



*Nedarim* (Vows): Obligation and Annulment  
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**Part 1 – *Nidrei Issur & Nidrei Hekdesh***

Parashat Matot opens with the laws concerning *nedarim* – voluntary obligations a person takes upon himself on oath. The Torah very clearly obligates one to abide by such vows: "A man who makes a vow to the Lord, or swears on oath to impose a prohibition upon himself, shall not violate his word; he shall act in accordance with everything that left his mouth" (30:3). The Torah returns to the issue of vows later, in the Book of Devarim (23:22-4):

"If you make a vow to the Lord your God, do not delay in paying it, for the Lord your God will assuredly claim it from you, and you shall bear iniquity... You must observe and carry out that which leaves your mouth, as you voluntarily vowed to the Lord your God, as you spoke with your mouth."

Although both these sections – in Parashat Matot, and in Devarim – discuss the obligation to act upon one's voluntary commitments, a clear distinction exists between the two contexts. Here, in Parashat Matot, the Torah speaks of a vow whereby one seeks "to impose a prohibition on himself." The most common example given in Talmudic discussions of *nedarim* is one who vows to abstain from a given type of food. In Devarim, the Torah warns against delaying "payment" ("*lo te'acher le-shalemo*"), clearly referring to a donation pledge, rather than a vow of abstinence. Indeed, the *Sifrei* interprets the verses in Devarim as requiring one to fulfill voluntary commitments involving all types of sacred donations, including sacrificial offerings, donations to the Temple treasury, and even charitable contributions. Thus, whereas in Parashat Matot the Torah obligates one to abide by his self-imposed restrictions, in Devarim, one is called upon to fulfill his pledges.

Maimonides formulates this distinction in his opening comments to Hilkhot Nedarim, the section in *Mishneh Torah* dealing with vows. He refers to the two categories as *nidrei issur* – "vows of prohibition" – and *nidrei hekdesch* – "vows of consecration," and alerts the reader to the fact that he addresses these two categories in two different sections of *Mishneh Torah*. In Hilkhot Nedarim he deals strictly with *nidrei issur*, self-imposed prohibitions, whereas the guidelines concerning the second group, *nidrei hekdesch*, are outlined in Hilkhot Ma'aseh Ha-korbanot, amidst Maimonides' treatment of the laws of *korbanot* (sacrifices).

From this arrangement, we might conclude that Maimonides approached these two categories as entirely separate halakhic issues. Surprisingly, however, in the very next paragraph (Hilkhot Nedarim 1:3), he explicitly combines the two under a single obligation:

There is a positive commandment from the Torah for a person to fulfill his oath or his vow, whether it was among *nidrei issur* or among *nidrei hekdesch*, as it says, "You must observe and carry out that which leaves your mouth..." and it says, "he shall act in accordance with everything that left his mouth."

Maimonides cites verses from both contexts as the Biblical source for the obligation to obey one's word, and includes *nidrei issur* and *nidrei hekdesch* under the same *mitzva*. Expectedly, he follows this arrangement in his *Sefer Ha-mitzvot*, as well, allocating but one of the 248 "positive commandments" to the obligation to obey vows, combining both categories of *nidrei issur* and *nidrei hekdesch* (*mitzva ase* 94).

Nachmanides, in his critique of *Sefer Ha-mitzvot*, takes issue with Maimonides' position, arguing that *nidrei issur* and *nidrei hekdesch* must be classified as separate obligations. He points to two basic differences between the two categories, which Nachmanides evidently perceived as sufficient to warrant their independent classification. Firstly, amidst the discussion of *nidrei hekdesch* in Devarim, the Torah interjects, "Should you refrain from taking vows, you shall not incur sin" (23:23). Nachmanides explains this verse as a disclaimer of sorts, informing the potential donor that despite the virtue of consecrating some of his possessions, no sin is incurred by refraining from doing so. Maimonides interprets the verse similarly (Hilkhot Arakhin Va-charamin, 8:12; *Guide for the Perplexed*, 3:46). This reminder, Nachmanides argues, is necessary only in the context of *nidrei hekdesch*, where a *mitzva* element is clearly involved. Self-imposed prohibitions, by contrast, constitute voluntary measures in the purest sense; no *mitzva* whatsoever is involved in abstaining from apples, for example, other than the person's own initiative in establishing such a prohibition. Naturally, then, the Torah felt no need to remind an individual that he commits no violation by refraining from such vows. Thus, Nachmanides contends, *nidrei hekdesch* and *nidrei issur* differ in terms of their inherent value. *Nidrei hekdesch* involve inherently virtuous gestures, whereas *nidrei issur* bear no religious meaning before the individual's decision to take on the given restriction.

Secondly, Nachmanides distinguishes between the two categories on halakhic grounds. A verbal pledge of *nidrei hekdesch* takes effect regardless of how the individual expresses the pledge. *Nidrei issur*, however, require a formulation that somehow incorporates *nedarim*-related terminology. Much of the first chapter of Masekhet Nedarim deals with the possible formulations by which *nidrei issur* take effect. These detailed regulations govern only the realm of *nidrei issur*; vows of consecration, however, become obligatory regardless of how one utters the pledge.

As the *Megilat Ester* (a work responding to Nachmanides' critique of *Sefer Ha-mitzvot*) claims, Maimonides likely accepts these distinctions, but he nevertheless felt that they do not reflect independent statuses of the two categories. Maimonides justifiably incorporates them both within the single rubric of *nedarim*, despite the minor differences between these groups.

We might gain a clearer understanding of Maimonides' position in light of his approach to the underlying purpose of *nedarim* generally. Towards the end of Hilkhot Nedarim (13:23), Maimonides assesses the value of taking upon oneself voluntary restrictions:

One who took vows in order to set his character straight and correct his conduct is deemed scrupulous and praiseworthy. How? Such as one who was overindulgent and [therefore] forbade meat upon himself for a year or two; or someone who was muddled by wine and forbade wine upon himself for an extended period, or forbade intoxicating beverages forever. Similarly, one who pursued gifts and was driven after wealth who forbade upon himself gifts or benefit from the people of a given land. Similarly, one who took pride in his beauty and took the nazirite vow, and similar kinds of vows. These all constitute the means of service to God.

Maimonides acknowledges the value of vows in helping a person overcome excessive conduct and regain a balanced mode of behavior. This passage brings to mind his more famous explication of the "doctrine of the mean," urging moderation in virtually all areas of human conduct and veering to an extreme only to regain balance after having previously stepped towards the opposite direction. (See *Mishneh Torah*, Hilkhot Dei'ot, chapters 1-2; *Shemona Perakim*, chapter 4.) The halakhic institution of *nedarim* provides a structured framework through which one can regain this quality of moderation.

In this passage Maimonides speaks specifically of *nidrei issur*, vows taken to restrict oneself in areas where he had become excessively indulgent. Interestingly enough, he appears to have viewed the category of *nidrei hekdesch* from the very same perspective:

Although consecrations... are *mitzvot*, and it is worthwhile for a person to conduct himself in accordance with these measures in order to suppress his [evil] inclination, so that he will not be miserly and will fulfill that which the prophets commanded, "Honor the Lord with your wealth," nevertheless, if one never consecrated... it is no matter, for the Torah testified and said, "Should you refrain from taking vows, you shall not incur sin."

(Hilkhot Arakhin 8:12)

Maimonides ascribes to *nidrei hekdesh* the very function served by *nidrei issur*: a halakhically prescribed means for achieving balance and avoiding extreme conduct. *Nidrei hekdesh* addresses a very specific characteristic, that of excessive frugality and the unwillingness to part with one's possessions in the service of God. Essentially, though, *nidrei issur* and *nidrei hekdesh* serve the very same purpose, as allowing for a temporary period of extreme conduct in an attempt to ultimately implement the ideal of moderation.

We might suggest, then, that the dispute between Maimonides and Nachmanides with regard to the classification of the two categories of *nedarim* evolves from their different perspectives on *nidrei hekdesh*. As mentioned, Maimonides ascribes the same underlying purpose to both categories, and for this reason, perhaps, he combined them into a single *mitzva*. Nachmanides, by contrast, appears to have viewed *nidrei hekdesh* as an ideal, rather than a necessary measure to rectify a state of imbalance. He indeed speaks of consecration as a lofty expression of devotion, to the point where the Torah found it necessary to dispel the mistaken notion that it is obligatory. Clearly, then, *nidrei issur* and *nidrei hekdesh* must be seen as two unrelated categories.

## **Part 2** – The "*Mitzva*" of *Hafarat Nedarim*

After presenting the basic obligation to obey one's vows, the Torah in Parashat Matot proceeds to elaborate on the specific provision known as *hafarat nedarim*, or just *hafara*. This law empowers the father of a single girl to annul her vows within twenty-four hours of its utterance, and affords similar authority to the husband of a married woman. Another form of annulment, generally referred to as *hatarat nedarim* or *hatara*, involves the authority of a *Beit-Din* (rabbinical court). The *hatara* provision authorizes the court to annul a vow if they can determine the presence of an erroneous preconception on the individual's part at the time of the vow's declaration. The Talmud (Chagiga 10a) informs that no clear Biblical source exists for the institution of *hatara*. Unlike *hafara*, which the Torah addresses at length here in Parashat Matot, the laws of *hatara* have come to us strictly through oral tradition.

Maimonides lists *hafarat nedarim* as one of the two hundred and forty-eight positive commandments (*Sefer Ha-mitzvot, mitzvat aseï 95*): "We were commanded to adjudicate with regard to the annulment of vows; meaning, the Torah instructed that we adjudicate according to those laws." Maimonides then proceeds to clarify that he does not refer to an obligation for a father or husband to annul his daughter or wife's vows. To explain the meaning behind this *mitzva*, Maimonides establishes a general rule concerning his policy in counting the *mitzvot*. Namely, he will often count as a *mitzva* a set of rules by which we determine halakhic status, even though these rules do not directly forbid or obligate a given mode of action. The clearest example, perhaps, appears in the very next *mitzva* mentioned in his list (96): "We are commanded that every person who touches a carcass is *tamei* [ritually impure]..." This *mitzva* begins a series of *mitzvot* which involve no obligation or prohibition, but simply bestow a given status upon an individual under certain circumstances. Similarly, Maimonides here counts as a *mitzva* the institution of *hafarat nedarim*. (Later, he includes under this *mitzva* the notion of *hatara*, as well.) This *mitzva* does not impose a specific obligation, but rather establishes the guidelines by which we determine the validity or cancellation of a given vow.

A number of other *Rishonim* (Medieval halakhic authorities) appear to have, indeed, acknowledged an actual obligation of *hafara* (as noted by Rabbi Binyamin Tabory, "Revoking Vows" – [www.vbm-torah.org/archive/mitzva/38matot%20masei.doc](http://www.vbm-torah.org/archive/mitzva/38matot%20masei.doc)). The *Sefer Mitzvot Katan* (more commonly known by the acrostic, *Semak*), lists the *mitzva* of *hafara* (*aseï 107*), and cites as the source of the obligation the verse, "her husband shall annul her vow" (30:14), suggesting that he bears an obligation to do so. Furthermore, the *Semak* cites in this context the Talmud's exhortation to make use of the *hafarat nedarim* mechanism (Yevamot 109a), further reinforcing this impression. In addition, Rabbi Sa'adya Gaon, who arranged his listing of *mitzvot* by category, classifies the *mitzva* of *hafara* under the category of personal *mitzvot*, as opposed to obligations cast upon the community as a whole. Seemingly, then, this *mitzva*, in his view, entails not simply following the Torah's guidelines in reaching a verdict, as Maimonides maintains, but an actual imperative to annul vows whenever possible. Finally, the early halakhic work *Shibalei Ha-leket* (317), documents a practice he

encountered to recite a *berakha* when performing *hatara*. Adherents of this practice clearly viewed *hatara* as a *mitzva*, and not merely a procedural rule, and therefore required the recitation of a *berakha*, just as is required before the performance of many other *mitzvot*.

It should be noted that in the standard editions of *Mishneh Torah*, in the introductory remarks to Hilkhot Nedarim, Maimonides mentions the *mitzva* "*she-yafar ha-neder o ha-shevu'a*" – "that one annul a vow or oath." This formulation quite clearly suggests an actual obligation to annul vows, and would thus directly contradict Maimonides' explicit comments in *Sefer Ha-mitzvot*, where he denies such an obligation. However, in the text of the Frankel edition of the *Mishneh Torah*, this sentence reads, "*she-yufar ha-neder o ha-shevu'a*" – "that a vow or oath shall be annulled." This syntax certainly accommodates the position articulated in *Sefer Ha-mitzvot*, that this *mitzva* involves simply the guidelines for determining a vow's status, rather than an actual obligation.

In any event, Nachmanides, in his critique of *Sefer Ha-mitzvot*, disapproves of Maimonides' inclusion of procedural laws in his listing of the Torah's commandments. Commenting on Maimonides' discussion of the "*mitzva*" to consider one ritually impure upon contact with an animal carcass, Nachmanides insists that the list of six hundred and thirteen commandments must include only laws that impose an obligation or restriction on one's conduct. Once we include in this list the prohibitions relevant to an individual who has contracted *tum'a*, we have no need to count additional commandments determining when and how one attains or divests himself of that status. Those rules simply establish when the status applies, rather than directly impose the relevant restrictions. Likewise, once we count the obligation to abide by one's vow, we should then count as *mitzvot* the methods by which we determine a vow's validity or annulment.

On the surface, this debate between Maimonides and Nachmanides does not pertain to *hafara* or *hatara* per se, but rather stems from their different methodologies in enumerating the *mitzvot*. Nevertheless, the 19<sup>th</sup>-century rabbinic leader Rabbi Moshe Shick (the "Maharam Shick"), in his work on the six hundred and thirteen commandments (*Maharam Shick Al Taryag Mitzvot*), suggests a deeper, philosophical basis for Maimonides' inclusion of *hatara* and *hafara* in his list of commandments. In his words, through this concept of the annulment of vows, "one of the foundations of the faith is reinforced." The Maharam Shick explains that a vow's annulment is a function of the individual's mindset at the time he uttered the promise. As we briefly discussed earlier, a *Beit-Din* can annul a vow by identifying a mistaken assumption upon which it was made. *Hatara* can occur when it can be determined that the individual had false impressions about certain conditions relevant to the viability of the vow's fulfillment. For example, one may have overestimated his physical or emotional ability to abstain from the given item, or misjudged his financial situation when pledging a generous gift to the Temple treasury. The Maharam Shick cites from Talmudic sources that *hafara* operates according to the same basic principle. The Torah's assumption is that when young girls or married women voluntarily take on additional religious responsibilities, particularly those that may interfere with their family obligations, their vow implicitly hinges on the consent of their father or husband. (Obviously, this assumption is rooted in the nature of family life in ancient times, which differed drastically from contemporary domestic arrangements.) In a sense, then, disapproval on the part of the father or husband serves the same role as the identification of a mistaken premise in the case of *hatara*. In both instances, it has been determined that the vow's utterance lacked the state of mind and firm conviction necessary for its effectuation.

The Maharam Shick affords great significance to this concept, the consequences of disparity between thought and words. That a vow loses all its halakhic import as a result of insufficient mental resolve demonstrates that the Torah sees human speech as rooted in mental faculties, rather than the biological speech mechanism. The Maharam Shick formulates this idea as follows:

The speech that we speak does not evolve from the power of the physical body and its properties. Rather, speech is rooted in one's soul... Therefore, only speech spoken with the intellect and mind constitutes a person's speech. And so should be the speech of prayer and study. Therefore, since speech is the instrument of the soul, a spiritual component, a Godly component, it is proper for one to watch the words of his mouth, and he should regard speech with great importance. We learn this principle from *hatarat nedarim*.

The concept of *hatara* demonstrates that speech is but "the instrument of the soul," and, as such, bears an intrinsically spiritual quality. The Maharam Shick invokes in this context the famous translation of Onkelos (the ancient Aramaic translation of the Torah) of the verse, "The Lord... blew in his [Adam's] nostrils the spirit of life, and man became a living creature" (Bereishit 2:7). Onkelos translates the term "*nefesh chaya*" ("living creature") as "*ru'ach memalela*" – a "speaking spirit." Man's capacity of speech results from and reflects his "spirit of life," the Godly soul implanted within him at the time of creation.

This notion, the Maharam Shick suggests, perhaps underlies the "*mitzva*" of *hatarat nedarim*. Maimonides listed this provision as a *mitzva* because of the profound theological tenet it embodies: the inherently spiritual nature of the human faculty of speech. By hinging a vow's validity on the mindset in which it was uttered, the Torah signals to us that speech originates from the mind, from the soul, and not from the larynx. The *mitzva* of *hafara* and *hatara*, then, is to recognize this spiritual quality of the power of speech, and to guard one's tongue accordingly.