

HALOCHOSCOPE

This week's question:

Someone frequently says "I am on a diet! I don't eat fried or oily foods!" Is this a *neder* or *shvua*, *halachically* binding oath? May he occasionally eat *latkes* and the like?

The issues:

A) *Nedarim* and *Shevuos*, bans and oaths, and their justifications

B) *Leshon benei adam*, popular language used in bans

C) Food restrictions imposed for health or other reasons

A) *Nedarim* and *shevuos*

The Torah specifically forbids uses of and benefits from certain things. Everything else is permitted in moderation. One may add to the forbidden list, by further restricting or obligating himself through a verbal undertaking. This takes the form of a pronouncement that becomes binding, so that violating the undertaking is a violation of a *mitzvah* like any other. These are not additional *mitzvos*. It is forbidden to add *mitzvos* to the Torah. Nor are they Rabbinical *mitzvos* imposed on all Jews by Rabbinical authority. In fact, most poskim consider Rabbinical authority an existing Scriptural *mitzvah* to adhere to their words. The Torah includes such undertakings in the *mitzvos* of *neder* and *shvua*, vows and oaths. [There is some debate on how the vow or oath of a gentile is binding on him. It must be included, in some way in the seven *mitzvos* that apply to him.]

Mitzvos set guidelines on behavior in two ways: they can be imposed on the person or outlaw an article. For example, it is forbidden to worship idols. This restricts personal behavior. The idol may not be benefited from. This is a restriction on the article, which in turn restricts behavior in terms of the benefit. If one undertakes or forbids a practice or an activity, he has made a *shvua*, or oath. If he forbids benefit from an item, he has made a *neder*, or ban. The result is basically the same, but they are included in different *mitzvos* and can have a different penalty. In addition, the restriction on their application are different. For example, one may not take a *shvua* in contradiction to a *mitzvah*. Since the *mitzvah* is a prior obligation, his *shvua* cannot take effect against it. However, *mitzvos* are almost always obligations based on behavior or activity. Therefore, if a person made a *neder* banning an item normally used for the *mitzvah*, he is indeed bound by it. This *neder* will take effect, and by default, he will be unable to fulfill the *mitzvah*.

Having undertaken a *neder* or *shvua*, one is bound by the positive *mitzvah*, *motza sefasecha tishmor*, you shall keep your word. If he violates it, he is in violation of the negative *mitzvah*, *lo yachel devaro*, he shall not profane his utterances. One can verbally ban the use of an item to himself, or if the item belongs to him, he may ban its use to others. In the same way he may consecrate an item to *hekdes*, the sanctified 'ownership' of the *Bais Hamikdash* and Hashem. A *hekdes* article may not be benefited from. Accord-

ingly, one who benefits from a banned article is considered the same as having profaned its sanctity. He 'sanctified' it with his word. *Hekdesh* is the model for many terms used in *nedarim*, and for the type of ban and violations thereof. *Shvua* does not sanctify the item, but the Torah uses the same concept of profanity in its violation. In addition, a *shvua* is often accompanied by uttering the Name of Hashem. This could involve more *mitzvos*, including swearing falsely and taking Hashem's Name in vain. Of the various types of *shvua*, the type under discussion is called *shvuas bituy*, literally, a verbal oath. According to some a *shvua* can carry the Scriptural penalty even without uttering Hashem's Name.

The language used for the undertaking determines whether it is considered a *shvua* or a *neder*. That is, one might mention an activity or an item. However, one need not include the formal language to be bound. He need not swear solemnly or take an oath or vow to be bound by the rules. Any time one verbalizes a serious undertaking without adding a statement that serves notice that it shall not be binding, he has automatically obligated himself Scripturally to follow through. A financial obligation adds more *mitzvos*, and some differences, since it also includes another party. Therefore, it is good to develop a habit of stating '*bli neder*' (or '*bli neder ushevua*') whenever one makes some kind of verbal commitment.

The Talmud derives from *pesukim* that it is not considered a virtue to impose bans and oaths on oneself. Rather, the Torah refers to such people as sinners. Often, the oath is made in haste, as a reaction to something, or in zeal, in a moment of inspiration. Had the person thought it through, he might have been more cautious. As a result, it can become difficult to maintain then practice, and the resultant violations make this worse than they were without it. In addition, the attitude of the one undertaking the *neder* is that the Torah is not sufficiently helpful to him in directing his behavior. Even one who observes his *nedarim* scrupulously is labeled a *rasha*, wicked. Furthermore, the Talmud condemns one who bans certain foods, as he is inflicting pain upon himself. The Talmud warns of grave consequences when a *neder* or *shvua* is violated, even inadvertently. While this refers to one made accompanied by Hashem's Name, we are always careful not to utter anything binding, as well as using Hashem's Name in any language for added effect in conversation (the original meaning of expletives). Even if the initial utterance was made casually, it should be taken seriously. A *Rav* should be consulted as to its status.

A *neder* is praiseworthy when it is undertaken to curb a bad habit. The typical example is gluttony. One might ban meat, for a period of time, to control his extreme urge to consume meat excessively. Ideally, meat consumption is considered an indulgence, but it is a food to be eaten, and even has *mitzvos* involved in its preparation. While moderate consumption is acceptable, and the world was created with permissible foods for this purpose, excesses are unacceptable. To control this behavior it is necessary to go to the other extreme. This type of *neder* is praised, but must be undertaken with deliberation. It should not be undertaken indefinitely, but for a year or two, or one could undertake never to get drunk, while allowing himself moderate consumption. These *nedarim* were meant when the rabbis said that *nedarim* is a fence for *prishus*, separation from worldly indulgences. Nonetheless, if one is able to, he should make the same restraints *bli neder*.

In light of this, a diet would seem to be the archetypal *neder*. Setting aside the health

issues [see below], the main purpose of the restraint would be to curb an indulgence. It is certainly praiseworthy, and is usually undertaken for a time period. It is almost always undertaken with a verbal commitment of some kind. It might not be specified at the beginning, but continual references to it when asked should be considered the equivalent of a verbal pronouncement. The intent seems to be to ban the items included in the diet totally, until the gluttony has been brought under control. Oily or fried foods are recognized by the Talmud as being more delicious and flavorful. They also represent temptation and indulgence. While the fat content of meat is relative, the presumption is that this diet includes specific oily or fried foods, that leave little room for speculation. Therefore, when undertaking such a diet, one should use the words 'try' or '*bli neder*', rather than making an outright commitment. If he did not do so, or if he wanted to ensure his adherence and literally bound himself by *neder*-like or *shvua*-like language, he is bound by it.

[To partake of this food during his dieting period, he would need to obtain a *hatara*, absolution, from a tribunal of three. Every *neder* takes effect through the power of the word, spoken with full awareness of its effect. If one can show that he did not fully realize what it would lead to, he may claim that he did not have full awareness. The tribunal would then approve this. It is possible that one on a diet may claim that he did not realize that he was restricting himself from the once-a-year *latkes* on *Chanukah*. Had he realized this he would not have undertaken the vow!] [See Taanis 11a-b Nedarim 6b 13b-14a [Ran] 20a 22a-b Avos 3:17, poskim Tur sh Ar YD 203: esp. 7, commentaries. Igros Moshe CM:II:65-66. Mishneh Halachos V:299.]

B) *Leshon benei adam*

the wording of a *neder* or of a *shvua* is interpreted according to the common understanding of the term used. Thus, while the Torah might mean one thing with a word, the person undertaking the *neder* means what is usually meant in the vernacular. However, some terms are given standardized meanings by the Talmud. For example, if one bans potatoes for a year, when does it end? What if he says 'this year'? The same standards are used for other periods of time, such as weeks or months.

In our case, there is an assumption that a dieter would include certain foods, especially if he specified them. The Talmud discusses standardized inclusions in certain terminology. For example, what is included in 'cooked foods'? Does this include roasted or undercooked food? Does it mean foods that need not be cooked to be made edible? In our case, the person on the diet might mean many different things. If he used the word fried foods, he could mean deep-fried or even something fried with a bare coating of oil in the pan. It might depend on the type of diet. Oily foods could refer to foods that are known for their heavy oil content, rather than those with some oil in their ingredients.

The actual usage of the word diet can be understood differently by different people. It could mean a very strict diet that would never be violated, like a kosher diet. Or it could mean that the person basically sticks to it, but sometimes cheats. If it is accepted that people cheat, the adoption of the diet is not like a *neder*, since it does not effect a full ban. The poskim debate whether a person on a voluntary diet should break it to fulfill *oneg Shabbos*, enjoying good food on *Shabbos*. While one who wishes to may refrain from foods to gain *oneg*, most people find the diet somewhat restrictive. Their *oneg*

would come from eating the 'forbidden' foods. The presumption seems to be that the diet was never meant as a *neder*. If one used a specific *neder* term, he is restricted on *Shabbos* as well. He may use this as a reason to obtain a *hatarah*, but he requires the *hatarah* nonetheless. Thus, it seems that the standard usage of the word diet does not indicate a true *neder*. However, it is possible that this discussion is about one who was careful not to use language that bound him in a *neder*, or who said *bli neder*. The poskim also discuss one whose diet restricts the amount of food, rather than a food type. This is a more complicated form of *neder*, beyond the scope of our discussion. [See Nedarim 30a etc. 49a etc. 60a etc., Poskim. Tur Sh Ar OC 288:1-2 etc. YD 216-217, commentaries. Nishmas Shabbos II:147. Rivevos Efraim VI:189. Or Letzion II:21:3.]

C) Health-based restrictions

Thus far, the discussion has focused on the *neder* aspect of the diet. If the diet is not undertaken voluntarily, but under instructions of a doctor, it might not have the status of a *neder*. Even if it is considered a *neder*, there might be an easy *pesach*, way to gain absolution. Since the patient thought that he could tolerate the restriction when he took it on, he undertook it willingly. Now that he realizes that he may cheat a little with no real negative consequences, he wishes to relax the *neder*. He would be absolved, and then he would continue his diet *bli neder*.

However, while the *neder* might not be the same, the health issue would restrict his consumption in its own right. One may not neglect his health. If a professional has determined that this diet will harm him, he may not indulge in the food. Harm can be relative. In some cases, what a person eats will have an immediate harmful effect, such as a reaction. In other cases it is a cumulative effect. In yet others, it depends on what other food is eaten at the same time. In general, the dietitian will give instruction on the details of the particular diet. If there is some room for cheating without causing undue harm, the patient may partake of the food. [See refs to earlier sections. Acharei Mos 18:5 Kedoshim 19:16 Va'eschanan 4:9 Ki Saitzai 22:8. Brochos 33b Yuma 85b Kesubos 41b Bava Kama 15b Bava Metzia 117b Sanhedrin 73a 74a, Poskim. Rambam, Dayos 3-4. Tur Sh Ar OC 329 YD 116 CM 409:3 426 427, commentaries.]

In conclusion, the dieter should consult with a *Rav* on the nature of his undertaking the diet. He might require *hataras nedarim*, and he might be restricted on health grounds.

On the Parsha ... *To his father he sent .. ten she-donkeys carrying grain and bread and mazon .. [45:23] Bread and mazon, here we learn that one who bans mazon is banned from everything[besides bread] except for water and salt.* Why would it not depend on the intent of the banner? Why is it indicated in this particular verse? Perhaps the proof is from the fact that the Torah is not discussing *halacha*, but using what would have been considered everyday language. When the banner knows what he intended there is indeed no need to reinterpret his words. If he is unsure, we rely on the vernacular, which the Torah uses as well.

Sponsored by Leon Kohane in memory of his father Dovid ben Michael Hakohain z"l,

whose yahrzeit is on the 13th of Teves. ☞

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