

HALOCHOSCOPE ^{TOI}

Someone had resolved not to purchase products of a certain company. He does not remember whether or not he ever verbalized his resolution. One day in an emergency situation, he bought something which he later realized was produced by this company. He wishes to know whether he violated a *Neder*, personal ban. He had previously made a *Moda'ah*, served notice, that unless he specifies otherwise, such practices should not become binding as a *Neder*.

The issues:

- (A) *Nedarim*
 - (B) *Moda'ah*, serving notice to protect future practices from being a *Neder*
 - (C) Overriding such a *Moda'ah*
- (A) *Nedarim*

The relevant details of the question are that the company involved was known to have strong anti-Jewish leanings and practices. Thus, the questioner had considered it something of a *Mitzvah* to refrain from supporting them by buying their products. Accordingly, this would be considered a meritorious practice.

Assuming that this is true, such a *Hanhaga Tova* would normally constitute a vow. Some consider such an undertaking binding even if it was only done one time. Others say that this could only apply to a properly defined act of voluntary *Mitzvah*, but that three times constitutes a practice, which, in turn constitutes a vow. In any event, if this is indeed a vow, it is binding. One can, as we shall explain, disclaim vows ahead of time. However, the disclaimer can expire, and it requires certain conditions. One can also override the disclaimer. If the resolution was verbalized, it is more likely to constitute a vow, even if the language used for it was not language used in uttering bans.

To do justice to this issue, we must review the Halachos of *Nedarim* and the processes [or excuses] for their annulment, from *Halochoscope* Vol. IV No. 35.

Utterances are binding, with major consequences for violating them. This means that 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*. The specific types of such binding utterances are known generally 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, usually bans an item, forbidding benefit from it as though it were a Halachically forbidden item, e.g., banning a certain food, which makes it like non-kosher food. To impose a ban one need not use the actual word *Neder*, but any words that mean the same thing can effect a ban. 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, depending on whether it is classified as a *Neder* or *Shvua*. The main Mitzvah referred to 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. Good reason includes those accepted in times of distress, to commit oneself to better observance of Mitzvos, to curb an undesirable trait or habit, such as gluttony, or those adopted as part of a *Teshuva*, penitence, regimen. Otherwise, there is concern that the person will not maintain his *Nedarim*, and will be worse off than had he never adopted them. In addition, imposing restrictions upon oneself implies that that the Torah’s Mitzvos are not enough for him. The world was created to benefit mankind. Some things are forbidden to man, but those that are permitted are meant to be used positively. Accordingly, one should not impose a *Neder* or take a *Shvua*, and if one did, should have it annulled.

Annuling *Nedarim* has an obscure source in the Torah. The Talmud refers to it as “mountains hanging by a hair.” A wife’s vow 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*. An interpretation, according to the guidelines of our Oral Tradition, on the words *Lo Yachel Devaro*, provides a source for *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, e.g., a *Chacham*, may do so. The Talmud derives the validity of a *Bais Din*, 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 is to show that the *Neder* was made by mistake or without proper intent. Thus, it is as though the initial utterance or

undertaking was never binding.

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.]

(B) *Moda’ah*

Any language used when uttering an undertaking or banning oneself, might be construed as a *Shvua* or *Neder*. The Talmud suggests that one concerned about inadvertent *Nedarim* to take measures to prevent them. 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 he serves notice that he regrets it.

This could work in one of three ways. In the simple meaning of the Talmud, 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 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, the Moda'a does nothing without a subsequent Hatara. Therefore, to make it work, a Moda'a is made at the beginning of the year, then at the end of the year (Erev Rosh Hashana) a Hatara is made, and immediately a new Moda'a is made for the next year. One may make a true Moda'ah in his own words at any time. Hatara will still be needed later, and in our case could be problematic due to the person having already violated the Neder. Nonetheless, some say that the institution of the Moda'ah is to alleviate these problems in precisely such cases. [See Nedarim 23b, commentaries, Poskim. Tur, Bais Yosef, Sh. Ar., Y.D. 211:1 228:46 Orach Chaim 619:1 (Levush), commentaries.]

(C) Overriding a Moda'ah

If one remembers his Moda'ah and still vows, it overrides the Moda'ah. If he forgets it, he is protected from verbalized vows. Actually the Talmud cites a view that if one remembers his Moda'ah and says that his vow is contingent on it, it can be nullified. If he does not the ban stands. Some say this only applies if he made a **specific** Moda'ah, and not **a general one**. A **minority** view applies it to a general **Moda'ah** as well. There **is** a view that one should **satisfy** this view as well. Another view maintains that the Moda'ah only works if when one does remember it he immediately applies it to his ban. Accordingly, it is possible to override it according to a number of Poskim in some cases. [See as above.]

Another issue here is whether he is also protected from strongly worded vows. These result from strongly held positions, and if verbalized sound like intentional vows. If not verbalized as a ban, but the practice is followed for a number of years, even after repeatedly making Moda'os each year for other inadvertent vows, does this show a will to override it in this case?

Obviously, one undertaking a practice means to take it seriously. However, if he understands the gravity of a vow, though he might truly want to punish the company, he does not want to take on additional bans and the accompanying problems. This is the express purpose of Moda'ah. Therefore, in our case, when he realizes the possibility of using his Moda'ah, he should apply it immediately. He should also gain a Hatara to satisfy the view that this is required.