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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.

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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"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')
- What is *R' Yishmael's* opinion regarding *bnot Yisrael*? (ט' 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')
- If one of these two people dies, can the other *meifer* her *nedarim*? (י' ב')
- 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')
- What was the *minhag* of the *talmidei Chachamim* with respect to *nedarim* of their daughters? (י' ד')
- What are the two opinions regarding when a *chatan* can be *meifer* the *nedarim* of his *bogeret kallah*? (י' ה')
- Explain the three opinions regarding who can be *meifer* the *nedarim* of a *shomeret yabam*. (י' ו')
- Explain the two opinions regarding whether a husband can be *meifer* his wife's future *nedarim*. (י' ז')
- Complete the following rule: (י' ח')
הפרת נדרים כל _____
- Explain how that rule can be both stringent and lenient. (י' ח')
- Which two cases are debated as to whether they are *nedarim she'yesh bahem inui*? (י"א א')
- Give examples of *nedarim* that “*yesh bahem inui*”? (י"א ב')
- Can a husband *meifer* a *neder* made against gaining any benefit from anyone? (י"א ג')
- What is the law regarding a *neder* made against giving any benefit to *kohanim* or *levi'im*? (י"א ג')
- Can a husband *meifer* a *neder* made by his wife against giving any benefit to her father? (י"א ג')
- What is the law regarding *neder* made against giving any benefit to her husband, regarding *hafarah*? (Include all three opinions) (י"א ד')
- Give an example of a “mistaken” *hafarah*. (י"א ה')
- Does a mistaken *hafarah* qualify as a *hafarah*? (י"א ה')

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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

