



Volume 3. Issue 23.

Hafarat and Hatarat Nedarim

This week we made the transition from learning about *hatarat nedarim* to *hafarat nedarim*. *Hatarat nedarim* refers to the process through which a person's *neder* (vow) can be "undone" by a *beit din* or *chacham*, provided that a regrettable and foreseeable factor was not considered at the time of the *neder* (see last week's article). *Hafarat nedarim* on the other hand refers to a father's or husband's ability to suspend a *neder* made by his young daughter (*na'arah*) or wife respectively.

Through learning the laws of *hafarat nedarim* many differences between *hatarat nedarim* and *hafarat nedarim* have become apparent. At the end of the *eighth perek*, the *Bartenura* records one such difference:

The concept of *hafarah* only works if [the husband] says "*mufar lach*" like the language used in the *Torah*, because *hafarah* employed by the husband implies from this point onward [and] without reason as it says "he has broken (*hefer*) my covenant" (*Bereishit* 17:14). The *Chacham* however says "*mutar lach*, there is no *neder*, there is no *shevuah*" as he uproots the entire *neder*.

This distinction, that *hatarat nedarim* work retroactively to uproot the *neder* while *hafarat nedarim* is only effective from the point of *hafarah* and onwards, seems to be supported by a *Gemara* in *Nazir* (21b-22a). There the *Gemara* asks how exactly *hafarah* works – "*miaker aker*" (uproots) or "*migaz ga'yiz*" (cuts)? The *Tosfot* understand that the *Gemara* is asking whether or not it works retroactively like *hatarat nedarim*. The *Gemara's* conclusion is that *hafarah* is "*migaz ga'yiz*" (cuts), which *Rashi* understand to mean that it is effective from the point of *hafarah* and onwards.¹ As the terminology *mutar* and *mufar* have very different implications, they are thus not interchangeable, and "*mutar lach*" is only used by the *chacham* while "*mufar lach*" is only used by the husband.

With the above said, the opinion of the *Rambam* is then surprising. Firstly he writes the *hafarah* completely uproots the *neder* "from its root" (*Nedarim* 13:2). Furthermore the *Kesef Mishneh* points out that when the *Rambam* writes:

"For the father and husband do not *matir* like a *chacham* but rather uproots the *neder* from its outset", it implies that *hatarat nedarim* performed by the *chacham* does not work retroactively. Aside from the problem already stated, the *Kesef Mishneh* points out that this implication flatly contradicts another statement of the *Rambam* (*Nazarut* 3) that suggests that the *Rambam* does agree that *hatarat nedarim* works retroactively.

The *Kesef Mishneh* explains the *chacham* and husband operate in two very distinctive manners. As has been explained, in *hatarat nedarim* the *chacham* works with the person to determine a foreseeable factor that had it been considered at the time of the *neder*, the *neder* would never have been formulated. When the *chacham* is *matir* he is simply delivering a *halachic* conclusion that the identified consideration was indeed foreseeable and regrettable and thus the *neder* never got off the ground – it was a mistaken *neder*. In *hafarat nedarim* however, the *neder* the wife makes is a *neder*, yet through *hafarat nedarim* the husband uproots the *neder*. This explains how the husband is not "*matir* like the *chacham* but rather uproots the *neder*", while leaving the understanding that *hatarat nedarim* works retroactively intact since the statement of the *Rambam* here is referring the difference in function and not timing.

The *Kesef Mishneh* also explains that the *Gemara's* question of whether that *hafarat nedarim* uproots the *neder* or is "*migaz ga'yiz*" is precisely this point. Unlike the explanation above, the *Gemara* is asking that after *hafarat nedarim* is it as if the *neder* never existed (like *hatarat nedarim*) or it did exist but was absolved by the husband – "*migaz ga'yiz*".²

Therefore we have seen two understandings of a difference between *hatarat nedarim* and *hafarat nedarim*. Most *Rishonim* understand that *hatarat nedarim* is effective retroactively while *hafarat nedarim* is not. The *Rambam* on the other hand understand that both are effective retroactively, the difference is in the mechanism through which they take effect.

David Bankier

¹ This also appears to be the opinion of the *Rosh*.

² The *Lechem Mishneh* adds to the *Kesef Mishneh* explaining that the term *migaz ga'yiz* means that the husband completely uproots only the elements

of the *neder* that are between him and his wife hence the term *migaz* (cut or trim). For a full understanding see the *Lechem Mishneh* inside.

Revision Questions

נדרים ט"י – י"א – ה'

- What is the law regarding one who makes a *neder* not to marry someone because they are short, yet in truth they are tall? (ט"י: י')
- What is *R' Yishmael's* opinion regarding *bnot Yisrael*? (ט"י: י')
- Which two people can *meifer* the *nedarim* of a *na'arah meorasah*? Is it enough if only one of these people is *meifer*? (י"א: י')
- If one of these two people dies, can the other *meifer* her *nedarim*? (י"ב: י')
- If the *na'arah* gets engaged, makes a *neder*, gets divorced, and gets engaged to another person all in the same day, who can *meifer* her *nedarim*? (י"ג: י')
- What was the *minhag* of the *talmidei Chachamim* with respect to *nedarim* of their daughters? (י"ד: י')
- What are the two opinions regarding when a *chatan* can be *meifer* the *nedarim* of his *bogeret kallah*? (י"ה: י')
- Explain the three opinions regarding who can be *meifer* the *nedarim* of a *shomeret yabam*. (י"ו: י')
- Explain the two opinions regarding whether a husband can be *meifer* his wife's future *nedarim*. (י"ז: י')
- Complete the following rule: (י"ח: י')
הפרת נדרים כל _____
- Explain how that rule can be both stringent and lenient. (י"ח: י')
- Which two cases are debated as to whether they are *nedarim she'yesh bahem inui*? (י"א: י')
- Give examples of *nedarim* that "yesh bahem inui"? (י"א: י')
- Can a husband *meifer* a *neder* made against gaining any benefit from anyone? (י"א: י')
- What is the law regarding a *neder* made against giving any benefit to *kohanim* or *levi'im*? (י"א: י')
- Can a husband *meifer* a *neder* made by his wife against giving any benefit to her father? (י"א: י')
- What is the law regarding *neder* made against giving any benefit to her husband, regarding *hafarah*? (Include all three opinions) (י"א: י')
- Give an example of a "mistaken" *hafarah*. (י"א: י')
- Does a mistaken *hafarah* qualify as a *hafarah*? (י"א: י')

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Next Week's Mishnayot...

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | שבת קודש |
|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|------------------------------------|
| 14 th January כ"ד טבת | 15 th January כ"ה טבת | 16 th January כ"ו טבת | 17 th January כ"ז טבת | 18 th January כ"ח טבת | 19 th January כ"ט טבת | 20 th January א' שבט |
| Nedarim 11:6-7 | Nedarim 11:8-9 | Nedarim 11:10-11 | Nedarim 11:12- Nazir 1:1 | Nazir 1:2-3 | Nazir 1:4-5 | Nazir 1:6-7 |

