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Nedarim affecting others – who is liable?

During *nedarim* we have learnt that through a *neder* one can make his own property forbidden to another person. This requires further analysis.

The *Sefer HaChinnuch* explains as follows:

... We have the power to make forbidden what is originally permitted. For the *Torah* taught us... “to tie a bond about himself, he shall not profane his word (*lo yachel d’varo*)” (*Bamidbar* 30:3). Thus the matter is similar to *hekdesch*, consecration, about which we find in the *Torah* that a man has the power to consecrate what belongs to him by the words of his mouth, and then it becomes forbidden at once to both him and to all the world...

At first glance, it would appear that the source cited by the *Sefer HaChinnuch* would bind an individual who makes a *neder* applying to himself. However, if one makes a *neder* forbidding another person, what is that person violating if he indeed proceeds to get benefit from that object?

Matters are clarified when analysing a *Mishnah* learnt this week (7:9). The *Mishnah* describes a case where the husband made *assur* any benefit derived from him (till *Pesach*) if the wife visited her father’s house (till the later date, *Sukkot*). The *Mishnah* describes the scenario of her visiting her father’s house after deriving benefit from her husband, thereby retroactively causing her to breach the *neder*. The conclusion is that the prohibition of *lo yachel d’varo* has been violated. Yet who has violated this prohibition?

The *Ran* (*Nedarim* 15a) explains that clearly the husband (who formulated the *neder*) has not violated the prohibition for he did not do anything that was prohibited. Rather, in this case, the wife would be liable because she breached the *neder*, even though she did not make the *neder*. “*Lo yachel d’varo*”, explains the *Ran*, is understood as meaning “the word” should not be breached, regardless of who formulated it. He further supports this idea by explaining that we find (*Niddah* 47a) by *hekdesch*, that if someone consecrates something to the *Beit Ha’Mikdash*, and another person comes and eats it, that second person has transgressed *lo yachel d’varo* and is punished.

The Opinion of the *Rambam*

The *Rambam* (*Nedarim* 10:12), when discussing this case writes: “if she goes [to her father’s house] prior to *pesach* and he [actively] benefits her prior to *pesach*, he [is punishable] by lashes”. It is understood that in this case the husband is punished because he actively breached his own *neder*¹. The question is, is the wife also punished? The absence of any mention of it led the *Ran* to believe that the *Rambam* maintained that she is not punished for she did not formulate the *neder*; thereby understanding *lo yachel d’varo* in its simplest sense.

The *Kesef Mishnah* argues that the *Rambam* maintains, like the *Ran*’s own position, that the wife is clearly also punished and that this point is obvious and did not need mentioning. The *Rambam* was focusing on the more novel point that the husband can transgress this prohibition by actively benefiting her, when ordinarily one is not liable if he feeds another a prohibited item.

The *Lechem Mishnah* however argues that what the *Rambam* ruled earlier (*Nedarim* 5:1) appears to confirm the *Ran*’s understanding: If *Reuven* makes a *neder* prohibiting benefit from *Shimon* it is indeed prohibited to *Shimon*. If however *Shimon* goes and gets benefit from *Reuven* his is not punishable by lashes “because he did not say anything”.²

How can we explain the opinion of the *Kesef Mishnah*? Perhaps one could suggest that the difference in this case to the classic case cited by the *Lechem Mishnah* is that this case involved a condition. Elsewhere the *Rambam* (*Nedarim* 2:1) writes that one can accept a *neder* if another person makes it for him and he responds “*amen*” or anything equivalent to it. Perhaps, in this case, the *Kesef Mishnah* understood that by the wife fulfilling the condition (visiting her father’s house) she affectively accepts the *neder* herself (like responding *amen*). Therefore if she then breaches the *neder*, in this case, it is as if she breached her own *neder* and is punishable with *lashes*.

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¹ Even though it appears that the *Ran* argues that there is no transgression in his involvement.

² One understanding of the exemption of lashes, while nevertheless being *assur*, is because the *Rambam* maintains that

only *issurim* that are explicitly stated and not learnt out from a *drash* are punishable by lashes. As the prohibition applying to another is not explicitly stated, rather learnt from a *drash*, it is not punishable.

Revision Questions

נדרים ו' ח' – ח' : ב'

- According to R' Yehuda why is date honey included in a *neder* forbidding dates? (ו' ח')
- Why is sesame oil not included in a *neder* forbidding oil? (ו' ט')
- What do the following terms used in a *neder* refer to: (ו' י')

 - *Chitah*?
 - *Chittin*?

- Which product is debated whether it is included in the term *yerek* and explain the debate? (ו' יא')
- According to the *Chachamim* what is included in the term *dagan*? Which term does R' Meir maintain refers to those things? (ו' יב')
- If someone makes a *neder* against wearing woolen garments, what woolen product is not included in the *neder*? (ו' יג')
- In response to the previous question, what principle does R' Yehuda raise? (ו' יד')
- Which part of the house is debated between R' Meir and the *Chachamim* as being included in the term "*ba'it*" in a *neder*? (ו' יה')
- Explain what the *ibur* and *techum* of a city are and are they included in a *neder* forbidding one from entering a city? (ו' יז')
- If one makes a *neder* from entering a house, where is the border from which he is forbidden to cross? (ו' יח')
- With what wording of a *neder* forbidding a fruit, would one also be prohibited from the money as a result of its sale or future trees that grow from the seeds of the fruit? (ו' יט')
- Give another example that shares the same law as the previous question? (ו' כ')
- What is the difference between the following two *nedarim*: (ו' כא')

"שאת עושה איני אוכל עד הפסח"
"שאת עושה עד הפסח איני אוכל"

- What is the law regarding the following *neder* after *pesach*: (ו' כב')

"שאת נהנית לי עד הפסח אם תלכי לבית אביך עד החג"

- When does a *neder* end if it is made for: (ו' כג')

 - A day?
 - This day?
 - A week?
 - This week?
 - A month?
 - This month?

- With what wording of a *neder* is the end of the *neder* the beginning of *pesach*? Is the end of *pesach*? (ו' כד')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
31 st December " טבת	1 st January "א טבת	2 nd January "ב טבת	3 rd January "ג טבת	4 th January "ד כסלו	5 th January "ו טבת	6 th January "ז טבת
Nedarim 8:3-4	Nedarim 8:5-6	Nedarim 8:7-9:1	Nedarim 9:2-3	Nedarim 9:4-5	Nedarim 9:6-7	Nedarim 9:8-9

