

Week 2 - Shevuot 27a-b - מושבע ועומד מהר סיני

There seem to be subtly conflicting approaches to the question of whether one's oath to violate or to uphold a Torah law takes effect or not. And what about if someone makes a נדר rather than a שבועה? Is the law the same? Lastly, what if someone makes a shevua not to be truly binding, but in order to motivate themselves to do a mitzvah? What can we learn from these different opinions about our power to create binding legislation on ourselves with our own oaths versus the Torah's power to bind us by default?

Questions? Comments? Email dinanddaf@gmail.com

1. ויקרא ה:ד

אוּ נָפֶשׁ כִּי תִשָּׁבַע לְבָטֹא בְשִׁפְתָּיִם לְהַרְעוֹת אֶת הָאָדָם בְּשִׁבְעָהּ וְנִעְלָם מִמֶּנּוּ וְהוּא יֵדַע וְאָשָׁם לְאַחַת מֵאַלֶּה:

Or when a person utters an oath to bad or good purpose (whatever a human being may utter in an oath) and, though having known about it, the fact has escaped notice, but later that person realizes guilt in any of these matters

2. במדבר ל:א-ב

וַיְדַבֵּר מֹשֶׁה אֶל־רֹאשֵׁי הַמִּטּוֹת לְבְנֵי יִשְׂרָאֵל לֵאמֹר זֶה הַדְּבָר אֲשֶׁר צִוָּה ה'

Moses spoke to the heads of the Israelite tribes, saying: This is what God has commanded:

אִישׁ כִּי־יִדָּר נָדָר לֵה' אוֹ־הִשָּׁבַע שְׁבַעַה לְאַסֹּר אֶסֶר עַל־נַפְשׁוֹ לֹא יִחַל דְּבָרוֹ כְּכֹל־הֵיכָא מִפִּי יַעֲשֶׂה:

If a householder makes a vow to יהוה or takes an oath imposing an obligation on himself, he shall not break his pledge; he must carry out all that has crossed his lips.

3. משנה שבועות ג:ו

נִשְׁבַּע לְבָטֵל אֶת הַמִּצְוָה וְלֹא בָטַל, פְּטוּר. לְקַיֵּם וְלֹא קָיָם, פְּטוּר. שְׁהִיָּה בְדִין, שְׁהִיָּה חֵיב, כְּדִבְרֵי רַבִּי יְהוּדָה בֶּן בֶּתִירָא. אָמַר רַבִּי יְהוּדָה בֶּן בֶּתִירָא, מָה אִם הָרְשׁוּת שְׁאִינוֹ מִשְׁבַּע עָלֶיהָ מִהַר סִינִי, הֲרִי הוּא חֵיב עָלֶיהָ, מִצְוָה שֶׁהוּא מִשְׁבַּע עָלֶיהָ מִהַר סִינִי, אֵינוֹ דִּין שְׁהִיָּה חֵיב עָלֶיהָ. אָמְרוּ לוֹ, לֹא, אִם אֲמַרְתָּ בְּשִׁבְעָתְךָ הָרְשׁוּת, שָׁכַן עָשָׂה בָּהּ לֹא כָהֵן, תֹּאמַר בְּשִׁבְעָתְךָ מִצְוָה שְׁלֹא עָשָׂה בָּהּ לֹא כָהֵן, שָׁאֵם נִשְׁבַּע לְבָטֵל וְלֹא בָטַל, פְּטוּר:

If one takes an oath to refrain from performing a mitzva and he does not refrain, he is exempt from bringing an offering for an oath on an utterance. If he takes an oath to perform a mitzva and he does not perform it, he is also exempt, though it would have been fitting to claim that he is liable to bring the offering, in accordance with the statement of Rabbi Yehuda ben Beteira. The mishna explains: Rabbi Yehuda ben Beteira said: What? If, with regard to an oath concerning an optional matter, for which one is not under oath from Mount Sinai, he is liable for breaking it, then with regard to an oath about a mitzva, for which he is under oath from Mount Sinai, is it not logical that he would be liable for breaking it? The Rabbis said to him: No, if you said that one is liable for breaking an oath concerning an optional action, where the Torah

rendered one liable for a negative oath not to perform it like for a positive oath to perform it, shall you also say one is liable with regard to breaking an oath concerning a mitzva, where the Torah did not render one liable for a negative oath like for a positive oath, since if one takes an oath to refrain from performing a mitzva and did not refrain, he is exempt.

4. משנה שבועות ג:ד

...שבועה שלא אכל, ואכל אכלים שאינן ראויין לאכילה ושתה משקין שאינן ראויין לשתיה, פטור. שבועה שלא אכל, ואכל נבלות וטרפות שקצים ורמשים, חייב. רבי שמעון פוטר.
...If he said: On my oath I will not eat, and then he ate the meat of unslaughtered carcasses or *tereifot*, repugnant creatures or creeping animals, he is liable. And Rabbi Shimon deems him exempt, since he is already under oath from Mount Sinai not to eat them and an oath cannot take effect where another oath is in force.

5. שבועות כז:-

גמ' תנו רבנן: יכול נשבע לבטל את המצוה ולא ביטל, יהא חייב? תלמוד לומר: "להרע או להיטיב" – מה הטבה רשות, אף הרעה רשות; אוציא נשבע לבטל את המצוה ולא ביטל, שהוא פטור.
GEMARA: The Sages taught in a *baraita*: One might have thought that when one takes an oath to refrain from performing a mitzva and he does not refrain, he would be liable to bring an offering for an oath on an utterance. To counter this, the verse states: "To do evil, or to do good" (Leviticus 5:4). Just as doing good is referring to an oath about an optional action, so too, doing evil is referring to an oath about an optional action. I will therefore exclude from liability one who takes an oath to refrain from performing a mitzva and does not refrain, so that he is exempt from bringing the offering.

יכול נשבע לקיים את המצוה ולא קיים, שיהא חייב? תלמוד לומר: "להרע או להיטיב" – מה הרעה רשות, אף הטבה רשות; אוציא נשבע לקיים את המצוה ולא קיים, שהוא פטור.
The *baraita* continues: One might have thought that when one takes an oath to perform a mitzva and does not perform it, that he would be liable. To counter this, the verse states: "To do evil, or to do good." Just as doing evil is referring to an oath about an optional action, so too, doing good is referring to an oath about an optional action. I will therefore exclude from liability one who takes an oath to perform a mitzva and does not perform it, so that he is exempt from bringing the offering.

...

וממאי דקראי בדבר הרשות כתיבי? דלמא בדבר מצוה כתיבי!
But from where do we know that these verses are written referring to optional matters? Perhaps they are written referring to matters involving a mitzva.

לא סלקא דעתה; דבעינן הטבה דומיא דהרעה, והרעה דומיא דהטבה; דאקיש הרעה להטבה – מה הטבה אינה בביטול מצוה, אף הרעה אינה בביטול מצוה. הרעה גופה – הטבה היא.

This should not enter your mind, since we require that doing good be similar to doing evil, and doing evil be similar to doing good, as doing evil is juxtaposed to doing good in the verse. If one stipulates that the verse is referring to matters involving a mitzva, then just as doing good does not involve refraining from performing a mitzva, but must involve performing a mitzva, e.g., an oath to eat *matza* on Passover, so too, doing evil does not involve refraining from performing a mitzva, e.g., an oath not to eat leavened bread on Passover. The result of this reasoning is that doing evil in the verse is itself doing good, in that it will always involve taking oaths to keep mitzvot.

ואקיש הטבה להרעה – מה הרעה אינה בקיום מצוה, אף הטבה אינה בקיום מצוה. הטבה גופה – הרעה היא.
And likewise, doing good is juxtaposed to doing evil; just as doing evil does not involve performing a mitzva, as it would then not be doing evil, so too, doing good does not involve performing a mitzva. Doing good in the verse is itself doing evil, in that it does not involve the fulfillment of mitzvot.

אי הכי, בדבר הרשות נמי לא משכחת לה!
The Gemara asks: If that is so, that doing evil and doing good are compared in this manner, you do not find that the verse can be interpreted even with regard to optional matters, as the same sort of contradiction could be generated.

אלא מדאיצטריך "או" לרבות הטבת אחרים – שמע מינה בדבר הרשות קתיבי. דאי סלקא דעתך בדבר מצוה קתיבי; השתא הרעת אחרים איתרבי, הטבת אחרים מיבעיא?
Rather, one may derive that the verse is referring to optional matters from the fact that it was necessary for the verse to write "or to do good," in order to include liability for oaths that involve doing good to others. Conclude from it that these verses are written referring to optional matters. As, if it should enter your mind that the verses are written referring to matters involving a mitzva, there is a difficulty: Now that doing evil to others has been included, i.e., when one takes an oath to refrain from performing a mitzva, is it necessary to mention doing good to others?

...

ורבי יהודה בן בתירא אמר לה: אטו הטבת אחרים – לאו אף על גב דליתיה בכלל הרעת אחרים, ורבי רחמנא?
הקא נמי בקיום מצוה – אף על גב דליתיה בביטול מצוה, רבייה רחמנא.
The Gemara responds: And Rabbi Yehuda ben Beteira could say to you: Isn't there the case of an oath involving doing good to others, even though it does not include the possibility of being inverted to include liability for an oath concerning harming others, but nevertheless the Merciful One has amplified the *halakha* to include it? Here also, with regard to an oath to perform a mitzva, even though it does not include the possibility of being inverted to include liability for an oath concerning refraining from performing a mitzva, the Merciful One has amplified the *halakha* to include it.

ורבנן – היתם, איתיה ב"לא איטיב"; הקא מי איתיה ב"לא אקיים"?
And how could the Rabbis respond? They could say that there, with regard to an oath to do good to others, there is the possibility of inverting the oath to: I will not do good. Here, with

regard to an oath to perform a mitzva, is there any possibility of a valid oath: I will not perform a mitzva?

6. נדרים טז:יז.

חומר בנדרים מבשבעות כיצד כו'. רב כהנא מתני: אומר רב גידל אומר רב. ורב טביומי מתני: אומר רב גידל אומר שמואל. מנין שאין נשבעין לעבור על המצות? תלמוד לומר: "לא יחל דברו", "דברו לא יחל" — אבל מיחל הוא לחפצי שמים.

§ It is stated in the mishna that there is a stringency of vows vis-à-vis oaths. How so? Whereas a vow can override a mitzva, an oath cannot. Rav Kahana teaches that Rav Giddel said that Rav said, and Rav Tavyumei teaches the same statement with a different attribution, i.e., Rav Giddel said that Shmuel said: From where is it derived that one cannot take an oath to transgress the mitzvot? The verse states: "He shall not profane his word" (Numbers 30:3). It is inferred that his word, i.e., the prohibition he accepted upon himself, he shall not profane. However, he may profane it for the desires of Heaven. If he took an oath to act against the will of God, the oath does not take effect.

מאי שנא נדר — דכתיב: "איש כי ידר נדר לה' ... לא יחל דברו". שבועה נמי, הא כתיב: "או השבע שבועה לה' לא יחל דברו!"

The Gemara asks: What is different about a vow that enables it to override mitzvot? Granted, as it is written in the Torah: "When a man takes a vow to the Lord...he shall not profane his word" (Numbers 30:3), which indicates that even with regard to matters that pertain to the Lord, i.e., mitzvot, one shall not profane his word, as the vow takes effect. However, with regard to an oath it is also written in the same verse: "Or swears an oath" to God, "he shall not profane his word."

...

ושאין נשבעין לעבור על המצות מהכא נפקא ליה? מהתם נפקא ליה, דתניא: יכול נשבע לבטל את המצוה ולא ביטל, יכול יהא חייב —

§ The Gemara asks: And is the principle that one cannot take an oath to transgress the mitzvot derived from here, i.e., the above verse? It is derived from there, i.e., another verse, as it is taught in a *baraita*: One might have thought that if one takes an oath to nullify a mitzva and does not nullify it, one might have thought that he will be liable for violating an oath on a statement.

י"ז א

תלמוד לומר: "להרע או להיטיב". מה הטבה רשות, אף הרעה רשות. יצא נשבע לבטל את המצוה ולא ביטל — שאין הרשות בידו!

However, the verse states: "Or if anyone swears clearly with his lips to do evil, or to do good" (Leviticus 5:4). From the juxtaposition of evil and good it is derived that just as the doing of good, which is interpreted as obligating himself to take a positive action, is referring to a permitted activity, e.g., to eat, so too, the doing of evil, which is interpreted as prohibiting himself from something, refers only to that which is permitted, e.g., not to eat. This excludes one who takes an oath to nullify a mitzva and does not nullify it; he is not liable for violating the oath, as the permission to nullify it is not in his power.

חד קרא למיפטריה מקרבן שבועה, וחד למיפטריה מן לאו דשבועה.

The Gemara answers that both verses are necessary. One verse: "To do evil or to do good," which is stated in the context of the *halakhot* of offerings, is necessary to exempt him from bringing an offering for violating an oath, and one verse: "He shall not profane," is necessary to exempt him from the prohibition for violating an oath.

7. תהלים קיט:קו

נִשְׁבַּעְתִּי וְאֶקְיָמָהּ לִשְׁמֹר מִשְׁפָּטֶי צְדָקָה:

I have firmly sworn to keep Your just rules.

8. נדרים ז:ח.

וְאָמַר רַב גִּידֵל אָמַר רַב:

And Rav Giddel said that Rav said:

מִנֵּין שְׁנִשְׁבַּעִין לְקַיֵּם אֶת הַמִּצְוָה, שֶׁנֶּאֱמַר: "נִשְׁבַּעְתִּי וְאֶקְיָמָהּ לִשְׁמֹר מִשְׁפָּטֶי צְדָקָה".

From where is it derived that one may take an oath to fulfill a mitzva? It is as it is stated: "I have sworn and I have confirmed it, to observe Your righteous ordinances" (Psalms 119:106).

וְהִלָּא מוֹשְׁבָע וְעוֹמֵד מִהָר סיני הוּא. אֲלָא הָא קָא מִשְׁמַע לֵן דְּשָׁרִי לִיה לְאִינִישׁ לְזִרְזִי נְפָשִׁיהּ.

The Gemara asks: Is he not already under oath from when each Jew took an oath at Mount Sinai to fulfill all the mitzvot? An oath cannot take effect if one is already bound by a different oath. Rather, it teaches us this: It is permitted for a man to motivate himself to fulfill the mitzvot in this manner, although the oath is not technically valid.

9. משנה נדרים ב:ב

... זֶה חֹמֶר בְּשִׁבּוּעוֹת מִבְּנֵי נְדָרִים. וְחֹמֶר בְּנְדָרִים מִבְּשִׁבּוּעוֹת, כִּי צִד, אָמַר, קוֹנֵם סֶכָה שְׁאֵנִי עוֹשֶׂה, לִזְלֹב שְׁאֵנִי נוֹטֵל, תְּפִלִּין שְׁאֵנִי מְנִיחַ, בְּנְדָרִים אָסוּר, בְּשִׁבּוּעוֹת מִתֵּר, שְׁאֵין נִשְׁבַּעִין לַעֲבֹר עַל הַמִּצְוֹת:

...And there is also a stringency of vows vis-à-vis oaths. How so? With regard to one who said: Making a *sukka* is *konam* for me, or: Taking a *lulav* is *konam* for me, or: Donning phylacteries is *konam* for me, in the case of vows, the items are rendered forbidden, and he may not perform the mitzva until the vow is dissolved. However, in the case of similar oaths, these items are permitted, as one cannot take an oath to transgress the mitzvot.

10. ספרי במדבר קנג

ד"א לאסור אסר על נפשו – למה נאמר? לפי שהוא אומר ככל היוצא מפיו יעשה, אין לי אלא שהוציא בפיו; קיבל עליו בנדר ובשבועה מנין? ת"ל לאסור אסר על נפשו. יכול אפילו נשבע לאכול נבלות וטרפות ושקצים ורמשים, קורא אני עליו ככל היוצא מפיו יעשה? ת"ל לאסור אסר, לאסור את המותר ולא להתיר את האסור:

Variantly: What is the intent of "to bind a bond upon his soul"? Because it is written (Ibid.)

"According to all that issues from his mouth shall he do," I might think, even if he swore to eat neveiloth and treifoith, forbidden animals and reptiles. It is, therefore, written "to bind a bond" — to bind (i.e., to forbid) what is permitted, and not to permit what is forbidden. Variantly: What is the intent of "upon his soul"? From "According to all that issues from his mouth shall he do," I

might think, only if he spoke it. Whence do I derive (the same for) his accepting it upon himself (inwardly) by vow or oath? It is, therefore, written "upon his soul."

11. רמב"ם הלכות נדרים ג:ו-ט

כיצד חלים הנדרים על דברי מצוה כדברי הרשות. האומר הרי המצה בלילי הפסח אסורה עליו. הרי ישיבת הסכה בחדר הסוכות אסורה עליו והרי התפילין אסורות בנטילה עליו הרי אלו אסורין עליו. ואם אכל או ישב או נטל לוקה. וכן כל כיוצא בזה. ואין צריך לומר במי שאמר הרי עלי קרבן אם אכל מצה בלילי הפסח שהוא חייב בקרבן. וכן כל כיוצא בזה:

What is meant by the statement that vows take effect with regard to mitzvot as well as actions that are left to one's choice? When a person says: "*Matzah* is forbidden to me on Pesach night," "Dwelling in a *sukkah* on that holiday is forbidden to me," or "I am forbidden to take hold of *tefillin*," they are forbidden to him. If he ate *matzah*, dwelled in a *sukkah*, or took *tefillin*, he is liable for lashes. Similar laws apply in all analogous situations. Needless to say, one who says: "I am obligated to bring a sacrifice if I eat *matzah* on Pesach night," is obligated to bring a sacrifice. Similar laws apply in all analogous situations.

ומפני מה נדרים חלים על דברי מצוה ושבוועות אין חלות על דברי מצוה. שהנשבע אוסר עצמו על דבר שנשבע עליו. והנודר אוסר הדבר הנדור על עצמו. נמצא הנשבע לבטל מצוה אוסר עצמו וכבר עצמו משבע מהר סיני ואין שבוועה חלה על שבוועה. והאוסר דבר זה בנדר זה הדבר הוא שנאסר ואותו הדבר אינו משבע מהר סיני:

Why do vows take effect with regard to mitzvot and oaths do not take effect with regard to mitzvot? Because when a person takes an oath he forbids himself from [partaking of] the entity mentioned in the oath. When, by contrast, one takes a vow, he causes the entity mentioned in the vow to be forbidden to him. Thus when a person takes an oath to nullify a mitzvah, he is placing a prohibition upon himself and he is already bound by an oath [to observe that mitzvah] from Mount Sinai, and one oath does not take effect if another is already in effect. When, by contrast, a person causes an entity to be forbidden through a vow, the prohibition involves the entity itself and that entity is not under oath from Mount Sinai.

כשאתה מתבונן בכתוב תמצא שהנדרים מראין כן כמו שקבלו חכמים מפי השמועה. שהרי אומר בשבוועת בטוי (ויקרא ה ד) "להרע או להיטיב" בדברי הרשות כמו שבארנו. שיאכל וישתה היום או שיצום וכיוצא בזה. ובנדרים הוא אומר (במדבר ל ג) "ככל היצא מפיו יעשה" ולא חלק בין דברי מצוה לדברי הרשות:

When you contemplate [the wording of] the Torah, it appears that their interpretation matches the explanation which our Sages received according to the Oral Tradition. For with regard to a *sh'vuat bitui*, [Leviticus 5:4] states: "Whether he will do harm or do good," i.e., speaking about permitted activities as we explained, e.g., whether I will eat or drink today, whether I will fast, or the like. With regard to vows, by contrast, [Numbers 30:3] states: "He shall do everything uttered by his mouth," without differentiating between matters associated with mitzvot and those left to our own volition.

הנודר שיצום בשבת או ביום טוב חייב לצום. שהנדרים חלים על דברי מצוה כמו שבארנו. וכן הנודר שיצום יום ראשון או יום שלישי כל ימיו ופגע בו יום זה והרי הוא יום טוב או ערב יום הכפורים הרי זה חייב לצום ואין צריך לומר ראש חודש. פגע בו חגכה ופורים ידחה נדרו מפני הימים האלו הואיל ואסור הצום בהם מדברי סופרים הרי הן צריכין חזק וידחה נדרו מפני גזרת חכמים:

When a person takes a vow to fast on the Sabbath or a festival, he is obligated to fast for vows take effect even when they involve [the nullification of] a mitzvah as explained. Similarly, if a person takes an oath to fast every Sunday or every Tuesday throughout his life and a festival or

the day preceding Yom Kippur falls on that day, he is obligated to fast. Needless to say, this applies with regard to Rosh Chodesh. If, however, Chanukah or Purim fall [on these days], his vow is superceded by [the celebrations of] these days. Since the prohibition against fasting on them is based on Rabbinic decree, reinforcement is necessary. Hence, his vow is superceded by the Rabbinic decree.

12. הלכות שבועות ה"ח

נִשְׁבַּע שְׁלֹא יֹאכַל מַצָּה שְׁנָה אוֹ שְׁנָתַיִם. הָרִי זֶה אָסוּר לֶאֱכֹל מַצָּה בְּלֵילִי הַפֶּסַח וְאִם אָכַל חֵיב מִשּׁוּם שְׁבוּעַת בִּטּוּי.
וְאִין זֶה שְׁבוּעַת שְׁוֹא שְׁהָרִי לֹא נִשְׁבַּע שְׁלֹא יֹאכַל מַצָּה בְּלֵילִי הַפֶּסַח אֲלֵא כָּלֵל עֲתִים שְׁאֲכִילַת מַצָּה בָּהֶם רְשׁוּת עִם
עֵת שְׁאֲכִילַתָּהּ בּוֹ מִצְוָה וּמִתּוֹךְ שְׁחֻלָּה שְׁבוּעָה עַל שְׁאֵר הַיָּמִים חֻלָּה עַל לֵיל הַפֶּסַח. וְכֵן כָּל כִּיּוּצָא בְּזֶה. כְּגוֹן שְׁנִשְׁבַּע
שְׁלֹא יֵשֵׁב בְּצֵל סֵכָה לְעוֹלָם אוֹ שְׁלֹא יַעֲלֶה עָלָיו בְּגָד שְׁנָה אוֹ שְׁנָתַיִם:

One who takes an oath not to eat matzah for a year or two is forbidden to eat matzah on the nights of Pesach. If he eats it, he is liable, for violating a *sh'vuat bitui*. This is not considered as an oath taken in vain, since he did not take an oath [specifically] not to eat matzah on the nights of Pesach. Instead, he included the times when eating matzah is a matter of choice together with those when it is a mitzvah. Since the oath takes effect with regard to the other days, it also takes effect with regard to Pesach. Similar laws apply in all analogous situations, e.g., one took an oath not to sit in the shade of a *sukkah* forever, or not to wear a garment for a year or two.

13. הלכות שבועות י"ג

וּמִתֵּר לְאָדָם לְהִשְׁבַּע עַל הַמִּצְוָה לַעֲשׂוֹתָהּ כְּדִי לְזַרֵּז אֶת עַצְמוֹ וְאָף עַל פִּי שֶׁהוּא מִשְׁבַּע עָלֶיהָ מִהֵרָ סִינֵי שְׁנִשְׁבַּע
(תהילים קיט קו) "נִשְׁבַּעְתִּי וְאֶקְיָמָהּ לִשְׁמֹר מִשְׁפָּטִי צִדִּיק":

It is permitted for a person to take an oath to fulfill a mitzvah in order to encourage himself [toward its performance]. Although he is under oath [to observe] it from Mount Sinai [onward], [he may take an oath, as implied by Psalms 119:106]: "I took an oath and I will uphold it - to observe Your righteous judgments."