

TALMUD TORAH 7:11

by Rabbi Yitzchak Etshalom

11. A conditional Nidui - even declared upon one's self - needs to be lifted (i.e. is still valid, even if the condition was not fulfilled).

If a Talmid Hakham declared Nidui on himself, even if he did so [conditioned] upon the assent of another and even if it was for a matter which requires Nidui; he may lift it himself. [RABD: "If a Talmid Hakham..." This is unclear, for, if so, why didn't Yehudah lift the ban himself; in any case, I don't understand - why didn't Yaakov lift [Yehuda's] ban?]

Q1: Why is a conditional Nidui valid, even if the condition isn't fulfilled?

YE (Yitz Etshalom): The source for this Halakha is the Gemara in Makkot (11b): "R. Yehuda said in the name of Rav: A conditional Nidui (even of himself) needs to be lifted. How do we know this? From Yehuda..." The Gemara goes on to expound upon the story of Yehuda's Nidui from his father, Yaakov. When the brothers returned to Yaakov and related that the viceroy [really Yosef] would only allow them back if they brought Binyamin (Beresheet [Genesis] 42:34), father Yaakov refused. In spite of Reuven's entreaty (42:37), he continued to resist sending Binyamin - until Yehuda made a promise that if he doesn't bring Binyamin back to his father, he will be ostracized from his father forever (43:9). The Gemara continues, quoting the Midrash that even in his death, Yehuda was "ostracized" until Moshe prayed for his acceptance into the Heavenly Academy. This, even though Binyamin was kept safe and reunited with his father - this negating the condition of the Nidui. Thus, we see that even if the condition is not fulfilled, the Nidui is still valid.

The Rishonim are bothered by several points here:

- (a) Why is a Nidui so much more severe than a regular oath or vow, where the outcome of the condition really does matter?; (Ritba)
- (b) In practice, "we" make such conditional bans of Nidui and regard them as inactive if the condition was not fulfilled; (Tosafot)
- (c) Why didn't Yaakov lift the ban? (RABD)

There are several responses - Tosafot (Makkot 11b s.v. Afilu) maintains that since Yehuda made a condition that was out of his control, it was like an unconditional Nidui. Since he could not guarantee, no matter how hard he tried, that Binyamin would be brought back safely - the Nidui "kicked in" right away. This would answer the first two questions - since, with this understanding, Nidui is not any

more severe than other oaths/vows; and the conditional bans that we impose (on ourselves or others) are unlike Yehuda's - in that they are conditions whose fulfillment is in our control.

Ritba (Makkot 11b s.v. Menalan) offers a second answer (also quoted in Me'ir in the name of R. Efraim) that Yehuda didn't actually do what he promised - he didn't bring Binyamin back to Yaakov - Yaakov had to go down to Egypt to be reunited with him. This also answers the first two questions.

The problem with both of these answers is that they do not align well with the wording of the Gemara, which simply states that a conditional Nidui needs to be lifted. The Gemara does not distinguish between different types of conditions.

Rambam evidently was bothered by this and, therefore, ruled that any conditional Nidui is valid, regardless of the type of condition and whether or not the condition was fulfilled.

His reasoning may be based on a principle outlined by Rashba (Responsa 4:274,7:277) that unlike a condition on an oath or vow, where the oath/vow only becomes active at the time that the condition is fulfilled, Nidui becomes active immediately and, only with the fulfillment of the condition, it becomes lifted. If so, it needs to be actively lifted and doesn't just "disappear" when the condition is fulfilled. The reasoning behind this distinction may be found in the nature and purpose of Nidui as against those of vows and oaths.

A person takes an oath or vow to commit himself to do something, to abstain from something, or to forbid his own possessions on another person. There is nothing inherently wrong with a vow (although it is not advisable - see MT Nedarim 13:24-25). If someone tacks on a condition, it means that he only wants that commitment or abstention to take place if certain other things happen or fail to take place. For instance, a frustrated neighbor may say: "My lawn is prohibited to you (i.e. you may gain no benefit from it) unless you leash your dog!" The declarant would be happy to never see the vow become active - but, if the neighbor neglects his "leashing" responsibilities, it will become valid.

On the other hand, Nidui is inherently a "bad" situation to be in. To put a condition on Nidui is, perhaps, an attempt to "soften the blow" - but, even entertaining the possibility of being under Nidui is enough to start the process. This is why, in any event, it must be lifted and does not "come off" by itself.

Regarding the third question (RABD), the Kessef Mishneh answers that since Binyamin and Yaakov were safely reunited, Yaakov thought that there was no need for the ban to be lifted. Rashba (Responsa 3:326) answerse in a similar vein, that Yehuda didn't think to ask for it to be lifted, since Yaakov and Binyamin were reunited. Both of these answers are interesting, in that they assume (as does the question) a level of Torah-observance, knowledge and obligation well before Sinai - they also assume incorrect Halakhic understanding on the part of either Yaakov or Yehuda.

Q2: What type of situation is Rambam referring to when Nidui is contingent upon "the assent of another"?

YE: Rambam answers this himself in his Responsa (#159 & 264) - if you declare "I am under a ban of Nidui, as long as Ploni agrees/permits" (perhaps Ploni is a friend, parent or teacher) - even if Ploni does not give his assent, the Nidui is still active. Rambam says that this is based on the rule that "A conditional Nidui needs to be lifted" - i.e. regardless of whether or not the condition was fulfilled.

As a conjecture, one might condition his self-imposed Nidui on the assent of another because:

- (a) he insulted that other person;
- (b) his Nidui may have a direct effect on that other person (e.g. a business partner)
- (c) he feels beholden to gain that person's acceptance for his actions (e.g. parent/teacher).

Q3: If the Talmid Hakham banned himself for a matter which deserves Nidui (see MT Talmud Torah 6:14), why may he lift it himself?

YE: Indeed, Rashba (quoted in RAN, Nedarim 7b s.v. Talmid Hakham) maintains that a Talmid Hakham may only lift his own ban if he originally declared it for a "voluntary" reason; however, if he declared it because he had violated one of those things which obligate Nidui, he may not lift it. Why does Rambam disagree and allow it in any case?

It may be that since, as we have mentioned several times, the main function of Nidui is protection of the honor of the court and its scholars, the Talmid Hakham is a unique position. On the one hand, he may feel that he has violated this honor (and that's why he has declared a self-imposed Nidui); on the other hand, he is the object of that same honor. We can rely on him to decide when he has rehabilitated himself for this purpose, such that he may lift his own ban.

Q4: Any answers to RABD's two questions?

YE: RABD's first question, that according to Rambam, Yehuda should have lifted his own ban, is answered by the Kessef Mishneh. He says that Rambam only applies this rule to a non-conditional Nidui; however, if it is conditional (such that it is a motivator to do something), he cannot lift it until he has accomplished the goal. For another response and responses to the second question (why didn't Yaakov lift the ban) see above, Q1.

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