

## OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah presents the halachos for a person who takes a vow prohibiting benefit before and after Shemittah and the halachos for a person who took a vow prohibiting food-related benefit before and after Shemittah.

### 2) Taking a vow before Shemittah

The Gemara presents a dispute between Rav and Shmuel on one side and R' Yochanan and Reish Lakish on the other. The dispute relates to a person who declared that his property is prohibited and they differ regarding what happens to the vow when Shemittah arrives.

A suggestion is made to explain the two positions of the dispute.

Two challenges against this explanation are presented.

Although the second challenge is resolved the first challenge remains unresolved.

An alternative explanation of the dispute is suggested.

The current explanation of Rav and Shmuel's position is successfully challenged.

The Gemara concludes that there is no dispute about this matter and Rav and Shmuel refer to one case whereas R' Yochanan and Reish Lakish refer to another case.

### 3) Clarifying the Mishnah

The Gemara wonders why the Mishnah distinguishes between eating the fruit and entering into the property of someone from whom he is not permitted to benefit.

Two explanations are recorded.

4) **MISHNAH:** The Mishnah continues to present guidelines to the relationship when one party is not permitted to benefit from the other. ■

## Distinctive INSIGHT

*According to whose opinion is entering one's property included in the neder?*

המודר הנאה מחבירו לפני שביעית אונן יורד לתוך שדהו ואינו אוכל מן הנטות

There are two distinct intents a person could have when he declares that he prohibits benefit to others. One intent may be that one disallows benefit from himself upon another person. Another intent is when one prohibits benefit from his possessions (מנכסיו) upon others. We must clarify which case is discussed in our Mishnah.

The Mishnah teaches that if Reuven pronounces a neder against Shimon, the result is that Shimon is prohibited entry into Reuven's field. Earlier, the Gemara (32b) presented a dispute between Rebbe Eliezer and Chachamim in this regard. It is understood that passing through someone's property (דריסת הרגל) is a courtesy which, although beneficial, is afforded without cost (ויתור). A property owner allows others to cross through his yard free of charge. Nevertheless, Rebbe Eliezer is of the opinion that such a favor is prohibited for someone who is denied benefit due to a neder. Chachamim hold that this is not prohibited in this case. Rabbi Akiva Eiger, in his commentary to the Mishnah (5:1), explains that even the Chachamim who are lenient in this regard, only permit דריסת הרגל when the neder is stated in terms of benefiting from the person himself (נודר ממנו). However, if the neder was stated in terms of not benefiting from his property (נודר מנכסיו), the Chachamim agree that crossing through his property is prohibited. In this case, we must admit that benefit is realized from the property, and it would not be allowed.

חידושי רבי שמואל shows that the opinion of Beis Yosef is unlike that of Rabbi Akiva Eiger. The Tur (Y.D. #221) writes that if Reuven makes a neder prohibiting Shimon benefit from his property, Shimon may not walk across his yard. Beis Yosef explains that this is according to the opinion of Rebbe Eliezer, who holds that ויתור is prohibited. Apparently, Beis Yosef holds that even when the neder is expressed in terms of not benefiting from one's property, Chachamim would allow walking through. חידושי רבי שמואל explains that the rationale of Beis Yosef would be that although Reuven stated clearly that his property be restricted from being the vehicle for benefit for Shimon, Reuven's intent was only to limit benefit to the extent that he himself cares to provide. This, according to Chachamim, does not include cases of ויתור, and therefore crossing across his property would be allowed. ■

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לעיני ר' אהרן בן ר' יעקב מאיר ע"ה  
By his children  
Mr. and Mrs. David Friedman

# HALACHAH Highlight

*Is it necessary to declare produce ownerless during Shemittah?*

ארעא נמי אפקרה

*The land is also ownerless*

Later authorities debate the issue of declaring produce ownerless during the Shemittah year. Does the produce become ownerless by virtue of Hashem's declaration or perhaps it is the owner of the field who must declare the produce ownerless without Hashem's playing a role in that process. One practical difference between these two approaches is the status of produce that grows in the field of someone who is not observant and did not declare his produce to be ownerless. If the produce becomes ownerless by Hashem's declaration one would be permitted to take "his" produce but if the owner must declare his produce ownerless one would not be permitted to take produce from this person's field.

One of the sources that plays a role in this debate is our Gemara. The Gemara ruled that during Shemittah one is permitted to eat fruit from the field of someone from whom he may not benefit but he may not enter his property. The distinction between the ruling to allow eating the produce but disallowing entering his property was challenged and two resolutions to the challenge are recorded. Maharit<sup>1</sup> cited a version of the Gemara which reads, *ארעא נמי רחמנא אפקרה*—the land is also declared ownerless by Hashem, and accordingly demonstrates that it is Hashem who makes property ownerless during the Shemittah year. Sefer Pe'as Hashulchan<sup>2</sup> rejects this proof based on our version of the Gemara that reads, *ארעא נמי אפקרה*—the land is ownerless due to the declaration of the

# REVIEW and Remember

1. Why is there a difference whether a person took a vow regarding food before or after shemittah?

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2. How did the Gemara initially suggest to explain the dispute between Rav and Shmuel versus R' Yochanan and Reish Lakish?

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3. Is there a difference whether one in his vow prohibits נכסי and נכסים אלו?

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4. What are the restrictions that apply to business when one person is prohibited from benefiting from another?

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owner.

Rav Shmuel Halevi *Wosner*<sup>3</sup>, the Shevet Halevi, demonstrated from our Gemara that the produce becomes ownerless by Hashem without input from the owner. The Gemara states that if one made a vow prohibiting his friend from benefiting from his property during Shemittah the produce is permitted, since the vow does not take effect on ownerless property, but he may not enter the other's field. Now, if one accepted the premise that the produce is ownerless only when declared so by the owner, it is possible for the vow to take effect even on the produce. That would happen when the owner did not declare the produce ownerless when he made the vow during the Shemittah year. This, concludes Shevet Halevi, is conclusive proof that it is Hashem that makes the produce ownerless. ■

1. שו"ת מהרי"ט ח"א סי' מ"ג
2. ספר פאת השלחן סי' כ"ג ס"ק כ"ט
3. שו"ת שבט הלוי ח"י סי' ר"א אות ב' ■

# STORIES Off the Daf

*The ownerless Esrog*

המודר הנאה מחבירו

The Mishnah at the end of our daf discusses the laws that apply to a person whose friend made a vow prohibiting him from enjoying the benefit of any of the friend's assets.

There was a certain wealthy man who owned several kosher esrogim. For some inscrutable reason, he decided to vow not to have any benefit of one of his esrogim just a few days before Sukkos. A

certain poor man who had no esrog of his own hit on what he thought was the perfect plan. He would take the wealthy man's "forbidden" esrog and use that. Although on the first day of Sukkos one must own the esrog used, the poor man assumed that this esrog was ownerless and could be used by anyone.

When he mentioned his "foolproof" plan to a Rabbi, the scholar was unconvinced. "I don't recommend this. Who says you can just take his esrog and use it? Besides, if the man annuls his vow you will be in really big trouble!"

Eventually this question was placed before the Ben Ish Chai, zt"l. Could a

poor man discharge his obligation on the first day of Sukkos using the wealthy man's esrog? The Ben Ish Chai replied, "According to both the Rashba and the Ran, the poor man was permitted to take the esrog and he discharges his obligation. However, the Maharshal states that he can only discharge his obligation with permission from the gevir, since the original owner still has the right to give it to tzedakah. Although the gevir excluded himself from use of the esrog, he didn't pronounce it hefker. Therefore, another cannot come along and discharge his obligation using that esrog without permission!" ■

