

OVERVIEW of the Daf

1) **MISHNAH** (cont.): The Mishnah continues its discussion of how a vow prohibiting benefit from another affects the use of public property. The Mishnah describes how parties who are prohibited from deriving benefit from one another could circumvent the restriction. A dispute is recorded that pertains to whether there is a difference between ceding one's rights to the nasi or someone else. R' Yehudah teaches a related halacha that applies specifically to the residents of Galil.

2) Writing one's property to the nasi

The Gemara questions the Mishnah's implication that one who writes his property to the nasi is not permitted to use that item.

R' Sheishes explains the intent of the Mishnah.

The Gemara proceeds to quote a long portion of the Mishnah.

3) Clarifying R' Yehudah's last ruling

A Baraisa elaborates on R' Yehudah's last ruling.

4) **MISHNAH:** The Mishnah continues to discuss giving ownership of property to a third party to circumvent a restriction caused by a vow.

5) Clarifying the Mishnah

It is noted that the incident cited in the Mishnah contradicts the ruling it is supposed to support.

Rava explains that the Mishnah's ruling that a gift does not circumvent the prohibition applies only when it was stipulated

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Distinctive INSIGHT

Benefit from using a sefer of the city

ואיזהו דבר של אותה העיר כגון הרחבה והמרחץ ובית הכנסת והתיבה והספרים

Learning from Torah texts is a mitzvah, and the benefit derived from doing mitzvos is usually not defined as personal enjoyment. **ההר** asks, therefore, why a person who is prohibited from benefiting from another should be restricted from reading his sifrei kodesh. We should expect the one who cannot receive benefit to be able to use the sifrei kodesh of the one who pronounced the neder.

He answers that the only type of benefit from a mitzvah which is not considered personal gain is when a mitzvah act is done. For example, if listening to the sound of a shofar is pleasant, we say that since the shofar is not being blown for personal reasons, but only to fulfill a mitzvah, this is permitted even where benefit from the shofar has been prohibited. Here, however, we are dealing with the study of Torah. Learning Torah is the pursuit of knowledge and seeking the truth. The main mitzvah is to revel in the pursuit of Hashem's Torah and to achieve an inner simcha and spiritual fulfillment. As the verse states (Tehillim 19:9), "The statutes of Hashem are straight, they cause the heart to be glad." A mourner is restricted in his learning of Torah precisely because it results in his person becoming cheerful. This is why we cannot say that the mitzvah of learning Torah is not included in the category of providing benefit, as the entire objective of the mitzvah is to provide a sense of fulfillment and satisfaction due to true accomplishment.

The **קצות החושן** (C.M. 72, #34) writes that when someone borrows a sefer from his friend, the borrower does not have the status of a **שואל**, one who benefits by using someone else's object, because the borrower's benefit is from a mitzvah, which is not personal enjoyment. He mentions that this is corroborated from the Mishnah (Nedarim 35b) where we find that if someone prohibits benefit to his friend, he may still teach him Midrash, Halachos, and Aggados. This indicates that there is no personal benefit afforded when one teaches Torah, and one who borrows a sefer to use is therefore not a **שואל**, and he is not liable for **אונסין**. How, then, does the **קצות** understand why a **מודר הנאה** cannot use the sefarim of the city in our Mishnah?

The **קצות** himself explains that it is not the benefit of learning Torah which prohibits usage of sefarim, but it is rather the wear and tear of the sefarim that is the problem. The Taz cites the **מיימוני תשובות** who says that it is permitted to charge others to use one's sefarim because the cost is assessed due to the depreciation of the sefer. Nevertheless, this is something that does not make one into a **שואל**. ■

REVIEW and Remember

1. What are examples of property that belongs to the residents of a town?

2. What is the measuring stick to determine whether a gift is valid?

3. How did a grandfather arrange to provide his grandson with an inheritance even though he did not want his son to have any rights to that property?

4. Explain the phrase **קני על מנת להקנות**.

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ומרת שרה פעסל בת הרב אליהו חיים, ע"ה

HALACHAH Highlight

Restrictions placed upon usage of a Beis Haknesses

ואיזהו דבר של אותה העיר כגון הרחבה והמרחץ ובית הכנסת והתיבה והספרים

What are things that belong to the city? The town square, the bathhouse, the Beis Haknesses, the Ark and the Sefarim.

Shulchan Aruch¹ rules that when two people are prohibited to benefit from one another they are not allowed to benefit from those things that are collectively owned by the citizens of their city. For example, these two people are prohibited to benefit from the Beis Haknesses, the Ark and the Sefarim. In order to be permitted to enter the Beis Haknesses these parties must transfer their rights in the Beis Haknesses to a third party, and by doing so neither is benefiting from the other's property. Shach² mentions that this ruling is consistent with the halacha taught in our Gemara, but the Gaonim³ made an enactment that a person may not prohibit his share of a Beis Haknesses or the Sefarim, and even if one makes such a declaration it is considered meaningless.

If someone lends his building to the community to be used as a Beis Haknesses and has a falling out with a member of the community, he is not permitted to prohibit that person from entering the building. His only option is to prohibit the entire community from entering his building⁴. The rationale behind this ruling, explains Mishnah Berurah⁵, is that it would be disgraceful for one person to be prohibited from entering the building. If he prohibits the entire community from entering the building no one will be disgraced. Biur Halacha⁶ adds that this halacha applies only when the owner of the property donated the property not only to be used for davening, but to acquire the

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that the gift was to circumvent the prohibition.

A second version of Rava's qualification is presented.

6) A rebellious son

A related incident is recorded.

The Gemara inquires whether the rebellious child can acquire his father's property in order to pass it on to his son in the event that his son will become a Torah scholar.

Pumbedisa and R' Nachman disagree on this point.

R' Ashi challenges R' Nachman's proof.

Rava challenges R' Nachman from our Mishnah.

Two versions of R' Nachman's response are presented.

Another unsuccessful challenge to R' Nachman is presented.

הדרן עלך השותפין ■

sanctity of a Beis Haknesses as well. If, however, the owner of the property only allowed people to use this space to daven but not to become sanctified as a Beis Haknesses he is authorized to prohibit individuals from entering his property. Biur Halacha⁷ also quotes an opinion which maintains that the restriction against prohibiting individuals from entering the property donated to be used as a shul only applies when there is no other Beis Haknesses in town. If, on the other hand, there is another Beis Haknesses in town the owner does have the right to prohibit individuals from davening on his property. ■

1. שר"ע יר"ד סי' רכ"ד סע' א'
2. ש"ך שם סק"א
3. לשון המ"ב סי' קנ"ג ס"ק פ"ז
4. שר"ע או"ח סי' קנ"ג סע' ט"ז
5. מ"ב שם ס"ק פ"ח
6. ביה"ל שם ד"ה מי שהשאל
7. ביה"ל שם ד"ה לאסרה ■

STORIES Off the Daf

Property of "The People"

ואיזהו דבר של עולי בבל

In the Soviet Union, circumstances conspired against those who wished to observe Torah and mitzvos. One great area of challenge was the construction and use of mikvaos. The government made the building and operation of a mikveh illegal under the pretext that the baths were unhygienic, and this didn't only affect the observance of טהרת המשפחה, but also the proper immersion of utensils. In places where there were natural bodies of water, the immersion of vessels was possible, but in places where there were no naturally kosher

mikvaos, this was a serious problem. Many people had the same question. Did they really have to immerse whatever vessels the Communist regime saw fit to issue to the nearest body of water, which was often hours away?

A certain rabbi wished to permit these vessels with no ritual immersion whatsoever. He reasoned that since the vessels were made in a Communist factory for the people and were not set aside for any individual or partners but were the property of the collective, they didn't count like vessels owned by a non-Jew. They had no specific non-Jewish owner. The Rav decided to ask Rav Moshe Feinstein, zt"l, if his heter would stand.

Rav Moshe replied, "On the surface, it appears that the Gemara in Nedarim 48

may support you. The Gemara states that certain types of property that belong to the collective of olei bavel are permitted to anyone's use. These are public property, such that even one who vowed that his neighbor enjoy no benefit from his possessions can derive benefit from these things. The Ran and Tosafos explain why. The olei bavel made these things like hefker, so although one may use them freely, they do not belong to the individual in the sense of restricting the use of another."

Rav Moshe concluded, "However, this is really no proof at all, since in Russia the vessels are not really ownerless. The people own the vessels. Therefore, the vessels distributed by the government are actually owned by many non-Jews and need immersion!" ■