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Nedarim Daf 47

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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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

Mishnah

The *Mishnah* had stated: If someone says to his friend, "Konam that I will enter your house," or "that I will buy your property," if the original owner died or sold the house or property, he may enter the house or buy the property. However, if he said, "Konam that I will enter *this* house or buy *this* field," even if the original owner died or sold the property, he is forbidden to enter the house or purchase the property.

Prohibiting Something for After it Leaves his Ownership

Avimi inquired: If one said to his friend, "Konam, your entering this house," and then he dies or sold it to someone else, what is the *halachah*? Does a person have the ability to prohibit something presently in his ownership, and the prohibition will remain even after it leaves his ownership, or not?

Rava said: This can be resolved from the following *Mishnah*: One who says to his son, "Konam that you cannot benefit from me"; if he dies, his son may inherit him (*since the possessions do not belong to the father any longer*). If he said in his vow, "while I am alive and even after I die," he may not inherit him. It is evident that a person has the ability to

prohibit something presently in his ownership, and the prohibition will remain even after it leaves his ownership! Indeed, learn it from this!

The *Gemora* cites a *Mishnah*: If one says, "These fruits are a *konam* upon me," or "They should be a *konam* upon my mouth," or "They should be a *konam* to my mouth," he is forbidden to derive benefit from that which is exchanged for them and what grows from them.

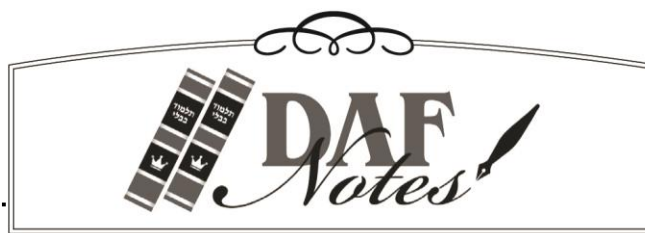
Ra"n Elucidated

[*Since he specified the things that were forbidden to him, he made them like hekdesch for himself. For that reason, he is forbidden what is exchanged from them, just as what is exchanged for and what grows from hekdesch is forbidden.*]

Exchange Items

Rami bar Chama inquired: If he said, "These fruits should be a *konam* upon So-and-so," what is the *halachah* regarding the items received in exchange for them?

The *Gemora* explains: Do we say that with respect to himself, since he can forbid his friend's property upon himself, he can likewise forbid to himself what



is not yet in existence (such as the items that he will receive in exchange for the forbidden fruits)? However, in regards to his friend, we can say that since one cannot prohibit another person's produce to his friend, he likewise cannot prohibit items that are non-existent upon his fellow. Or perhaps, the reason that the prohibition includes exchange items is because they are regarded as if they grew from the forbidden item. And then we would say that just like the exchange items are forbidden in a case when he declared a *neder* upon himself, so too, it should apply when he declared a *neder* upon his friend.

Ra"n Elucidated

[He was not asking only about konamos, but was also in doubt regarding all kinds of forbidden benefit in general. This explains why the Gemora will shortly offer a proof from one who marries a woman with fruits of orlah.]

He was not inquiring whether it is permitted to exchange these forbidden fruits, for it is certainly forbidden to sell or exchange anything from which it is forbidden to derive benefit. For if you would argue that one would be permitted to sell something which is forbidden to have benefit from, it will emerge that chametz on Pesach will have a value, because he would be able to sell them to an idolater. Why then, would the Mishnah say that one who steals them is not liable to pay back? Rather, it is certainly obvious that it is forbidden to sell these items, and Rami's inquiry is regarding one who transgressed and exchanged them.

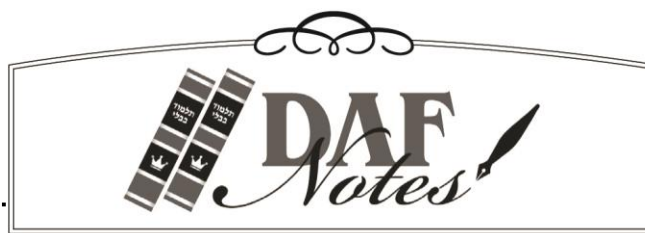
The inquiry is only relevant to the person who transgressed and exchanged the forbidden items. These exchange items are definitely permitted to other people.

This is the primary concern: Do we say that the reason that the Mishnah ruled that the exchange items are forbidden is because that was the intention of the one who declared the neder, and since it is because of his intention, only to himself can he forbid it by neder? He would not be able to prohibit it to someone else.

Or perhaps, it has nothing to do with his intention. Rather, the Rabbinic law is that anything exchanged for a forbidden item is forbidden, and therefore, there would be no distinction whether he forbade it to himself or someone else forbade it to him.]

Rav Acha bar Manyumi said: Come and hear [from the following Baraisa]: If a man says to his wife, "Konam, my benefit to you," she may borrow [money], and the creditors come and exact it from him. Why can the creditors collect it [from him]: surely because what is taken in exchange is not the same as what grows from them? – Rava said: Possibly it is forbidden [to make an exchange] in the first place only, but if it has been done, it is valid.

The Gemora states: Perhaps it can be resolved from the following Mishnah: If one marries a woman with fruits of orlah (the fruit that grows from a tree; the first three years of its life, they are forbidden for all benefit), she is not married. If he sold the orlah fruits, and married her with the money, the *kiddushin* is valid.



Ra"n Elucidated

[The Gemora thinks that since it is forbidden to derive benefit from what has been exchanged, even if he transgressed and had benefit and exchanged it for something else, the exchange of the exchange would be forbidden. For that reason, it is problematic that if he transgressed and married with the money, that she be completely married and wouldn't be required to be married again. For if the exchanged items are Rabbinically forbidden, we would require another betrothal.]

The Gemora objects to this: Perhaps it is only initially forbidden to derive benefit from an exchanged item, but if he did derive benefit from it (*by exchanging it for another item*), he has done so (*and he would even be permitted to derive benefit from that secondary exchange item*). (47a1 – 47b2)

INSIGHTS TO THE DAF

The prohibition remaining even after the item leaves his possession

Avimi inquired: If one said to his friend, “*Konam*, your entering this house,” and then he dies or sold it to someone else, what is the *halachah*? Does a person have the ability to prohibit something presently in his ownership, and the prohibition will remain even after it leaves his ownership or not?

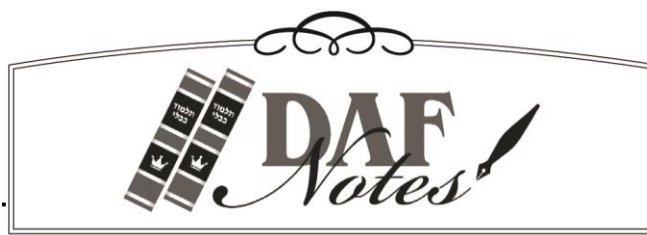
The Nimukei Yosef cites a Ritva, who quotes the following Yerushalmi: A person will only have the ability to prohibit something presently in his

ownership, and the prohibition will remain even after it leaves his ownership. However, he cannot initially prohibit the item only for the time after it leaves his possession.

The Haflaas Nedarim explains: The reason that someone would have the ability to prohibit something presently in his ownership, and the prohibition will remain even after it leaves his ownership is only because it is similar to *hekdes*. Since the item in question is presently in his possession, the *neder* takes effect and the prohibition remains on this object forever just like *hekdes*. However, one does not have the ability to consecrate an item that is presently not in his possession, and therefore, a *neder* to prohibit something only for the time after it leaves his possession will not take effect.

The *Korban* Nesanel asks: Why couldn't this inquiry be resolved from the Gemora above (42a-b) which concluded that if one says to his fellow, “These possessions should be forbidden to you”; if he vowed prior to *shemita*, he may not enter his field and he may not eat from the fruits which are growing on the branches outside of his field even when *shemita* arrives? This is because a person has the ability to prohibit something presently in his ownership, and the prohibition will remain even after it leaves his ownership! Shouldn't the *halachah* be the same in our case where he sold the property to someone else?

He answers that *shemita* is different. Since the vower has the right to acquire the fruits that are growing just like anyone else, it is regarded as if it is



still in his possession, and that is why the fruits remain forbidden. (*This is a tremendous chiddush that something can be considered yours because you have the right to acquire it.*) However, the *Gemora's* inquiry here is regarding a case where he sold the property. In this case, the item is not in his possession at all, and perhaps, the prohibition will not remain after it leaves his possession.

The Shitah Mikubetzes answers that Avimi did not know the conclusion of the *Gemora* above and that is why he made this inquiry.

DAILY MASHAL

The *Gemora* explains: With respect to himself, since he can forbid his friend's property upon himself, he can likewise forbid to himself what is not yet in existence (*such as the items that he will receive in exchange for the forbidden fruits*).

Vows and oaths are obligations created by words. They are commitments to do something or refrain from doing something. A vow, *neder*, affects the status of an object. I may vow not to eat something. That something is now, for me, forbidden food.

What is unique to humans is that we use language to bind our own future behavior so that we can form with other human beings bonds of mutuality and trust. One such bond is the promise. Another is marriage. A third – unique to Judaism – is society understood as a covenant, a set of mutually binding promises between the Jewish people and God.

It is this use of language, explains Rabbi Lord Sachs, not to describe something already in existence, but to create something that didn't exist before, that links us to God. God used words to bring the natural universe into being: "And God said . . . and there was." We use words to bring a social universe into being. What the Torah is telling us is that words create because words are holy: that is to say, they bind. When words bind, they generate trust. Trust is to society what predictability is to nature: the basis of order as opposed to chaos.

Social institutions in a free society depend on trust, and trust means that we keep our word. We do what we say we are going to do. If we make a vow, an oath, a promise, a verbal undertaking, then we hold ourselves bound by it. This means that we will actually fulfil our commitment unless we can establish that, due to circumstances unforeseeable at the time, we are simply unable to do so.