

## Nedarim 33a

The Mishna said that if a person makes a neder to forbid food, not only is the food assur, but all the kaylim that are used to prepare the food are assur as well.

And on this the Gemara asks:  
**But it was from the food** **וְהָאֵלֶּיךָ מֵאֲכָלָךְ**  
**that he made the neder** **וְנָדַר**

If a person makes a neder not to benefit from food, why is he even assur from the kaylim that are used to prepare the food? Although these kaylim have a connection to food, they are not food, and as such, they should not be included in a neder that just said that food should be assur.

The Gemara answers:

**R' Shimon ben Lakish said** **אָמַר רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ**  
**(the case is one in which) he said** **וְהָאֵלֶּיךָ מֵאֲכָלָךְ**  
**“The benefit of your food** **וְהַנֶּאֱמָר מֵאֲכָלָךְ**  
**(should be assur) on me”** **עָלַי**

Since the person did not just say that the food should be assur, but he said the benefit of the food should be assur, we understand this to mean that this comes to include even the kaylim that are used in the food's preparation.

But on this the Gemara asks:

**(But) I should say** **אֵימָא**  
**(that because of this neder) he should not** **שְׁלֵא**  
**chew wheat** **וְלַעֹס חִיטִּין**  
**and place it on his wound** **וַיִּתֵּן עַל מַפְתּוֹ**

This person did not just say that the food should be assur but rather he said that the benefit of the food should be assur as well. The Gemara assumes that by the person adding that the benefit should also be assur, this comes to include even the kaylim used in the food's preparation. But on this the Gemara asks that seemingly there is a much better way to explain the person's intent. If a person says that he wants not only the food to be assur, but he also wants the benefit of the food to be assur, this should come to include benefit from the actual food, that is, it should forbid even non-eating benefit. The classic case of non-eating benefit of food is someone who chews wheat in order to put in on his wound. In this case the person is benefitting from the actual food without eating it. This would seem to be a better explanation of a person's intent when he assures 'the benefit of food', and if so, we will still need to find a case of a neder that will assur not only the food but even the kaylim that are used in the food's preparation.

The Gemara answers:

Rava said **אָמַר רַבָּא**  
**(the case is) that he said** **וְהָאֵלֶּיךָ מֵאֲכָלָךְ**  
**(that he is assuring) the benefit** **וְהַנֶּאֱמָר**  
**that brings to your food** **וְהַמְבִיָּאָה לְיָדֶיךָ מֵאֲכָלָךְ**  
**is on me (should be assur)** **עָלַי**

In this case, the person says explicitly that he wants to assur those things that bring to the eating of food, and if so, we understand very well why this neder assures not only the food itself but even the kaylim that are used in the food's preparation.

### What is Included in the Category of those Things that Bring to the Eating of the Food?

The Mishna listed various kaylim that are considered as food-related, and the Gemara will now explore other possibilities as to which kaylim can be considered as food-related.

**Rav Pappa said** **אָמַר רַב פָּפָא**  
**a sack to bring the fruits** **שַׁקֵּי לְהַבִּיאַת פְּרִיֹת**  
**and a donkey** **וְחֲמֹר**  
**to bring the fruits on it** **וְלְהַבִּיאַת עָלָיו פְּרִיֹת**  
**and even** **וְאֶפְּלִילוֹ**  
**a 'regular' basket** **צַנָּא בְּעֵלְמָא**  
**(are all considered as) benefit** **וְהַנֶּאֱמָר**  
**that brings to food** **וְהַמְבִיָּאָה לְיָדֶיךָ מֵאֲכָלָךְ הוּא**

All of these kaylim are used in order to allow the person to eat the food, and therefore, they are all assur to the one who made a neder to assur benefit that leads to food.

The Gemara asks:

**Rav Pappa asked** **בְּעֵי רַב פָּפָא**  
**a horse to ride on it** **סוּס לְרִכּוּב עָלָיו**  
**and a ring to 'show off' with it** **וְטַבַּעַת לְרִאיוֹת בָּהּ**  
**what is the halacha** **מֵהוּוֹ**

The Ran explains that this person wants to borrow a horse or (fancy) ring in order to go to a certain feast, and by arriving with such expensive items, the host will be impressed with him and offer him more food than he normally would have. What is the status of these items? Are they also considered as kaylim that bring to food, and as such, they should be assur? Or do we say that since these items only bring about the ability to eat this extra food in an indirect manner, they are not assur under the neder that was made.

The Gemara continues by asking with regard to another type of indirect benefit.

**To cut through and go (as a shortcut)** **מִפְּסֵק וּמִיִּזְל**  
**in his land** **בְּאַרְעֵיהּ**

what (is the halacha) מאי

What is the halacha with regard to this person using his friend's property in order to go get food? Do we say that this is also included under his neder not to get any food-related benefit from him? Or do we say that the benefit of using his shortcut is only considered as being indirectly related to his getting food and is therefore not included in his neder.

The Gemara brings a proof from our Mishna.

Come and hear שָׁמַע תָּא

but he can lend him לוֹ מִשְׁאֵיל אָבַל

a shirt and tallis חֲלוּק וְטָלִית

(or) earrings and rings וְטַבְעוֹת נְזָמִים

What is the case הִכִּי דָמִי

If you say (that his objective) אֵילִמָּא

is not to show them off (in order to get more בְּהֵן שְׂלָא לִירְאוֹת בָּהֶן food) food)

does it need to be said! צְרִיכָא לְמִימַר

Rather not (are we not forced to say) אֵלָא לָאוּ

(that the case is) even אֶפְיֵלוּ

(if he borrows them) to show off with them לִירְאוֹת בְּהֵן

and we learned וְקִתְנִי

he can lend them (i.e., the other person can lend them to מִשְׁאֵילוּ the person that made the neder)

The Mishna said that if a person makes a neder to assur all food-related benefit, he can still use the person's shirt, etc. The Gemara says that it cannot be that the person just wants to borrow the shirt in order to wear it, because if this is the reason why he is borrowing it, it would be obvious that it would be mutur (as it is not food-related) and the Mishna would not have to tell us that it is mutur.

The Gemara concludes that it must be that indeed the reason the person is borrowing these items is in order to show them off in order to get more food. And yet the Mishna still says that it is mutur to borrow them. If so, we have an answer to our question if items that are used to pressure people to give more food are considered as food-related benefit or not. Our Mishna clearly says that the person is allowed to borrow these items, the neder notwithstanding.

The Gemara answers:

לֹא

really לעוֹלָם

(he borrowed them) not to be seen in them לִירְאוֹת

and since we learned the raysha וְאֵיִדִּי דְקִתְנִי רִישָׁא

that he cannot lend them לֹא יִשְׁאֵילֵנוּ

we learn in the sayfa תְּנָא סִיפָא

he can lend them מִשְׁאֵילוּ

The Gemara answers that it could very well be that the person did not borrow these items for food-related purposes (i.e., he borrowed the shirt to just wear and not that he should be seen by his potential host). And even though it is true that if this is really the case, there would be no reason the Mishna would have to tell us that this case is mutur, the reason the Mishna does mention it, is in order to contrast it with the raysha. That is, the Mishna mentions the cases of the raysha in order to teach us the halacha that even though these items are not used in the actual preparation (i.e., the cooking etc.) of the food, they are still assur. And once the Mishna mentions cases that are assur, the Mishna mentions a case in which it is mutur to borrow these items (even if intrinsically there is no need to do so).

## משנה

### Under Which Circumstances are Even Non-Food-related Kaylim Assur to Someone Who Cannot Get Food-related Benefit?

The previous Mishna told us that if a person is assur to get food-related benefit, he is allowed to borrow kaylim that are not used in food preparation. And on this the Mishna says:

And anything וְכֹל דְּבָר

that is not used to make food שְׁאֵין עוֹשִׂין בּוֹ אוֹכֵל נֶפֶשׁ

in a location מְקוֹם

that they rent (kaylim) שְׂמִשְׁכְּרִין

similar to these כְּיוֹצֵא בְּהֵן

it will (still) be assur אַסּוּר

The Ran explains that since the Gemara said the case of the previous Mishna is one in which the person says that he wants to forbid any benefit that leads to food, this person will now be assur to borrow anything that is normally rented out, even if it is not food related.

The reason for this is that even though this particular object might not be food-related, if he would not borrow it from this person, he would have to rent it from someone else. But now that he borrows this object from this person, he saves that rental fee and he can now use the saved money to buy food. Therefore, even the borrowing of this nonfood-related item is considered as a benefit that leads to food.

## גמרא

**Establishing the Tanna of Our Mishna that Holds that it is Assur to Borrow Food-Related Kaylim Even if they Are Not Rented Out**

The Mishna said that one who makes a neder not to benefit from anything that brings to food is assur to use even non-food related kaylim as long as these types of kaylim are normally rented out. On this the Gemara says:

This implies **מכלל**  
(that the case) of the **raysha** **דרישא**  
(is true) even though **פי**  
they are not **שאינן**  
(typically) rented out **משכירין**

Our Mishna tells us that non-food related kaylim are assur in the case that they are normally rented out. This would seem to imply that it only non-food related kaylim that need to be rented out in order to be assur, but in the case of kaylim that are used for food, these kaylim would be assur even in the case that they are not rented out (i.e., the owner of these kaylim would let other people use them for free).

And on this the Gemara asks:

**מאן תנא (that learns this way) תנא**

The Gemara wants to know which Tanna holds that even benefit that a person is not **מפקיד** on will be assur to someone who is assur to receive benefit.

The Gemara answers:

**אמר רב אדא בר אהבה**  
it is R' Eliezer **היא**

We previously explained that R' Eliezer is the one who holds that a storekeeper cannot give 'the extra' to someone who is assur to receive benefit from him. That is, even though this 'extra' is not something that the person normally charges for, it is still considered as benefit and it is therefore assur. Rav Ada bar Ahava says that he is the Tanna of our Mishna. That is, in our Mishna as well all benefit is assur, even the benefit that people freely allow others to have without payment

**משנה**

**The Various Actions that One is Allowed to Do for Someone Who is Forbidden to Receive Benefit from Him (paying his shekel, paying back his loan, and returning his lost object)**

One who makes a neder (to forbid) **המנדיר**  
benefit **הנאה**

from his friend ( his friend is assur to benefit from him) **מחבירו**

he can still 'pay' his 'friend's shekel' **שוקל לו את שקלו**  
and pay back his loan **ופורע את חובו**  
and return to him **ומחזיר לו**  
his lost object **את אבידתו**  
(and in a place) **מקום**  
that they take payment for it **שנותליו עליה שָׂכָר**  
he should 'give' the benefit **תפול הנאה**  
to hekdedsh **להקדש**

Even if a person says that his friend is assur to benefit from him, the person making the neder is still allowed to do all of the actions mentioned:

1. He is allowed to pay his shekel. During the time of the Bais Hamikdosh, once a year every Jewish man would have to pay a half-shekel to the Bais Hamikdosh. The Mishna tells us that the person who made the neder is allowed to pay this half-shekel for the other person. The Gemara will explain why this is so.
2. This person who made the neder is allowed to pay back the other person's loan (the Gemara will explain why this is so).
3. The one who made the neder is allowed to return the other person's lost object to him. And if the custom of this location was for the owner of the object to compensate the finder for the time that it took for him to return the object, the one who made the neder (i.e., the finder) must accept this payment. If the finder will refuse this payment, then it will come out that the owner of the object (the one who the neder was made against) is benefiting from the finder, something that is not allowed to happen. The Mishna concludes that if the finder refuses to accept this payment, the owner must give the money to hekdedsh (in order to ensure that he doesn't benefit from the finder). That is, although that actual returning is not considered a benefit, the waiving of the 'returning fee' is considered a benefit.

**גמרא**

**The Sugya of אַבְרוּחֵי אָרִי (when is repaying a loan not considered a benefit?)**

The Mishna said that even if one says that it should be assur for a particular person to benefit from him, the one making the neder is still allowed to pay back that person's loan (this will obviously require explanation as it would seem that the other

person most certainly does benefit from having his loan paid back).

On this halacha the Gemara says:

**אֵלֵמָּא** We see (from this halacha)

**הוּא בְּעֵלְמָא אָרִי אֲבָרוּחִי** (this this is just considered) as ‘one just chasing away a lion’

**וּשְׂרִי** and is (therefore) *mutur*<sup>21</sup>

**תַּנָּא מֵאֵן** Who is this Tanna (that holds this way)

**הוֹשֵׁעִיָּא רַב אָמֵר** Rav Oshiya said

**זֶה** this is

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#### <sup>21</sup> Understanding this that Repayment of a Loan is Not Considered a Benefit

The Gemara tells us that the reason repayment of one’s loan is not considered as a benefit is because it is similar to the case of **אָרִי אֲבָרוּחִי** “the chasing away of the lion”.

The halacha is that if one goes down to his friend’s field and plants crops there (or does a different improvement to the field), he can demand payment for the amount of benefit. However, if a lion comes to attack a person’s flock and this person saves the flock, he cannot demand compensation from the owner. This is because the understanding of what happened was not that this person benefitted the owner but rather he just prevented a loss to the person. Therefore, since he only prevented him from getting a loss but did not actually benefit him, this is not considered a benefit that has to be paid for.

The chiddush of Chanan is that paying back a loan is similar to the case of chasing away a lion. When someone pays back a loan, he is not benefitting the borrower but rather he is just preventing the lender from hurting him. If so, that is why in our Mishna’s case it would be *mutur* for this person to pay back his friend’s debt, even though his friend is *assur* to benefit from this person.

The Ran continues and says that the same is true with regard to paying someone else’s shekel as well. Here too also the only benefit the other person has is that the *gizbar* (one in charge of collecting the shekel) will not come to him,

and if so, when one pays someone else’s shekel, he is not benefitting the other person but rather all he is doing is that he is preventing the other person from having a loss.

One could have thought that with regard to paying someone else’s shekel this is not true. Because with regard to paying someone else’s shekel, not only does his payment prevent the *gizbar* from collecting from him, but the payment of the shekel allows this person to have a portion in the *korbanos*. After all, the reason why Klal Yisroel was *chayiv* to give the half-shekel was in order that the *korban tzibbur* should belong to every member of Klal Yisroel. Therefore, if the person has his *chiyuv shekel* paid, not only will the *gizbar* not come to him, but he has also received a portion in the *korban tzibbur*. If so, how can we say that the payment of the shekel is not considered a benefit if the person receives his portion in the *korban tzibbur*.

The answer is that even if there will be a person who does not end up giving the half-shekel, the halacha is that the *korban* will still include this person. Therefore, since even if the other person would not pay this half-shekel on this person’s behalf, he would still have a portion in the *korban tzibbur*, the payment of the half-shekel is not considered a benefit.

## Nedarim 34b

They are the words of Chanan **דברי חנן היא**

Rava said **רבא אמר**

you can even say **אפילו תימאמר**

that it is in accordance with everyone **דברי הכל**

(and) with regard to the case of **גבאי**

one who made a neder (to assur) benefit **מודר הנאה**

(the case could be) that he (the lender) gave it **דיהיב**

on condition **על מנת**

that it does not have to be paid **שלא לפרוע**

As the Gemara will tell us shortly, Chanan holds that if someone pays back someone's debt, that other person does not have to repay this person for what he did. If so, we say that the act of repaying a loan is not considered as a benefit (as it does not require compensation), and if so, he is the Tanna of our Mishna that says that the repayment of a loan is not considered a benefit. However, although this is Chanan's view, the Chachamim argue and they hold that this other person would have to repay the first person for this that he repaid his loan. If so, we see from them that they certainly hold that the repayment of a loan can be considered a benefit, and as such, they would argue on what the Mishna says that it is not considered as a benefit.

Rava, however, disagrees. He holds that the Mishna could be the shita of the Rabbanan, and the reason why the repayment that is done in our Mishna's case is not considered as a benefit is because the case is one in which the lender told the borrower that there is no time that he has to repay this loan, i.e., the borrower has the right to repay the loan whenever he wants. Therefore, since in this case the borrower does not have to pay back the loan, if someone pays it back for him, this is not considered as a benefit for the borrower.

The Ran explains that the chiddush of the Mishna according to this is that even though it could be that the borrower would want to pay back the loan (as he is embarrassed not to do so), since he is not obligated to do so, if someone else comes and pays it back for him, it is not considered as a benefit.<sup>22</sup>

The Case of Chanan's Halacha – (supporting someone else's wife)

What is (the case of) Chanan **מאי חנן**

as we learned a Mishna **דתנן**

one who goes to an overseas land **מי שהלך למדינת הים**

and one (i.e., a different person) gets up **ועמד אחד**

and supports his wife **ופירגס את אשתו**

Chanan said **חנן אמר**

he loses his money **איבד את מעותיו**

(and) they argued on him **נחלקו עליו**

the children of the Kohanim Gedolim **בני כהנים גדולים**

and they said **ואמרו**

he (the supporter of his friend's wife) swears **ישבע**

how much he spent **כמה הוציא**

and he takes (that amount) **ויטול**

When a person gets married, he gives his wife a kesubah that spells out the obligations that the husband has towards his wife. Chanan's case involves someone who goes overseas and is not fulfilling this obligation. His friend sees that this woman is not being supported and decides that he will support her in place of her husband. The husband then comes back and the question arises if the husband is obligated to pay back all the money that the person spent on his wife.

Chanan holds that the person cannot demand to be compensated for the money that he spent and the Bnei Kohanim Gedolim argue with Chanan and they hold that he could demand his money back. Therefore, according to them, the person can go to a Bais Din, make a shevuah (swears) how much money he spent, and he can then collect that amount of money from the husband.

Which regard to this halacha, the Gemara tells us:

**אמר רבי דוסא בן הרקינס**

like them (i.e., the Chachamim) **כדבריהם**

(And) R' Yochanan ben Zakkai **אמר רבי יוחנן בן זכאי**

Chanan spoke 'correctly' **חנן אמר חנן**

(for it is as if this person) placed **הניח**

his money **מעותיו**

<sup>22</sup> **How Do We Understand this that the Person Can Pay Back this Person's Chiyuv Shekel (i.e., how do we understand this according to the Chachamim who normally hold that paying back someone's debt is considered a benefit)?**

The Mishna told us that the person can pay back his friend's debt and chiyuv shekel, even if this person's friend is assur to get benefit from him.

But how do we understand this? The Gemara just explained why the repayment of the loan is not considered a benefit, even according to the Chachamim who argue on Chanan (as the borrower is not obligated to pay back this loan) but why could this person pay his friend's chiyuv shekel? The chiyuv to

give the shekel is not a chiyuv that his friend can get out of, and if so, why is it not considered a benefit to have this chiyuv paid off?

The Ran answers that the Mishna is dealing with a case in which this person's friend sent his half-shekel to the Bais Hamikdash and it got lost or stolen on the way. The halacha is that if the shekalim in the Bais Hamikdash were already separated, one does not have to replace the half-shekel, but the prevalent practice was to have it replaced. The chiddush of the Mishna is that although the custom was to replace it, since there is no chiyuv to do so, its replacement is not considered a benefit, and that is why this person can replace his friend's shekel, despite the fact that his friend is assur to benefit from him.

<sup>23</sup>הַחֹרֵן הַצֵּבִי קָרָן עַל the horn of a deer

R' Dosa ben Harkinas holds that the halacha is like the Chachamim and the person can demand his money back. R' Yochanan ben Zakkai, however, holds that the halacha is like Chanan that the person cannot recoup the money he spent to support his friend's wife. R' Yochanan ben Zakkai compares this person to someone who places his money on the horn of a deer. The same way that someone who places his money on the horn of a deer will not get it back, so too this person as well. Although he paid to support his friend's wife, he cannot expect to get his money returned to him.

**Why Did Rava Not Want to Say Like Rav Oshiya and Why Did Rav Oshiya Not Want to Say Like Rava?**

With regard to the question of who the author of our Mishna is, Rava and Rav Oshiya disagreed. Rav Oshiya had said that the Mishna is only in accordance with the shita of Chanan. Rava, however, said that in reality the Mishna could even be in accordance with the shita of the Chachamim as well. The Gemara now explains why each one of them held the way they did.

**רַבָּא** Rava

**<sup>23</sup> When Does the Halacha of Chanan Apply?**

The Ran quotes the Rashba as saying that this that Chanan holds that the person cannot demand payment from the husband is only in the case in which the person said explicitly that the reason he is giving the woman the money is in order to satisfy the husband's chiyuv to her. But if the man would just give her the money without specifying why he is doing so, then it would be considered as if the man is lending money to the woman (i.e., and not that he is giving her a gift), and the woman would have to repay the money to the man. The woman, however, would be able to then go ahead and demand the money back from her husband.

The Rashba then brings proof to this point, that when a person gives someone money without saying why he is doing so, we do not assume that he is giving the person a gift. And therefore, this is what we say in our case as well. When the man gave the woman the money without specifying why, we do not assume that it is meant as a gift and that is why he has the right to demand it back.

The Ran argues and says that while it is true that when a person gives someone else money, the assumed intent is not that it should be a gift but that will not be relevant in our case. In our case as well, we do not assume that he meant to give the woman a gift, but rather we assume that the reason that he did not say anything to her is because he plans on demanding the money back from the husband.

And if this is true, that he plans to demand the money back from the husband, we understand why he did not say anything to her. He knows that she doesn't have anything, and as such he does not say anything to her. His plan all along is to demand the money from the husband, and as such, according to Chanan it is as if he placed his money on the horn of the deer as he does not have the right to demand the money back from the husband.

**Is there a Difference if the Lender is Demanding his Money Back?**

The Ran brings that there are those that explain that the reason why the person who pays back the borrower's debt cannot not demand the borrower to pay him back is because the borrower can always say that if he would have been there, he would have been able to convince the lender to forgive the debt. Therefore, even though this person did pay back his debt, this is not considered a benefit.

לֹא אָמַר כְּרַב הוֹשְׁעִיָא did not say like Rav Oshiya

דְּקָא מוֹקִיָּם לֵה for he establishes

לְמִתְנִיתִין our Mishna

כְּדַבְרֵי הַכֹּל like everyone

Rava did not want to say like Rav Oshiya for the simple reason that Rava wanted to establish our Mishna in accordance with everyone and not as Rav Oshiya said that our Mishna is only like Chanan.

(And) Rav Oshiya רַב הוֹשְׁעִיָא

לֹא אָמַר כְּרַבָּא did not say like Rava

גְּזִירָה for there is a gezirah (degree)

שְׁלֵא לִפְרַע (of the case) that he does not have to pay

מִשּׁוּם לִפְרַע because (of the case) that he has to pay

Rav Oshiya holds that even in the case in which the borrower does not have to pay back the loan, it would still be assur for the other person to pay it back. This is because although in theory in this case it is not considered a benefit to have the loan paid, we are concerned that being maykil in this case will lead people to be maykil even in the case in which the loan does have to be repaid. Therefore, since in the case in which the loan has to be repaid it is assur, so too in the case in which the loan does not have to be repaid, it would be assur to for the third-party to repay the loan if it is assur for the borrower to benefit from this third party.<sup>24</sup>

If this would be true, there would be a difference with regard to halacha l'maaseh (practical halacha). If the lender would be demanding his money back, then if the third-party would then go ahead and pay the debt back, this would be a debt that the borrower would have to compensate the third-party for (as the previous shevara would not apply).

The Ran says that this cannot be the correct pshat in Chanan's shita because if this would be the correct explanation, then there would be no way to explain the Mishna. The Mishna said that the paying back of another's person's chiyuv shekel is also not considered a benefit. But why not? In the case of paying the shekel, the person whose obligation was paid for can obviously not claim that he could have gotten out of this chiyuv to pay! Even though it is true that we find that a lender might forgive the money owed to him, the gizbar (one in charge of collecting the half-shekels) does not have that ability. Therefore, the previous shevara cannot apply to the case of paying someone else's chiyuv shekel, and yet the Mishna still says that the paying of the chiyuv shekel is not considered a benefit.

The Ran says that the explanation for Chanan's shita must be as he explained previously. That Chanan holds that paying back a debt is not considered as a benefit but rather it is only considered as preventing a loss. And if so, it would not make a difference if the lender is demanding the money back or not. In either case, the repayment of the loan is not considered a benefit and is therefore mutur even to the person to whom it is assur to benefit from.

**<sup>24</sup> Another Reason to Explain Why Our Mishna Cannot be Explained to be in Accordance with the Rabbanan**

Our Gemara explains why our Mishna cannot be in accordance with those who argue with Chanan. The Ran points out that the Gemara in meseches Kesubos gives a different reason why one cannot answer that the case of the Mishna is one in which the lender said that the borrower does not have to pay back. The Gemara there explains that even if there is no chiyuv for the borrower to pay back the loan, it is certainly beneficial for him to do so. It is embarrassing not to pay back one's loan, and therefore even if there would be no chiyuv to

**When is One Allowed to Return a Lost Object to Someone  
that He is Assur to Benefit from (the machlokes R' Ami and  
R' Asi?)**

The Mishna said:

You can return his lost object **מְחִזֵּר לוֹ אֶת אֲבִידָתוֹ**  
they argue in this (i.e., with regard to this halacha) **בִּה**  
R' Ami and R' Asi **רַבִּי אָמִי וְרַבִּי אֲסִי**  
one says **אָמַר**  
we did not learn (that it is mutur) **לֹא שָׁנוּ**  
only **אֶלֶּא**  
when the returner's property **בְּשִׁנְכֶסִּי מְחִזֵּר**  
are assur **אֲסוּרִין**  
on the owner of the lost object **עַל בְּעַל אֲבִידָה**  
for when he returns it **דְּכִי מְהַדֵּר לִיה**  
his own thing **מִיָּדָעִים דְּנִפְשִׁיה**  
he is returning to him **קָא מְהַדֵּר לִיה**  
but **אֲבָל**  
(if) the property **נִכְסֵי**  
of the owner of the lost object **בְּעַל אֲבִידָה**  
is assur on the returner **אֲסוּרִין עַל מְחִזֵּר**  
he cannot return it **לֹא קָא מְהַדֵּר לִיה**  
for he is benefiting him **דְּקָא מְהַנִּי לִיה**  
with the perutah of Rav Yosef **בְּרוּטָה דְּרַב יוֹסֵף**  
And one said **אָמַר**  
even if **אֲפִילוּ**  
the property of **נִכְסֵי**  
the owner of the lost object **בְּעַל אֲבִידָה**  
is assur on the returner **אֲסוּרִין עַל מְחִזֵּר**  
he can (still) return it **מְהַדֵּר לִיה**  
(and with regard to forbidding it) because **וּמִשּׁוּם**  
(of) the perutah of Rav Yosef **בְּרוּטָה דְּרַב יוֹסֵף**  
it is not common **לֹא שְׂכִיחַ**

The Mishna told us that even if a person makes a neder with regard to his friend, he can still return his friend's aveida (his lost object). What exactly is the case that this is permitted? The

Gemara brings that this was the subject of a machlokes between Rav Ami and Rav Asi.

One of them said that it is mutur in the case in which the owner of the lost object is the one who is assur to get benefit. The reason why in this case it would be mutur for the returner to give the aveida to the owner is because the returner is not giving the owner of the object anything that was not already his. As the Ran explains, even though the owner of the aveida now has his object back, it is only considered as if the returner just prevented a loss to the owner but not that the returner actually benefitted him.

But in the case in which it is the returner who is assur to benefit from the owner, then we say that the returner cannot give back the object. This is because the actual returning of the object is considered as benefit to the returner. This is based on what is called 'Perutah D'Rav Yosef'. Rav Yosef holds that every person who returns an aveida is considered as a **שׂוֹמֵר שְׂכָר** – a paid watchman. This is because even though he is not being paid, he still benefits from this that he is returning the object, and because he has this benefit, it is considered as if he is being paid. The benefit that he gets while returning the lost object is this that he does not have to give tzeddakah to a poor person who would ask him for tzeddakah at that time. This is based on the rule that when a person is busy doing one mitzvah, he is patur from doing other mitzvahs (**הַעוֹסֵק בְּמִצְוָה פְּטוּר מִן הַמִּצְוָה**). Since this person is busy doing the mitzvah of hashavas aveida, he saves himself a perutah that he would otherwise have to give the poor person.

Therefore, one of the previous Amoraim hold that in the case that the returner is assur to benefit, he will not be able to return the object. If he returns the object, it would be considered that he has benefited from the owner, and it is therefore assur to do so.

The other Amora holds that even if the returner is the one who is assur to benefit, he would still be allowed to return the object as the chance that he will end of benefiting from this returning is very small as it is unlikely that a poor person would come at the same time that he is returning the object).

See footnote where we discuss the question of why the fact that the 'Perutah D'Rav Yosef' is unlikely only says that the benefit is not considered as a benefit with regard to allowing the returner to return the object, but it does not say that returner is only an unpaid watchman (why do we differentiate between the halachos of someone who is assur to benefit from someone and the halachos of who is considered a paid or unpaid watchman).<sup>25</sup>

pay it back, if someone else does pay back the loan, that would certainly be considered as a benefit to the borrower.

The Ran points out that even though our Gemara is saying that since the benefit of Perutah D'Rav Yosef is uncommon, since there is a possibility that the returner will receive this benefit, this is enough to make him a paid watchman.

But the Ran does not explain the difference. Why is it that with regard to a person making a neder to ban benefit from someone, this is not considered a benefit but with regard to determining what type of watchman he is, this is

**25 If the 'Perutah D'Rav Yosef' is Uncommon, Why is Shomer Aveida Considered a Shomer Shachor (the answer of the Mishna L' melech and R' Leib Malin)?**

**To Summarize:** The Mishna said that even if a neder is made to assur benefit one from the other, it is mutur to return a lost object. R' Ami and R' Asi argue when this halacha applies.

1. One of them holds that this is only true if it is the owner that is assur to benefit from the returner but if the return is assur, he cannot return it because he will be getting the benefit of 'Perutah D'Rav Yosef.

2. The second opinion holds even if the returner is assur to benefit he will still be allowed to return the lost object as the case of 'Perutah D'Rav Yosef' is not considered a benefit as it is not common.

Based on these two shitos, the Gemara will try to understand the next case of the Mishna.

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considered a benefit? The Ran just states that there is a difference between the two halachos, but he does not say what it is. ויש לפלפל ואכמ"ל.

The Mishna L'Melech (Nedarim 7:1) explains with a practical answer, that our case is one in which the person finds that lost object and now wants to return it, something that does not take a long time (as the finder knows who the owner is). Therefore, since the returning does not take a long time, it is not likely that a poor person will come at that exact moment and ask for tzedakah. Therefore, since the likelihood of a poor person coming then is small, the benefit that he gets is not considered as a 'significant' benefit.

However, in the typical case of a person finding an object, the finder does not know who the owner is, and as such, the finder has to bring to the object to his home and wait until the owner can be located. This process takes time and therefore we say that since there is a significant enough possibility that a poor person will come during that time, the benefit of being exempt from giving tzedakah is great enough to make him a paid watchman.

However, the notes on the Ritva (Mossad Rav Kook) asks that seemingly this is not like the shita of most Rishonim that hold that this that a person is patur from giving a poor person tzedakah is only at the time that the finder is 'busy' with the lost object. But if the object is just resting in the finder's house, then the finder would not be patur. Therefore, according to this logic we should say that since the possibility of a poor person coming at the time that he is "busy" with the lost object is small, the benefit of being patur from tzedakah should not be considered a significant benefit.

A second question that is asked is that according to the Mishna L'Melech in a case in which the finder is forbidden to receive benefit from the owner, if the finder knows that it will take a long time to return the object (for ex. if the owner

is out of town), then it should be assur for the returner to return the object as it will take a long time to do so (and therefore it will be likely that a poor person will come during that time). Seemingly the question can be asked in reverse as well. According to the Mishna L'Melech, it should come out that if a person finds an object and know who the owner is (i.e., and as such he will be able to return it within a short time) the finder should not be considered as a paid watchman (and seemingly this is not the halacha).

Reb Leib Malin (סוף סימן ע"ח) gives a fascinating explanation, that the difference between our case and the regular case of determining if a finder is a paid watchman or not, is not a partial difference but rather it is a 'lomdishe' difference.

He explains that when it comes to determining if this person is allowed to return the object to the one that he is forbidden to get benefit from, we have to judge each one of his actions separately (i.e., is he allowed to pick it up, is he then allowed to walk with it, is he then allowed to put it down in his house, etc.). And since with regard to each one of these actions there is only a small chance that a poor person would come then, the benefit for being patur for that small time period is not considered a benefit and therefore that action is mutur for him to do.

However, when it comes to determining whether to consider a returner as a paid watchman or an unpaid watchman, we have to look at 'the entire job' at once. That is, when he picks up the object in order to return it, at that point we look at what the person will be doing (the entire job of returning it) and since over the entire time that he will be involved with this object there is a significant chance that a poor person would come, that is enough to say that he should be considered as a paid watchman ויש לפלפל ואכמ"ל.