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נדרים מ״ו
The Chicago Center

OVERVIEW of the Daf

1) MISHNAH (cont.): The Mishnah continues to address the halachos of partners who make a vow to prohibit benefit from one another. The Mishnah also addresses the case where only one partner is prohibited from deriving benefit from the other as well as when a third party is prohibited to derive benefit from one of the partners. The Mishnah concludes with two cases related to deriving benefit from property that is no longer in the possession of the one from whom one may not benefit.

2) Clarifying the Mishnah's first case

The Gemara first states that the dispute in the Mishnah applies when each partner took a vow not to benefit from the other but then inquires whether there would also be a dispute if each of the two parties prohibited his friend from deriving benefit from him.

An attempt is made to prove from the Mishnah's next case that the same dispute will be in place when the two parties prohibit their property on their friend.

This attempt is rejected since there could be another reading of the Mishnah.

Proof in favor of the alternate reading is cited.

Rabbah in the name of Zeiri asserts that the dispute between Rabbanan and Rebbe Eliezer ben Azarya applies only when the courtyard has enough area to be divided, but if it does not have that space all opinions agree that each can enter the yard, as the original partnership included exclusive usage as each partner enters.

R' Yosef rejects this interpretation and maintains that the dispute applies when there is not enough area to divide but when there is enough area to divide everyone agrees that it is prohibited for each partner to enter the field.

R' Huna and R'Elazar rule in accordance with R' Elazar ben Yaakov's position.

3) Retaining a "holding" – תפיסת יד

R' Nachman asserts that retaining a "holding" means that the owner keeps at least one quarter of the profits.

Abaye disagrees and maintains that any percentage of income is considered retaining a "holding" and the case that would be permitted is when the owner receives a fixed yearly rental fee. ■

Distinctive INSIGHT

In which case does the partner have to sell his portion of the yard?

וכופין את הנודר למכור את חלקו

The Mishnah presents the case of two people who own a yard in partnership, but then one of them, Reuven, pronounces an oath to restrict Shimon, his partner, from receiving benefit from him. The halacha is that the one who declared the neder must sell his portion in the yard. The Rishonim discuss how to understand this halacha, when we require a sale, and who it is that must sell his portion.

Ramban and ר״ן learn that the case is where the neder of Reuven was that he prohibited upon himself to benefit from Shimon. Now that Reuven cannot enter the yard, we are afraid that he will not observe this restriction carefully, and we therefore penalize him by instructing him to sell his portion in the yard so that he will not come to enter the area of his friend which is now prohibited. However, if Reuven had declared in his neder that Shimon may not benefit from him, we do not issue a penalty against Shimon to sell out, because although Shimon may not enter the part of the yard that is not his, Shimon did not create the problem. ר״ן adds that in case Reuven prohibits benefit upon Shimon, we also do not penalize Reuven to sell his own portion to minimize the risk that Shimon will violate the neder. Although Reuven caused the problem for Shimon, we only penalize a person who causes a risk for his own self. Therefore, the case is where Reuven declared that he himself may not benefit from Shimon's property.

Rambam (Hilchos Nedarim 7:5) learns the case in the

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REVIEW and Remember

1. What is the underlying dispute between Chachamim and R' Eliezer ben Yaakov?
2. When does property prohibited by a vow remain prohibited even after the vower died?
3. What size property is considered כדי חלוקה?
4. Explain the dispute between R' Nachman and Abaye concerning the definition of תפיסת יד.

HALACHAH Highlight

Retaining one's name on a building that was sold

קונם בית זה שאני נכנס

"Konam that I will enter this house."

There was once a Torah institution that made plans for a major expansion project which would render the old building unusable and it would either be torn down, sold or converted into apartments. This raised the question of what should be done regarding the name of the old building. A family had paid money to have their name on the old building and even had a contract that stipulates that they bought the right to the name of building forever, לעולם ועד. Since the administrators already had people prepared to donate significant funds to put their name on the new building, the question was whether the first family has any rights to put their name on the new building.

The Shevet HaLevi[1] addressed a number of issues involved in this inquiry and one of them was the contract between the institution and the first family granting rights to the family to put their name on the building forever. Shevet Halevi ruled that it is obvious that the stipulation is in force only as long as the building still serves its purpose. Once the building falls, is sold under permissible conditions or becomes too small to serve its purpose the family loses their rights. This is similar to the ruling in our Mishnah that if a person declares, "Konam that I will enter this house," he is prohibited to enter the house even if the owner dies or the house is sold but once the house is torn down he may derive benefit from a new house that is built on that same location.

Shevet Halevi takes note that although the physical structure of the building donated by the first family will not last forever, their merit for bringing the institution into existence will last forever. Therefore, it is proper and upright (מן הדין והיושר) for the institution to transfer the name of the first family onto the new building, subject to the following condition. If by transferring the first family's name to the new building other benefactors will refrain from donating the needed funds for the new building, it is not necessary to transfer their name. ■

1. שו"ת שבט הלוי ח"ט סי' ר"ה ■

(Insight. Continued from page 1)

Mishnah as the reverse of the case as stated by ר"ן. The case where Reuven must sell out his portion is where he declared that Shimon may not benefit from him. In this case, Reuven has caused an obstacle for his neighbor, Shimon, and as long as Reuven remains living there, Shimon is at risk of entering his land. Therefore, we compel Reuven to sell his portion of ownership and to move away so as to no longer threaten Shimon. If, however, Reuven prohibited upon himself to benefit from Shimon, Reuven must deal with his own limitations, and we do not impose upon him any requirements to sell out.

Rosh (סימן א') and Tur (Y.D. #226) explain that the case of the Mishnah which requires that Reuven sell his portion of the yard is dealing with either case. Whether Reuven prohibits benefit to Shimon or from Shimon, in either case we demand that Reuven sells his partnership in the land. When he cannot receive benefit we are afraid that he might lapse and enter the forbidden area, and when Shimon cannot benefit from Reuven, we are concerned that Reuven not pose a threat to Shimon on a regular basis. ■

STORIES Off the Daf

Dividing up a synagogue

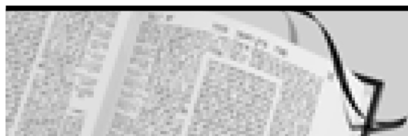
הרי בית הכנסת כדמי שאין בו כדי חלוקה דמי

There was a certain shul in which two groups of mispallelim were not getting along. One of the groups decided to break away from the main group. However, money was short and the group which was splitting off wished to arrange a halachic sale of the shul and divide the proceeds with the rival faction in an equitable way based on the number breaking off. The main group categorically refused.

They exclaimed, "Who ever heard of a splitting up a shul to accommodate one of its groups! Even breaking away from the main group of a shul is a halachic question. Why should we have to pay for this?"

The decided to ask a local Rav and were told that they definitely did not have to sell. He answered, "Although the Maharshdam, zt"l, discusses the question of dividing a shul at great length, the Knesess Hagedolah states that this is not a question at all. There is a clear gemara in Nedarim 46b which makes this a non-issue. The Gemara states clearly that a beis hakeneses doesn't have a law of chalukah. Obviously the halachah is that we don't divide a shul."

However, when Rav Yisrael of Shklov, zt"l, consulted the Chasam Sofer, zt"l, regarding a similar question, he disagreed. "There is no proof whatsoever from Nedarim 46, since there the Gemara is discussing dividing someone's seat in shul—something that physically cannot be divided into two for it only suffices for one person. A shul is certainly not in this category. So the Gemara has no bearing on the question!" ■



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