



## Payment for Returning a Lost Item

Some of the *Mishnayot* learnt this week involved a case where one person made a *neder* against deriving benefit from another. For simplicity we will use the example where *Reuven* made a *neder* against deriving any benefit from *Shimon*. The *Mishnah* discussed various interactions between these two parties that would not be in violation of the *neder*. For example, the *Mishnah* (4:2) taught that *Shimon* would still be allowed to return *Reuven's* lost property. The *Bartenura* explains that the *Reuven* would similarly be able to return *Shimon's* lost object (despite the fact he is not allowed to derive any benefit from that object). He explains that this because when returning a lost object, he is fulfilling a *mitzvah* which is not considered as deriving benefit such that it would constitute a violation of the *neder*.<sup>1</sup>

The *Mishnah* continues that when considering a case where one could receive payment for returning the lost object, and *Shimon* forgoes the payment, that benefit derived by *Reuven* would then need to be considered *hekdesh*. We shall analyse this law.

The *Tosfot Yom Tov* cites the *Ran* who explains that we are dealing with a case where *Shimon* has a legal right to claim compensation. This would be where *Shimon* took time away from work to return the object.<sup>2</sup> Consequently, if the case was reversed and *Reuven* was returning *Shimon's* property, there would be no problem with *Reuven* receiving payment. Since he has a legal right for compensation it would not be considered as deriving benefit from *Shimon*.

The *Tosfot Yom Tov* however cites the *Bartenura* who explains that in this case both parties made a *neder* against deriving benefit from one another. The *Bartenura* explains that if *Shimon* is paid then he would be deriving benefit, while if he forgoes the payment then *Reuven* derives benefit. This appears to contradict our explanation above. The *Tosfot*

*Yom Tov* explains that the *Bartenura* must understand that the payment in this case is not one of legal right or compensation, but rather one made as part of the local custom to give the finder a small reward. Consequently, even the receipt of the payment would be considered as deriving benefit and a violation of the *neder*.

The *Tosfot Yom Tov* however is uncomfortable with this understanding. Since it is a *mitzvah* to return one's lost object, he is obligated to do so for free (see *Tur ChM 265*). It is difficult to understand that the *Mishnah* is dealing with a case where there is a *minhag* that goes against *Halacha*.

The *Tifferet Yisrael* answers that we find that if *Chazal* see that when relating to a *mitzvah* in financial matters people begin to violate a negative command, they are able to put *halachic* mechanisms in place to prevent that from occurring. For example, the *Chachamim* saw that as the *shemittah* year approached, people stopped lending money to those in need. They therefore instituted the *pruzbel*, though which loans were not absolved, thereby ensure critical lines of credit were kept open. (The *Beit Din's* ability to do so lies in their ability to absolve financial ownership – *hefker Beit Din hefker*.)

The *Tifferet Yisrael* explains that the same is true in this case. The *Chachamim* saw that people stopped returning lost objects. Even though they were not doing anything else at the time and there was no lost opportunity cost, nonetheless they were still concerned that something might come up that they will miss while dealing with this lost item. This attitude resulted in the violating the prohibition of *lo tuchal le'hitalel* – you must not overlook. Consequently, to avoid this becoming widespread, they instituted that one could be rewarded for their efforts, even if there was no lost opportunity cost.<sup>3</sup>

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<sup>1</sup> See the *Tosfot Yom Tov* who explains that even though his preoccupation in this *mitzvah* would exempt him from assisting an *ani*, which one might think is considered benefit, that situation is considered rare and therefore would not prevent him from performing the *mitzvah* of returning then lost object.

<sup>2</sup> How the compensation is calculated is debated and beyond the scope of this article.

<sup>3</sup> Again the *Tifferet Yisrael* leans on the principle of *hefker Beit Din hefker*, explaining that *Beit Din* have the capacity to transfer the ownership of the reward fee to the returner, such that it is not considered as being a payment for the performance of a *mitzvah*.



**Revision Questions**

נדרים ג' – ה' – א'

- If someone made a *neder* from benefiting from “*ro’ei ha’chamah*” can he get benefit from a blind person? (ג' :י')
- Which people are implied by one who makes a *neder* from gaining benefit from “*sh’churei rosh*”? (ח' :י')
- Explain the debate regarding the term “*noldim*” used in a *neder*. (ט' :י')
- Who is excluded from the term “*olei Yerushalaim*” yet included in the term “*shovtei Shabbat*”? (י' :י')
- Who is included in the term “*zera Avraham*”? (יא' :י')
- If someone made a *neder* against an *Yisrael* gaining benefit from him, can he continue to do business with an *Yisrael*? (יא' :י')
- Which *areilim* are not included in the term “*areilim*”? (יב' :י')
- How many covenants were made over the *brit millah*? (יב' :י')
- Why does *Rebbi* hold that *brit millah* is important (“*gedolah*”)”? (יב' :י')
- What is the difference between one that makes a *neder* against gaining benefit from his friend and one that makes a *neder* against gaining food related benefit? (יד' :א')
- If a person makes a *neder* preventing any benefit from his friend, can his friend:
  - return his lost object? (יד' :ב')
  - teach him *Torah*? (Careful)
  - provide food for his family?
  - provide food for his animals? (יד' :ג')
  - visit him if he is unwell?
  - treat him medically?
  - eat at the same table? (יד' :ד')
- What is the difference between one that makes a *neder* against gaining benefit from his friend before the *shmittah* year and during the *shmittah* year? (יד' :ה')
- If a person makes a *neder* preventing any benefit from his friend can they do business with one another? (יד' :ו')
- If a person makes a *neder* preventing any benefit from his friend yet then does not have any food to eat, how can his friend provide him with food? (יד' :ז')
- If *Reuven* made a *neder* against gaining any benefit from *Shimon* and they were traveling together, and *Reuven* ran out of food, how can *Shimon* give *Reuven* food without breaching the *neder*? (יד' :ח')
- If two people share a *chatzer* and make a *neder* against gaining benefit from each other: Explain the debate regarding whether they can walk through the *chatzer* to get to there properties (יד' :ט')

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
10 June כ"ז סיון	11 June כ"ח סיון	12 June כ"ט סיון	13 June ל' סיון	14 June א' תמוז	15 June ב' תמוז	16 June ג' תמוז
Nedarim 5:2-3	Nedarim 5:4-5	Nedarim 5:6-6:1	Nedarim 6:2-3	Nedarim 6:4-5	Nedarim 6:6-7	Nedarim 6:8-9

