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Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

WEEK ONE SUMMARY OF SBM 2016

Eliav Grossman and Leead Staller

What role do unforeseen occurrences play in the halakhic system of commercial commitments? We will cast a wide net over this summer, including topics that seem very distant from commercial contracts at first sight. Since halakhic marriage can be understood as a halakhic contract, Rabbi Klapper hopes that new perspectives we gain about the response of halakhic contracts in general to unforeseen negative developments will contribute to the development of solutions for agunot.

In this first week of learning, we explored the world of *nedarim*; verbal commitments that are self-imposed constraints on otherwise permitted behaviors. More specifically, we explored the processes and parameters through which one can renege on such commitments. To that end, we considered various cases of unforeseen circumstances that allow a *neder* to be erased.

The Mishnah (Ned. 9:1) states:

Rabbi Eliezer says: we give a person an opening [to a vow] by reference to the honor of their father and mother. The Sages forbid doing so.

Said Rabbi Tzadok: Rather than giving an opening through the honor of their father and mother, open with honor of God; If so there would be no vows!

In order to nullify a vow, the vower must express regret at having taken the vow to a rabbi. In cases where the vower wishes to nullify his vow but does not feel regret, a rabbi can attempt to provoke feelings of regret through guided questions. Rabbi Eliezer teaches that a rabbi may prompt someone who has taken a vow to regret his pledge by reminding him how unhappy his parents would be with his wanton oath-taking. The Sages disagree with the acceptability of such a practice. Rabbi Zadok challenges R' Eliezer's view, and asserts that a rabbi could, more powerfully, invoke God's disapproval at such behavior in order to encourage nullification. If God's displeasure with irresponsible oath-taking is valid grounds for such rabbinic encouragement, though, then all vows

are susceptible to erasure! After all--who could resist feelings of regret when told that God frowns upon his supererogatory self-imposed restrictions? Thus, implies the Mishnah, the displeasure of neither God nor parents may be invoked to actuate erasure of the vow.

Given the severity with which we generally consider religious commitments, we can understand why The Sages would be hesitant. Like the Mishnah says, once we adopt a looser standard for vows, it's a slippery slope until the entire institution of *nedarim* itself is undermined.

But why would Rabbi Eliezer be lax with the stakes as high as the erasure of the institution of *nedarim*? Can he really scoff so dismissively at the binding weight of verbal commitments? Indeed, he may well be doing just this. While, intuitively, the idea of disregarding one's commitments may seem disturbingly dishonest, in this case, we must consider whether *nedarim* should be thought of as comparable to human contract law in any way. Undoubtedly, it would seem morally and pragmatically problematic for Halakha to allow for one to disregard their word and break their interpersonal commitments. Thus, it must be that the legal system could not allow for all commercial commitments to be easily nullified; otherwise commerce would be chaotic and impossible. That being the case, if Rabbi Eliezer really is unperturbed by the potential erasure of all *nedarim*, it must be that he does not think of *nedarim* as comparable in any way to human promises or commercial commitments. Rather, from a legal perspective, the ritual world of *nedarim* must be viewed as wholly independent from the interpersonal world of commercial law. Thus, *Nedarim* may not be a useful point of reference for thinking about unexpected circumstances and commercial contracts.

Indeed, such a perspective may emerge from a comment of the *Tiferet Yisrael* on our Mishnah. The *Tiferet*

Yisrael rejects the idea that one should be bothered by the prospect of the total erasure of all *nedarim*. Paraphrasing a mishnah from *Zavim*, the tractate dealing with impure bodily emissions, the *Tiferet Yisrael* exclaims “Is the existence of *nedarim* really our responsibility?” In other words, while such a position may indeed wipe *nedarim* off the map, it’s not the responsibility of the human halakhist to ensure the real world existence of ritual law. Much like we would feel unperturbed by a halakha that renders certain laws of ritual impurity impractical, we should adopt a similar attitude towards the ritual laws of *nedarim*. This seems predicated upon an assumption that the world of *nedarim* is just as ritual and removed from interpersonal laws of human commitments as the laws of *Zavim* and ritual purity are.

Indeed, several sugyot suggest that there is *always* a way to undo a *neder*. For example (b. Ned. 23a):

A man once said that if his wife were to make the festival pilgrimage [to Jerusalem], he would vow not to allow her to derive any benefit from him [Note--the result of such a vow is that the husband must divorce his wife] ; but she disregarded his wish, and did go.

He went to R. Yose [for absolution of the vow], who said to him, 'Had you known that she would disregard your wish and make the journey, would you have imposed the vow on her?'

He answered, 'No,' and R. Yose absolved him.

Rabbi Yose’s agreement to nullify the vow seems astonishing. After all, did not this man explicitly stipulate that if his wife would go to Jerusalem, he would take a vow and divorce her? How can the man reasonably say that had he known his wife would disregard his threat, he would not have stipulated the very condition which acknowledges the possibility of her going to Jerusalem?! Yet, while some commentators attempt to mitigate the severity of this conclusion, the simplest reading of the Gemara indicates that R. Yose’s nullification of the vow is effective. If this type of nullification works, it would seem that there are no vows that are impervious to nullification. This sugya furthers the impression that *nedarim* and commercial contracts exist on different planes--such expansive possibilities for nullification would render commercial interaction impossible.

The truth is that even Rabbi Eliezer may have his limits, depending on how one reads the Mishnah. There is an ambiguity as far as who states the last clause quoted

above, “if you allow for opening vows by invoking divine disapproval, then you’ll allow for the erasure of all *nedarim*.” Seeing as this clause is unattributed, one could read it as the continuation, and final thrust, of Rabbi Tzadok’s challenge to Rabbi Eliezer. “If you allow rabbis to invoke parental disapproval, then you must allow for the invocation of divine disapproval. And if you allow that, then you’ll undermine all of *nedarim*! Thus, one must not allow even the invocation of parental disapproval.” Rambam, in his commentary on the Mishnah, adopts this reading.

Alternatively, one could read this unattributed statement as being Rabbi Eliezer’s response to Rabbi Tzadok’s challenge. After Rabbi Tzadok challenges that permitting the invocation of parental disapproval must necessarily lead to the permissibility of invoking divine disapproval, R’ Eliezer responds by drawing a line. “While I may allow for the invocation of parental disapproval, I would never allow for the invocation of divine disapproval, as that would undermine all of *nedarim*.” Rav Ovadiah MiBartenura suggests this reading of the Mishnah. If we adopt this approach, even Rabbi Eliezer can be seen to have limits to his willingness to nullify *nedarim*--reinforcing the seriousness with which Halakha considers one’s commitments. Thus, the disagreement between the Rambam and Bartenura as to how to read the Mishnah may belie a greater question as to whether it’s even possible to entertain a position within the Halakhic system that is unfazed by the threat of nullifying all vows. In turns, this may reflect upon one’s general attitude towards Halakhic commitments and their severity.

Thus, the discussion in our Mishnah can be seen as revolving around the question of halakha’s willingness to allow for the nullification of previous commitments. The sages in our Mishnah struggle to impose the proper limits on the scope of vow erasure, by arguing about whether to allow vow erasure at the mere remembrance of parental or divine displeasure. The expansive allowances adopted by some for nullification of *nedarim* may point to a large gap between the laws of *nedarim* and those of commercial contracts. Ultimately, this discussion touches upon the larger question of one’s perspective towards halakhic commitments, and the circumstances necessary to justify a reconsideration of those commitments.