

HALOCHOSCOPE TOI

Someone is bedridden. He wishes to make the customary *Hataras Nedarim*, annulment of vows, on *Erev Rosh Hashana*. May he appoint a *Shliach*, agent in his stead? If he makes a personal appearance, may he remain seated or lying down?

The issues:

- (A) *Hataras Nedarim*
- (B) Appointing a *Shliach* for it
- (C) Doing *Hataras Nedarim* sitting down
- (A) *Hataras Nedarim*

If one utters words banning himself from certain benefits, committing himself to an undertaking, or forbidding himself doing a certain act, he is bound by his words as if they were Mitzvos. Binding utterances are known as *Shvuos* and *Nedarim*. *Shvua*, oath, is the type that commits or forbids the person, e.g., to do something, or not to do it. *Neder*, a vow, bans an item, forbidding benefit from it like a Halachically forbidden item, e.g., banning a certain food, which makes it like non-kosher food. Even a pious practice with no verbal commitment can become a *Neder*, binding the person to maintain it.

Having made the utterance, one is bound by it due to various Mitzvos. The main Mitzvah is *Lo Yachel Devaro*, he shall not "profane" his word; one must respect his words as though they are holy. The Talmud warns of grave consequences for violating a *Neder*, even inadvertently. The Torah condemns one who adopts *Nedarim*, unless he has good reason to do so. There is concern that the person will not be able to maintain his *Nedarim*, and will be worse off than had he never adopted them. In addition, imposing these restrictions upon oneself implies that he feels that the Torah's Mitzvos are not enough. Accordingly, one should not make a *Neder* or *Shvua*, and if one did, he should have it annulled.

Annuling *Nedarim* has a very obscure source in the Torah. The Talmud refers to it as "mountains hanging by a hair." A wife's *Neder* may be annulled by her husband, as clearly stated in the Torah. However, this is in no way comparable to the *Hataras Nedarim* done by a *Chacham*, expert, or panel of three, the *Bais Din*. According to the guidelines of our Oral Tradition, an alternative

interpretation of the words *Lo Yachel Devaro*, provides a source for this Hatara. The exact use of the root for profaning would be *Yechalel*. The dropping of one letter permits us to include another meaning by substituting the letter *Mem*, giving us *Yimchol*, forgive, or waive the obligation. *Lo Yimchol Devaro*, he shall not waive his own obligation, implying that someone else (a *Chacham*) may waive it. The Talmud also derives the permissibility of panel of three "ordinary" judges, to perform this function. In our days, when no *Chacham* has due authority to act alone, a *Bais Din* is required. At least one member of the panel must be proficient in the details of how the Hatara works, so he may show the person seeking Hatara that he is entitled to it.

Hatara literally means untying. The idea of the Hatara is to show that the original *Neder* was made by mistake or without proper intent. Thus, it overturns the initial utterance or undertaking, making it as though it was never binding. Since it works retroactively, it could save one from punishment after having violated his *Neder*. *Bais Din* is not permitted to annul such vows because this leads to laxity in *Nedarim*, unless the alternative would cause waste and loss.

There must be good reason to form the basis of a Hatara. Two types of reason are acceptable: *Pesach* and *Charata*.

Charata means regret; one regrets having uttered the *Neder*. One might regret having made it binding for so long without limitations, or regret ever have got into it in the first place. For *Hataras Nedarim* one must regret having made the *Neder* in the first place. Simply wishing he could get out of it now is insufficient.

Pesach means an opening or excuse; he would not have undertaken the *Neder* had he realized what it would entail. Accordingly the *Neder* was not made with full awareness, is deemed a mistake, and is not binding. A *Pesach* is the preferable way to base a Hatara, turning the *Neder* into a mistaken undertaking; *Charata* turns it into a rash undertaking. Nowadays it is customary to turn *Charata* into a *Pesach* — "Had I known how much I would regret it I would not have made the *Neder*!"

At least one panelist must hear the person's declaration that he regrets this specific *Neder*. [See *Parshas Vayikra* 5:4 *Matos* 30:3 *Ki Seitzei* 23:23-24 *Chagiga* 10a *Nedarim* 13b-14a 22a-b 30b 60a 64a *Kesubos* 74b *Gitin* 35a *Shvuos* 20b-21b, *Poskim Tur*, *Shulchan Aruch Yoreh Deah* 203 228, commentaries.]

It is customary to make a general *Hataras Nedarim* on Erev Rosh Hashana. The source for this Minhag is a Talmudic dictum advising one who is concerned about inadvertent *Nedarim*. Any language used when uttering an undertaking or banning oneself, might be construed as a *Shvua* or *Neder*. To prevent this, the Talmud

suggests a *Moda'a*, disclaimer, at the beginning of each year (*on Rosh Hashana*). One declares at if he should inadvertently make an utterance constituting a vow, without stipulating that it should not be binding (*Bli Neder*), he serves notice that he regrets it. This could work in one of three ways: The most straightforward is that it is a *Tnai*, provision, stipulating ahead of time that the utterance should not be binding. There follows a discussion on when this helps. If one made a general *Moda'a* on future inadvertent utterances, then made such utterances, they are null. The exception to this is a case where one remembered the *Moda'a* and still made the *Neder*. Since the purpose of the disclaimer was to save him from the *Neder*, he should not be making such *Nedarim* intentionally. His doing so anyhow demonstrates his intent to override his disclaimer and that his *Neder* is binding.

Another possible interpretation is that the *Neder* has its *Pesach* with it, meaning that at the time of the utterance the excuse is built-in. This could mean that a Hatara is unnecessary, or that the formal *Charata* at the time of the utterance allows a subsequent Hatara. A third way to interpret the disclaimer is that when asking for Hatara he need not specify which *Neder* he regrets, and why, but may claim that based on his *Moda'a*, he has a generic *Charata* at this time.

According to the second and third ways to view it, *Moda'a* alone does nothing without a subsequent Hatara. To make it work, a *Moda'a* is made at the beginning of the year, then at the end of the year a Hatara is made. Immediately following the Hatara a new *Moda'a* is made for the next year. [See *Nedarim* 23b, commentaries, *Poskim Tur*, *Bais Yosef*, *Sh. Ar.*, *Y.D.* 211:1 228:46 *Orach Chaim* 619:1 (*Levush*), commentaries. *Matei Efraim* 581:49. *Nitei Gavriel* 9.]

(B) Appointing a *Shliach*

Normally the rule is that one may appoint another person in his stead to act out a transaction. The same is true of the performance of some *Mitzvos*, since that they are not personal obligations. One may often send a representative to *Bais Din* on his behalf. The *Poskim* debate whether one may be represented *in absentia* for *Hataras Nedarim*? The sources are Talmudic passages. A husband may represent his wife to have her vows annulled. Some say that is only true of a husband, due to the dictum that *Ishto Kegufo*, one's wife is part of himself. Thus it is as though the wife appears personally. A *Shliach* would not help anybody else. In another passage, the *Yerushalmi* permits an interpreter to mediate between the vower and the *Bais Din*. This implies that the vower must be present. The later *Poskim* speculate on whether this is a Scriptural limitation, based on the inappropriateness of being

represented for “words”, or Rabbinical, based on concern that the Bais Din might be unable to quiz the vower properly before annulling his vows. The other view maintains that Hataras Nedarim is no different from any situation where one may be represented in Bais Din. Furthermore, some maintain that there need not even be a Shliach. Just as a husband annuls his wife’s vows in her absence, a Chacham may also do so. The only difference is that a husband does not need the consent of his wife, while a Chacham must know that the vower wishes to annul his vows. A written request to Bais Din would appear to be better than sending a Shliach to do it in absentia. However, there are indications that some consider it more lenient, yet permit it anyhow.

In practice we follow the view that does not rely on a Shliach, though some rely on a written request. In emergency cases, and for the Erev Rosh Hashana Hatara, perhaps the patient should do it anyhow. However, it would be worth his while to repeat it when he is able to do it in person. [See Nedarim 8b Yerushalmi 10, Poskim. Tur, Sh. Ar. Y.D. 228:16, commentaries, Ar. Hash. 52-53.]

(C) Doing Hataras Nedarim sitting down

The Poskim maintain that though a Bais Din is convened to annul the vows, it is not a judgment. A true Bais Din is not convened by night, nor on Shabbos, yet Hataras Nedarim could be made during these times. Nonetheless, due to its similarity to a regular Bais Din, Hataras Nedarim is not done by night or on Shabbos, except in pressing circumstances. Similarly, while a Bais Din normally sits, for Hataras Nedarim they may stand, unless they need to deliberate on a Pesach. This requires concentration, which is best accomplished sitting down. The accepted practice is for the Bais Din to sit for Hataras Nedarim.

Normally, a litigant stands before the judges. This raises a question regarding Hataras Nedarim. Many Poskim maintain that it is not required, but has evolved into the *Minhag*, binding custom. Some actually cite a Talmudic source, but others maintain that this is also simply relating the custom. Normally, one would not be permitted to violate this custom. However, there is a view that the Bais Din should not let a Torah scholar stand for his Hataras Nedarim. This implies that it is in the hands of the Bais Din to permit the vower to sit. If this is true, they may permit the patient to remain seated or lying down. [See Nedarim 77b, Poskim. Tur Sh. Ar. Y.D. 228:3-4, Pischei Teshuva, commentaries.]