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Limitations of a Shevuah

The Mishna states that a shevuah does not take effect on a mitzvah. Therefore, if one promised to violate or fulfill a mitzvah and then violated his promise, he is not liable.

It would have been logical to obligate him in the case of a promise to fulfill a mitzvah, based on Rabbi Yehudah ben Beseirah’s argument. Rabbi Yehudah ben Beseirah says that if a promise to do something which is voluntary is effective, surely a promise to something obligatory should be effective. The Sages explain that a promise to do something voluntary fulfills the requirement of being reversible – one can promise to do or not do it, but a promise to do something obligatory cannot be made in the reverse, since one cannot promise to violate a mitzvah.

The Gemora cites a braisa, which considers different types of obligations accepted by a promise, and evaluates them against the prototypical example given by the verse, of lehara o lehaitiv – to damage or help.

Case	Included?	Why?
Negate a mitzvah	No	lehaitiv is not a mitzvah, so lehara is not a mitzvah
Fulfill a mitzvah	No	lehara is not a mitzvah, so lehaitiv is not a mitzvah
Harm oneself	Yes	he can help himself (lehaitiv), so he can harm himself (lehara)
Harm someone	No	lehaitiv is something permitted, so lehara is something permitted
Help someone	Yes	the connecting word o – or, including this asymmetric case

Finally, the braisa explains that a promise to harm someone means a promise to hit him.

The Gemora attempts to explain how the braisa knows that the case of a promise must be a voluntary act. The Gemora first suggests that the braisa is learning from the categories of the active hatavah – helping, and the passive hara’a – damaging. Just as hatavah cannot be referring to a case of helping the body by actively negating a mitzvah (e.g., eating chametz on pesach), since that is damaging to one’s soul, so too hara’a cannot be referring to a case of harming the body by passively negating a mitzvah (e.g., not eating matzah on pesach). Similarly, just as hara’a cannot be referring to a case of harming the body by passively fulfilling a mitzvah (e.g., not eating chametz on pesach), since that is helpful to one’s soul, so too hatavah cannot be referring to a case of helping the body by actively fulfilling a mitzvah (e.g., eating matzah on pesach).

The Gemora objects that such an argument would exclude even promises about voluntary actions: just as the active hatavah is referring to a case of helping the body (e.g., eating healthy food), so too the passive hara’a is referring to a case of helping the body (e.g., not eating unhealthy foods). In that case, however, the hara’a is not referring to a case of damaging, and the phrase of hara’a is unnecessary. The argument can be reversed to make hatavah unnecessary as well.

Rather, the Gemora says that the braisa learns from the extra word o – or, which includes a promise to helps someone else. If the verse already includes violating and fulfilling mitzvos, it would include harming someone, which is a violation of a mitzvah. If a promise to harm someone is included, surely a

promise to help someone, which fulfills a mitzvah, is included, and the extra o – or is unnecessary. (27a)

And/or?

The Gemora asks how the braisa can learn from the word o – or, since it is necessary to separate the two cases, as without it, we would have thought that one is liable only when promising to both damage and help.

The Gemora clarifies that this depends on the dispute of Rabbi Yonasan and Rabbi Yoshiya. Rabbi Yonasan says that when the Torah lists two items, it means either one, unless they are explicitly joined, while Rabbi Yoshiya says that it means both, unless they are explicitly separated.

The Gemora cites a braisa: *A man that will curse his father and mother.* This tells us only regarding cursing both his father and mother. What if he curses only his father or only his mother? The verse therefore states: *His father and mother he cursed, his blood is in him.* [Rashi explains that the word cursed is both in the beginning of the verse and at the end, to show that either cursing one's father or mother render him liable.] These are the words of Rabbi Yoshiya. Rabbi Yonasan says: The verse implies that it could be both, or one alone is enough, as long as the Torah does not say "together."

According to Rabbi Yonasan, the o is extra, while according to Rabbi Yoshiya, it is not.

The Gemora says that Rabbi Yoshiya still can agree to the braisa, as he may follow the opinion of Rabbi Akiva, who explains the verse as having one excluding clause, excluding the most logical exception of a mitzvah. (27a – 27b)

Repeated Promises

The Mishna says that if one promised three times not to eat a loaf of bread, he is liable only for one promise, since there is nothing added by the later ones. This is a case of an expressive promise, for which one receives lashes for intentional violation, and is obligated in an *oleh v'yored* – sliding scale sacrifice for unintentional violation. However, if one promised

for nothing, he violated a *shvuas shav* – a useless promise, and receives lashes for intentional violation, but nothing for unintentional violation.

The Mishna's case of three promises is:

1. I promise I won't eat this loaf
2. I promise I won't eat it
3. I promise I won't eat it

The Gemora explains that the Mishna changes the language from the first to the second to teach that the first one is effective only when done in this order. However, if he first said "I won't eat it," and then "I won't eat this loaf," he is liable for both. This follows Rava, who says that a promise to not eat "this loaf" prohibits eating any *k'zayis* – olive size piece from it, while a promise not to eat "it" prohibits only eating the whole loaf. Thus, if he reversed the order, his first promise would allow him to eat less than the whole loaf, while the second promise would add a prohibition for every *k'zayis*, and therefore take effect.

The Gemora explains that the Mishna listed three promises to teach that each one is dormant, and takes effect if the earlier one is annulled. This follows Rava, who says that if the first oath was annulled (by petitioning an expert sage or a panel of three laymen), the subsequent one takes effect.

The Gemora suggests a braisa to support Rava. The braisa says that if one accepted two sets of *nezirus* – nazirite restrictions, then counted one set, designated his sacrifices for its conclusion, and then he successfully petitioned (for an annulment of his first vow), the days he counted apply to his second *nezirus*.

The Gemora objects that in the case of *nezirus*, both take effect, albeit sequentially, so it is logical that when one is annulled, its days count for the second set. However, the second oath is not in effect at all until the first is annulled, so it may not take effect later. (27b)

When is a Promise Over?

Rava says that if one promises not to eat a loaf, and then ate it, he may only dismantle his promise if there is a k'zayis left.

Rav Acha the son of Rava asked Rav Ashi what kind of promise Rava was referring to. If it's a promise to not eat the loaf, he already violated the oath once he ate the first k'zayis, while if it's a promise to not eat it, he should be able to dismantle it unless he ate the whole loaf, even if he left over less than a k'zayis.

Rav Ashi explained that Rava can be explained in either case:

1. "I won't eat the loaf": Although he already violated the promise, since the dismantling is effective for the last k'zayis, which is still prohibited, it is retroactively effective for the rest of the loaf.
2. "I won't eat it": Anything less than a k'zayis is not substantial enough to dismantle. (27b – 28a)

INSIGHTS TO THE DAF

Promises and Mitzvos

The Mishna states that a promise to fulfill a mitzvah is not effective, although it should be, based on the logic of Rabbi Yehudah ben Beseirah.

Rashi and Tosfos differ on whether this Mishna is at odds with Rabbi Yehudah ben Beseirah or not. Rashi's text of the Mishna is that it would be logical for such a promise to be effective, kedivrei – like the words of Rabbi Yehudah ben Beseirah, i.e., in accordance with Rabbi Yehudah ben Beseirah's position, that such a promise is effective. The Mishna, however, argues, and says that it is not effective, since it is not reversible.

Tosfos (27a l'kayem) cites the Riva whose text of the Mishna is divrei – [these are] the words of Rabbi Yehudah ben Beseirah, attributing the Mishna to Rabbi Yehudah ben Beseirah. The Riva explains that although Rabbi Yehudah ben Beseirah says that a promise to fulfill a mitzvah is effective, this is limited to a promise to actively fulfill a positive commandment, e.g., eat matzah on Pesach. However, a promise to refrain from

violating a commandment, e.g., not eat chametz on Pesach, is not effective, since once something is prohibited, no new prohibition can take effect. The Riva quotes a Yerushalmi to support this distinction.

Tosfos earlier (20b dechi) agrees with Rashi, and states that Rabbi Yehudah ben Beseirah says that a promise on either a positive or negative commandment is effective. See Rabbi Akiva Eiger there for a fuller discussion of the differing positions.

The Mishna excludes a promise to fulfill a mitzvah from the rules of promises, since the verse specifies that the promise must be possible in the negative and positive. The Gemora (Nedarim 8a) cites Rav Gidal, who says that one may promise to fulfill a mitzvah. The Gemora asks why this should be, as the person is already obligated by the promise taken at Mount Sinai, and answers that Rav Gidal is teaching that one is permitted to strengthen their performance of mitzvos by promising.

The Rishonim differ on the status of such a promise. The Ran (Nedarim 8a) and Ba'al Hamaor (end of this perek) say that although the verse excludes such a promise, that is only as far as being obligated in a sacrifice. However, the promise is valid inasmuch as the prohibition of violating a promise, and one would receive lashes if he violated it.

The Ran says that Rav Gidal is teaching that one is allowed to make a promise, which will add a new prohibition, in order to encourage himself to fulfill the mitzvah.

The Rosh (Nedarim 8a) and Ramban (end of this perek) disagree, and state that such a promise is not in effect at all, neither for obligating a sacrifice or lashes.

The Ramban says that in addition to the verse cited in the Mishna, the Gemora (Nedarim) cites the verse which says that one who promised lo yachail devaro – should not defame his word [by violating his oath]. The word devaro – his word, implies that this only applies to something which is in the



person's domain (his), but not to something which is in Heaven's domain, i.e., mitzvos. This exclusion relates to the very prohibition of violating a promise, excluding it from lashes.

The Rambam (Shevuos 5:16) similarly says that the promise is not in effect at all. The Ramban explains that Rav Gidal is teaching that one is not considered to have made a shevuas shav – useless promise by making such a promise, since it encourages him to fulfill the mitzvah.

The Me'iri states that if one made such a promise, and then did not fulfill the mitzvah, the promise retroactively becomes a shevuas shav.

If one made a promise to refrain from violating a prohibition, the Rishonim agree that the promise is not in effect at all, neither for lashes or a sacrifice, since a prohibition cannot take effect on an existing one. The Rishonim further say that it is not considered a shevuas shav, although the Rashba says that if one promised to fulfill a promise, it is a shevuas shav.

The Mishna (27b) says that if one promised not to eat a loaf, and then promised again, only one prohibition is in effect. Rashi says that this is because a promise cannot take effect on an existing promise.

The Ba'al Hamaor and most later commentators assume that this rule is synonymous with the rule that one prohibition cannot take effect on an existing prohibition.

However, the Avnei Miluim (responsa 12) says that while a promise on an existing promise is not in effect at all, a prohibition on an existing prohibition is not in effect, and does not incur punishment, but does create an additional prohibition. He uses this principle to explain the Shach (YD 238:5), who says that if someone promised to not eat non-kosher meat, and then was deathly ill, he need not dismantle his promise. See Pri Megadim in his introduction to Hilchos Pesach, who challenges this Shach. See Afikei Yam (1:36) for a

detailed exposition of the various positions on promises related to mitzvahs.

Leftovers

Rava says that one can petition a sage to annul his oath not to eat a loaf of bread only if there is a k'zayis left. Rav Ashi suggests that Rava is discussing an oath to "not eat it," in which case he is only prohibited from eating the whole loaf. However, only a k'zayis left is substantial enough to allow annulment.

Rashi learns that although even though one who left over any part of the loaf – even less than a k'zayis – has still not violated the oath, and it is still in effect, since the remainder is so small, he may not annul his oath. Tosfos (37b Im) says that an oath to not eat the whole loaf is violated once there is less than a k'zayis left. Tosfos notes that if one leaves crumbs, he presumably would still be considered in violation, and this extends to any leftover which is less than a k'zayis. Therefore, if less than a k'zayis remains, the oath was already violated, and he may not annul it. Tosfos rejects Rashi's explanation, since all agree that if one took an oath not to eat any part of a loaf, which was less than a k'zayis, he may annul the oath. This proves that even something less than a k'zayis is substantial enough to annul the oath on its account.

DAILY MASHAL

The Sanctity of Speech

The Torah says: "He shall not profane his word; he shall do everything that comes out of his mouth" (Bemidbar 30:3). The Magid of Kozhnitz zt"l said that a person who observes his speech not to profane it purifies his power of speech to the point where his words are heard Above (**He** will do everything that comes out of his mouth...) in the sense of "a tzadik makes a decree and Hashem upholds it" („Avodas Yisrael).

Care About Vows

When one of the daughters of HaGaon Rav S.Z. Auerbach zt"l reached the age of 11 years, he taught her the main points of the *halachos* of *terumos*, *ma'aseros* and vows and gently told her how careful she should be about her speech from then on (Halichos Shlomo).