasi* (*and then the other person may derive benefit from the facility*).

Rabbi Yehudah says: One may assign it to the *Nasi* and one may assign it to an ordinary person. What is the difference between one who assigns it to the *Nasi* and one who assigns it to an ordinary person? One who assigns it to the *Nasi* is not required to transfer it to him through another person (*because due to the importance of the Nasi, he was able to take possession without an act of acquisition*). But the *Chachamim* say: Even a *Nasi* needs to have someone acquire it on his behalf. They spoke of the *Nasi* (*above*) only because it was more common to give it to him. (*They trusted the Nasi, for he would not forbid it to them.*)

Rabbi Yehudah says: The people of Galilee are not obligated to assign, for their fathers had already assigned for them. (47b – 48a)

Galileans

The *Mishna* had stated: Rabbi Yehudah says: The people of Galilee are not obligated to assign, for their fathers had already assigned for them.

The *Gemora* cites a *braisa*: Rabbi Yehuda said: The people of Galilee were quarrelsome and would often make vows not to benefit from each other. Their forefathers arose and assigned their portions to the *Nasi* (*this enabled their*

future generations to be permitted to use these public facilities even if someone else prohibited them from benefit). (48a)

Mishna

The *Mishna* states: If one is prohibited by vow from deriving benefit from his fellow and he has nothing to eat, he may give it to another person as a gift, and then, this one is permitted. It once happened that a person in Beis Choron, whose father was prohibited by vow from deriving benefit from him, and he was marrying off his son. He said to his fellow, "The courtyard and the feast are given to you as a gift, and are yours only so that Father will come and eat with us at the wedding." He said to him, "If they are mine, then they are consecrated to Heaven." The giver said to him, "Did I give you that which was mine in order that you would consecrate them to Heaven?" He said to him, "You gave to me yours only so that you and your father would be able to eat and drink, and be reconciled with one another, and that the sin should rest on his (*my*) head." The *Chachamim* said: Any gift, where if the recipient would consecrate it, it is not consecrated, is not a gift.

Ra"n Elucidated

[*This is not like the case of a gift given on the condition that it should be returned. There too, if he consecrated it, the consecration is not effective, yet it is regarded as a gift. This is because the giver was sincere in his giving, and for a while, it was a gift. But, here, by Beis Choron, the gift is not a gift at all, for the giver is not sincere at all.*] (48a)

The Mishna's Incident

The *Gemora* asks: Why does the *Mishna* cite an incident that contradicts the initial ruling?

The *Gemora* answers: It is as if there are some missing words in the *Mishna*, and this is what it means to say: If one is prohibited by vow from deriving benefit from his fellow and he has nothing to eat, he may give it to another person as a gift, and then, this one is permitted. However, if it is evident that the giver was not sincere (*in giving the*

gift), it is forbidden to derive benefit from that "gift." There was such an incident in Beis Choron, where the giver was insincere, and therefore, the father was forbidden to attend the wedding feast. (48a)

Insincere Gift

Rava qualifies the *Mishna's* ruling: The gift is invalid only if he said explicitly, "They are being given to you only for the purpose that Father should come." However, if he said, "They are being given to you so that Father should come," the gift is valid, for he is saying that it is up to you (*the recipient*) to allow his father to come.

The *Gemora* cites another version of Rava's ruling: Do not say that the *Mishna's* ruling is applicable only in the case where he said, "They are being given to you only for the purpose that Father should come." However, if he said, "They are being given to you so that Father should come," the gift is valid. Rather, even if he said, "They are being given to you so that Father should come," it is forbidden. What is the reason? The feast is the indicator that he does not truly intend to give away the feast that he prepared. (48a)

A Wayward Son

The *Gemora* relates an incident: There was a certain man who had a son who used to steal bundles of flax. Thereupon, his father forbade his property to him. They asked the father, "What if the son of your son becomes a Torah scholar?" (*Wouldn't you want him to receive a portion of the inheritance?*) He replied, "Let him acquire it, and if his son emerges as a Torah scholar, it shall be his."

The *Gemora* inquires: Now, what is the *halacha* in this case?

Ra"n Elucidated

[*The Ra"n asks: Even if the father forbade the son with a neder, it should still be permitted for the grandson to acquire it! This is because we learned above that if a father forbade his property to his son and then he dies, the*

son may not benefit from the property, but it nevertheless belongs to the son. Accordingly, the grandson should inherit it from his father whether he will be a Torah scholar or not?

He answers: The father had two sons. One of them was upright and the other stole the bundles of flax. The people realized that the father intended to give his property to the upright one. It was for this reason that they said to him, "What if the son of your son becomes a Torah scholar?" Wouldn't you want him to receive a portion of the inheritance? He replied, "You are right! Let this one acquire half, and if his son turns out to be a Torah scholar, let his son acquire that half, but if not, let this half belong to the upright son."

The Pumbediseans ruled, this is a case of 'acquire in order to give possession to another,' and in such cases, he does not take possession of the property at all. Rav Nachman said: The son does acquire it, for the giving of a kerchief (for the purpose of effecting a *kinyan chalipin*) is also a case of 'acquire in order to give possession to another,' and nevertheless, it is indeed a valid *kinyan*.

Ra"n Elucidated

[The Ra"n explains: When the buyer gives his kerchief to the seller, he doesn't give him possession of it for any purpose other than performing an act of acquisition, so that the seller should give his land over to him. We nevertheless, regard this as an acquisition, that by means of it, the buyer acquires the field. It follows that in our case as well, he acquires the property.]

Rav Ashi challenged his proof: But in the case of a kerchief, who tells you that if he retains it, it is not his (perhaps, it is only customary to return it; the *kinyan* will be valid even if seizes the kerchief; it emerges that the *kinyan chalipin* is a full acquisition, and not a case of 'acquire in order to give possession to another.')

And furthermore, the kerchief is a case of 'acquire in order to give possession to another,' and 'acquire immediately' (he conveys something to the kerchief owner immediately upon acquiring the kerchief). But as for this property, when does the son acquire it? It is only when his grandson emerges as a Torah scholar! But by then, the kerchief (whereby the transaction between the father and son was possibly made) has been returned to its owner.

Rava challenges Rav Nachman from our *Mishna*: But the gift of Beis Choron was a case of 'acquire in order to give possession to another,' yet it was invalid?

Sometimes he answered that it was only because his feast is the indicator that he does not intend to give away the feast that he prepared. Other times he answered that this is taught in accordance with Rabbi Eliezer, who maintained that even the gratuities given by the vendor to a customer is forbidden to one subject to a vow forbidding benefit (although such a gift is valid under monetary law, we rule stringently regarding *nedarim*, and therefore here, the gift is invalid).

The *Gemora* challenges Rav Nachman again from our *Mishna*: The *Chachamim* said: Any gift, where if the recipient would consecrate it, it is not consecrated, is not a gift. What case is the *Mishna* coming to include by using the expression "any gift"? Is it not coming to include this type of case, where the son stole the bundles of flax (and the *Mishna* is therefore teaching us that these types of gifts are invalid)?

No! It is coming to include the second version of Rava's teaching. (That is, even if he said, "They are being given to you so that Father should come," it is forbidden.) (48a – 48b)

WE SHALL RETURN TO YOU, HASHUTAFIN