



## The Base Neder

*Masechet Nedarim* opens by discussing *nidrei issur* - a type of *neder* (vow) through which an object become prohibited to oneself or another. The *Mishnah* explains that *kinuyei nedarim* and *yadot nedarim* are treated the same as *nedarim*. Broadly speaking *kineui nedarim* are when a different term is used when articulating the vow that the *Chachamim* understood as have the same meaning as a *neder* (see 1:2). *Yadot Nedarim* refer to cases where the vow was partially articulated, but enough was said such that the full *neder* was understood. One however should ask, what is the basic *neder*?

The *Mishneh LeMelech* explains that this question is the subject of debate. He cites the *Ran* who explains that the base *neder* can be made in one of two ways. Either by stating that an object is prohibited. Alternatively, when making a *neder* one can associate the item with an object when prohibiting it (*hatpasa*). He adds however, that when associating with another object, it is must be an item that is voluntarily offered (e.g. a *korban*) and not simply another prohibited object (e.g. non-kosher food).

The *Mishneh LeMelech* however cites the *Tosfot* who explains that the base *neder* is only through *hatpasa*. The *Ritva* similarly explains that the base *neder* is where one says, e.g. this object is prohibited to me like a *korban* or like *hekesh*. In the absence of *hatpasa* the *neder* would only be binding if considered a *yad neder*. The *Ran* (*Shevuot* 8a) explains this position is based on the fact that one normally cannot make items prohibited. It is only in the world of *hekesh* where one can take a permissible item and exchange it for a sanctified one thereby making it prohibited. Consequently, only a *neder* through *hatpasa* that is connected to that world can be effective.<sup>1</sup>

Note that according to the second understanding, there is only one type of *neder* and that is through *hatpasa*. Anything that appears different would need to be defined as a *yad* or *kinui*. According to the first understanding, it is possible that there are two type of *nedarim*, with and without *hatpasa*. Is there a difference?

The *Mishneh LeMelech* cites the *Rosh* (*Teshuva* 12:4) who explains that if one made a *neder* to prohibit his wine to others, he does not make it *assur* to them. The difficulty is that when one makes a *neder* he can make it *assur* to others. The *Mishneh LeMelech* cites the *Shach* who explains that in the case of the *Rosh* he was making his wine *assur* like *yayin nesech*. As we explained previously, for a *neder* to be valid he must associate it with a *korban* or *hekesh*. In this case it is being associated with a prohibited substance so the *neder* is not valid. The *Mishneh LeMelech* believes that this is the accurate understanding of the *Rosh*.

Nevertheless, before bringing the *Shach*'s explanation, he cites the *Taz* who explains that in this case the *neder* was not done through *hatpasa*. The *neder* was only making the wine *assur*. In that case, the wine can only be made *assur* to the person making the *neder*. A *neder* made with *hatpasa* however, by making it like a *korban*, would make the wine *assur* to everyone (much like a *korban*). The *Mishneh LeMelech* however argues that according to *halacha* in both cases, the wine would be *assur* to everyone.

Despite the *Mishneh LeMelech*'s conclusion, we find grounds for the distinction between these two different base types of *Nedarim*. The *Grach* (stencil 296) explains that the *Sifri Zuta* cites the verse, "everything that come from your mouth you shall do" as the basis of an object of a *neder* becoming forbidden to others. The *Grach* explains that a *neder* by way of *hatpasa* does not need a *pasuk*. The *pasuk* is only needed for a *neder* that is made without *hatpasa*.

The *Grach* continues that according to those opinions that the base *neder* is only through *hatpasa*, the derivation of the *Sifri Zuta* is not only unnecessary but not learnt. This is important because if the derivation of the *Sifri Zuta* is learnt, then it would equally apply to the world of *Shevuot*. For example, one can prohibit another of from entering his house by way of a *shevua*. The *Grach* uses this to explains why the *Rambam* rules such a *shevua* would work. Since he holds that the base *shevua* is even without *hatpasa*, the derivation of the *Sifri Zuta* applies to such *nedarim* and consequently to *shevuot* as well.

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<sup>1</sup> Note that the *Ran* in *Shevuot* appears to take this second position whereas in our *Gemara* he takes the first. The *Chatam Sofer*

(*Nedarim* 12a) explains that the *Ran* in *Shevuot* is only explaining the position of the *Rif*.

## Revision Questions

יבמות י"ב:ג' – י"ג:ג'

- What is the law regarding an *almanah* that does not want to leave her late husband's house? (י"ב:ג')
- What is the law regarding an *almanah* that returns to her father's house? (י"ב:ג')
- Explain the debate regarding the time within which an *almanah* can collect her *ketubah* if: (י"ב:ד')
  - She is living in her late husband's house.
  - She is living in her father's house.
- What were the two *halachot* that were disputed between *Chanan ben Avishalom* and the *bnei kohanim gedolim*? With whom did *Rabbi Yochanan Ben Zakkai* side? (י"ג:א'-ב')
- Explain the debate regarding how the sons and daughters are supported when there is a very small *yerusha*? (י"ג:ג')
- Explain the debate between *Admon* and the *Chachamim* regarding a case where:
  - One party claims he is owed jugs of oil and the other party admits he only owes him empty jugs. (י"ג:ד')
  - The father reneges on his promise for a dowry just prior to *nisuin*. (י"ג:ה')
  - One party claims that his field was stolen from him yet his own signature is on the sale contract that is in the hands of the other party. (י"ג:ו')
  - A person returns from an extended period overseas to find that the access path to his property through another's field has disappeared and he does not remember where it was. (י"ג:ז')
  - One party presents a loan contract and the other party presents a sale document (dated after the loan contract) stating that he purchased land from the first party. (י"ג:ח')
  - Two parties each produce loan documents trying to claim money from each other. (י"ג:ט')
- What are the three regions in *Eretz Yisrael* for *nisuin* and why are they important? (י"ג:י')
- Can one force the members of his household to move to Israel? (י"ג:ג'א')
- If a couple marries in Israel and divorce outside Israel, in what currency must the *ketubah* be paid? (י"ג:ג'א')

נדרים א':א'

- Is the following a valid *neder*: "מפרשמי ממק שאיני אוכל ל" (א':א')
- Is it a valid *neder* if a person adds the phrase: (א':א')?
  - כנדורי רשעים?
  - כנדורי כשרים?

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 Melbourne, Australia

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*Shiur in English*

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 9:00am  
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### Next Week's Mishnayot...

שבת קודש	Friday	Thursday	Wednesday	Tuesday	Monday	Sunday
31 May י"ז סיון	1 June י"ח סיון	31 May י"ז סיון	30 May י"ו סיון	29 May י"ו סיון	28 May י"ד סיון	27 May י"ג סיון
Nedarim 1:2-3	Nedarim 3:3-4	Nedarim 3:1-2	Nedarim 2:4-5	Nedarim 2:2-3	Nedarim 1:4-2:1	Nedarim 1:2-3

