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## The *Tzedakah* Pledge - Monetary Law or Ritual Law?

In reference to the Talmudic quandary of *safek mamon aniyim* - money which may or may not be the property of the poor - Rav Yehuda Heller-Kahane (1743 - 1819) writes in his *Kunteres Hasefeikos*<sup>1</sup> that there is a good amount of confusion one encounters when studying the early authorities and halakhic decisors . At times it seems as if the governing principle used is *safek mamon lekulah* - in all monetary matters we are lenient in cases of doubtful ownership. At other times however, it is not treated as a monetary matter. To dispel some of the confusion, this article will attempt to demonstrate that this issue is in fact a point of contention between Ran, Nahmanides, and Rashba.

In Tractate *Nedarim* (6b - 7a) the Talmud records Rav Papa posing a series of questions regarding the nature of *yodos* - verbal intimation<sup>2</sup> in different realms of *Halakha*. The institution of *yodos* - literally hands or handles - is the

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<sup>1</sup> *Klal* 1:2

<sup>2</sup> As translated by the William Davidson Talmud. The Soncino Talmud translates the word *yad* in this context as abbreviation.

halakhic mechanism in which one can intimate intent<sup>3</sup> for a longer statement by using a shortened phrase. Rav Pappa raises the following dilemma: Does the institution of *yodos* apply for *kiddushin* (betrothal or halachic marriage) or not? Can a man propose to a woman via an incomplete statement and successfully perform formal halakhic *kiddushin*? Another question that Rav Pappa asks is can one use a *yad* for a pledge of *tzedakah*? The Talmud leaves both of these questions unanswered.

This ambiguity leads to a dispute among the medieval Talmudic authorities as to how to rule in such cases. Nahmanides<sup>4</sup> (1194 - 1270) and Rashba<sup>5</sup> (Rav Shlomo Ben Avraham Aderes, 1235 - 1310) invoke the principle of *safek deoraysa lehumra* - in cases of doubt within biblical law we generally are stringent. Therefore, since both *kiddushin* and *tzedakah* are cases in the realm of biblical law, one who uses a *yad* for *kiddushin* is married and one

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<sup>3</sup> See *Ran* 2a s.v. *kol kenuiy nedarim* and *Pirush HaRosh* 2a s.v. *ha'omer l'chaveuri* who explain why the Talmud uses the term "hand" or "handle" to refer to intimation. He explains that although not the handle of a vessel is not considered the primary vessel, one can still lift the entirety of the vessel by grabbing its handle. Similarly, one can utilize the entirety of a phrase by mere abbreviation or intimation.

<sup>4</sup> *Nedarim* 1a-2b in the pages of *Rif*. See *Nemukei Yosef* *ibid.* who is stringent as well because of *safek deoraysa lechumra*.

<sup>5</sup> *Nedarim* 6b s.v. *yeish yad l'peah*

who uses a *yad* for a pledge of *tzedakah* is obligated to donate.

Ran<sup>6</sup> (Rav Nissim Ben Reuven, 1320 - 1380) challenges their approach to the *tzedakah* pledge with a number of statements from the Talmud. He takes issue with the application of *safek deorysa lehumra* to *tzedaka*. Ran points out, it is clear from *Hullin* 134a and *Yoma* 8b, that the Talmud is generally lenient in cases of *safek mamon aniyim* - monetary cases involving the money of the poor which involve a doubtful ruling. He therefore concludes, because our case remains unanswered in the Talmud, it constitutes *safek mamon aniyim* a doubt regarding monetary matters, and we should be lenient<sup>7</sup>.

Upon further analysis, one matter remains unclear. Our case involves a pledge to donate *tzedakah* by taking a *neder* - a vow. What did Ran gain from invoking the principle of *safek mamon aniyim l'kulah*? The principle of *nedarim* is clearly in the realm of *issurim* - ritual law and not in the realm of *mamonos* - monetary law. Furthermore, the Torah clearly indicates a formal ritual prohibition for violating

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<sup>6</sup> *Nedarim* 7a s.v. *u'liyan halkha*

<sup>7</sup> See Maimonides, *matanos aniyim*, 8:2, *Tur*, *Yoreh Deah* 259, *Shulhan Arukh* 258:2 who all rule stringently in accordance with the views of Nahmanides and Rashba. On the other hand, *Biur HaGra*, *Yoreh Deah*, 158:15 is lenient like Ran.

vows in *Matos* 30:3.<sup>8</sup> This makes it inconsistent with *Hullin* 134a and *Yoma* 8b which are cases of *safek mamon aniyim* without any vow being made and without any connection to the realm of *issurim*. How can Ran compare them? Accordingly, when a *yad* is used to intimate a vow to give *tzedakah*, we should invoke the principle of *safek issurin lehumra* - we are stringent in cases of doubt in ritual law - (as Nahmanides and Rashba did) and obligate the pledger. Why then is Ran lenient?<sup>9</sup>

Rav Yitzhak Minkovsky (1784 - 1852) in his work *Keren Orach*<sup>10</sup> challenges Ran with this very question. How can we be lenient in the above case? If the pledger does not give the *tzedakah* he may be violating a biblical prohibition if his *yad* was effective? Should we not apply the rule of

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8 איש כי יודר נדר לה' או השבע שבועה לאסור אסור על-גופשו לא יחל דברו ככל-ה' צא  
מפיו יעשה -

“If a man makes a vow to the Lord 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.”

<sup>9</sup> See *Hasam Sofer, Responsa, Yoreh Deah*, 240 who raises many questions regarding Ran’s ruling and therefore rules like Nahmanides and Rashba. See *Nesivos HaMishpat, dinei tefisas b’eidim, klal 2* and *Turei Even, Rosh HaShana* 14a on this topic. *Shulhan Arukh - Yoreh Deah* 259:5 is stringent, whereas *Rama* *ibid.* writes if we are unsure of the pledger’s intent, and then he dies without clarifying, the burden of proof is on the one claiming collection from the inheritors of the pledger.

<sup>10</sup> *Nedarim* 7a

*safek issurin lehumrah* to the pledger's possible violation of the prohibition of "*baal yahel divaro* - he shall not break his pledge?" He points out, in the Talmudic cases Ran cited above as proof, the principle of *hamotzi m'haveiro alav haraaya* - in monetary matters the burden of proof is on the collector - allows the person not part with his money. This principle is not applicable to a case which has a potential biblical violation at stake.

Rav Minkovsky answers that the debate between Nahmanides, Rashba, and Ran hinges on a different point - whether we generally are lenient or strict by vows which we are unsure took affect. This approach is difficult, he admits, because Ran<sup>11</sup> explicitly takes the stringent approach on this matter which would not fit with his lenient ruling in our case. Rav Minkovsky remains with this unresolved conclusion.

*Kuntres HaSeifeikos*<sup>12</sup> makes a similar point in an attempt to answer the question Ran posed to Nahmanides and Rashba above. He claims that Nahmanides and Rashba would respond to Ran's claim that they are inconsistent with the principle of *safek mamon aniyim l'kulah* as follows:

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<sup>11</sup> See Ran *Nedarim* 20a s.v. *ul'inyan halakha*. Rashba *Nedarim* 19b s.v. *ul'inyan p'sak halkha* also takes the stringent approach

<sup>12</sup> *Klal* 1:2

Granted, in cases of *safek mamon aniyim* we are generally lenient.<sup>13</sup> But in a case, when the person pledging the *tzedakah* intimates a vow, we must be stringent to avoid the violation of *baal yahel devaro* (violating the vow) and *baal taacher* (delaying the vow) - which are both biblical prohibitions<sup>14</sup>. Rabbi Yaakov Yisrael Kanievsky (1899–1985), known as the Steipler, notes in his *Kehilos Yaakov* that the above answer is the approach of most later authorities.

With that said, this only makes the view of Ran more problematic. Why did Ran not agree that in a case of intimation involving a vow we should follow the principle of *safek deorysa lehumra*? If this is not the issue at hand, what then is the point of contention between Ran and Nahmanides and Rashba?

Rav Ephraim Navon (1677 - 1735) offers an approach of his own in *Mahane Ephraim*<sup>15</sup>. He claims the debate between Ran and Nahmanides and Rashba is about a

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<sup>13</sup> Rashba, Responsa 1:656. See *Shakh, Yoreh Deah* 259:14 who raises an internal contradiction for Rashba from this Responsa.

<sup>14</sup> See *Matos* 30:3

<sup>15</sup> *Hilkhos Tzedaka* 2, *Hilkhos Nedarim* 8

different issue entirely. The Talmud<sup>16</sup> discusses a case in which a certain man slapped another man:

The man who was slapped said to Rav Yosef, “Since the fine is only half a *dinar*, I do not want it, as it is beneath me to collect such an amount. Instead, let him give it to the poor.” Then he retracted his decision, and wanted the money back. Rav Yosef said to him, “Since you already committed to give it to charity, the poor have already acquired it and it now belongs to them. And although there are no poor people here to acquire it, *yad aniyim anan*, we, the court, are the hand, i.e., the legal extension, of the poor.

*Tosafos*<sup>17</sup> ask why did Rav Yosef need to invoke the principle of *yad aniyim anan*, this man should be obligated to pay the *tzedakah* that he verbally pledged based on the principle of *b'fikha zu tzedaka* - a verbal pledge of *tzedakah* is binding.<sup>18</sup> *Tosafos* answer that since, in this case the offender did not yet pay the man he slapped, the defendant's pledge to give that money to the poor was ineffective because he was promising to donate money he did not own yet. When this man pledged to give the *tzedakah*, the money had the status of a *davar shelo baah l'olam* - something that did yet not enter the world. Therefore, this pledge did not have the status of a binding

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<sup>16</sup> *Bava Kamma* 36b

<sup>17</sup> *Ibid.* s.v. *yad anyim anan*

<sup>18</sup> *Ki Tzei'tzei* 23:24. See *Rosh HaShanah* 6a.

vow. That is why Rav Yosef needed to invoke the principle of *yad aniyim anan*.

However, *Tosafos* cite Rabeinu Hananel (990 - 1053) who interprets the story in the Talmud differently. He claims that the defendant did not intend to retract his vow at all, rather he wanted to lend the money temporarily, then afterwards claim the money back in order to give it to other poor people instead. We find precedent for this in *Erekhin* 6a, where the Talmud states one is allowed to retract a pledge before the *gabai tzedakah* - the caretakers of the money - receive the funds. Rabeinu Hananel argues the same would apply in our case. Because the money had not yet been given to the poor, the offender is permitted to modify his donation.<sup>19</sup>

According to Rav Navon, the point of contention between *Tosafos* and Rabeinu Hananel is if there is a vow established in the above case. According to *Tosafos*, the offender's statement constitutes a vow that he must fulfill,

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<sup>19</sup> This appears to be the view of Maimonides as well in *Hilkhos Mekhira* 22:15, although Ra'avad argues. *Mahane Ephriam* explains that according to Ra'avad, *amiraso l'gevoah kimesiraso l'hedyot* - pledging money to the Temple is as if one has literally given it - applies to pledges of *tzedakah*; the poor already acquire the money even before it physically enters their hands. Therefore, even if the pledge was not said in the language of a vow, it is binding. See *Kehilos Yaakov*, *Nedarim* 5, for a different explanation of the view of Maimonides.

even though the money was not yet given to the *gabai tzedakah*. *Tosafos* apply the principle of *amiraso l'gevoah kimesiraso l'hedyot* - pledging money to the Temple is as if one has literally given it - to one who donates *tzedaka*. Accordingly, once the pledge is made, it automatically is considered to be owned by the poor. Whereas according to Rabeinu Hananel, there is no vow established. This is because he only applies the principle of *amiraso l'gevoah kimesiraso l'hedyot* to actual *hekdesh* - Temple donations, and not to *tzedakah*. Therefore, according to Rabeinu Hananel, one is permitted to retract such a pledge before the *gabai tzedakah* get it, because there was no binding vow in affect.<sup>20</sup>

Rav Navon claims that the above debate between *Tosafos* and Rabeinu Hananel is the very same debate between Ran, Nahmanides, and Rashba with regards to *yados* used for pledging *tzedakah*. Ran agrees to the *Tosafos* and applies *amiraso l'gevoah kimesiraso l'hedyot* to *tzedakah*. The minute one makes the *tzedakah* pledge, the charity money becomes the property of the poor. He fulfills his vow immediately. The question is not if there has been a vow established, rather the question at hand is purely a monetary one - did the poor acquire the money or not. Therefore, we can use the normative rules for monetary law, and allow the money to remain in its status quo. Whereas Nahmanides

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<sup>20</sup> See *Baal HaMaor*, *Bava Kama* 18a in the pages of *Rif*, cites Rav Hai Gaon who maintains that although the poor do not acquire the money, it is obligatory for the one who pledges the *tzedaka*.

and Rashba agree with Rabeinu Hananel that there is no vow established, they do not apply *amiraso l'gevoah kimesiraso l'hedyot* to *tzedakah*. Therefore, they can apply the rule of *safek deoraysa lehumra* - in cases of doubt we are stringent when it comes to biblical prohibitions.

Although creative, once again, the explanation of Ran appears problematic. If Rav Navon is correct, and the main thrust of Ran's argument is *amiraso l'gevoah kimesiraso l'hedyot* applying to *tzedakah*, he should make some mention of it! Furthermore, what did Ran derive from the Talmudic statements about *matnos anyim* in *Hullin* and *Yoma* earlier? Therefore, the question of how Ran can be lenient in a case of *safek issar lehumrah* was still not addressed.<sup>21</sup>

I would like to suggest a different explanation of Ran's approach. It is predicated on Ran's interpretation of a passage in the Talmud only one page later, in *Nedarim* 8a:

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<sup>21</sup> See *Kehilos Yaakov, Nedarim* 5 who suggests that although we generally say we are stringent in cases of unresolved *sfeikos issurin* - doubts in ritual law -, since we cannot obligate someone to give *tzedakah* money based on this, there can be no actual *neder* present either.

Rav Giddel said in the name of Rav: One who says: I will rise early and study this chapter [of Torah], or I will study this tractate of [Torah] has made a *neder gadol nadar l'elohei yisrael* - a great vow to the God of Israel (indicating that the vow takes effect)...Rav Giddel said in the name of Rav: With regard to one who says to another: Let us rise early and study this chapter [of Torah], and they agree to do so, it is incumbent upon him.

There is debate between the commentators as to what the proper translation of *neder gadol nadar l'elohei yisrael* is. *Pirush HaRosh* (1259 – 1327)<sup>22</sup> explains that it is not a real *neder*. Rather, it is considered as if he made a *neder tzedaka*. Ran<sup>23</sup> disagrees and explains that it is actually a *shavua* - an oath - because in order to qualify as a *neder*, there must be an *issar heftza* - a prohibition must take effect on a particular object. How can Ran claim there is a *shevua* being made, when the Talmud uses the word *neder*? Ran addresses this question<sup>24</sup>:

Even though the words *neder gadol nadar* are used, we are talking about a case in which he explicitly made a *shevua* - an oath. This must be the case, because there is no such thing as a *neder* without an object becoming forbidden to the one

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<sup>22</sup> *Nedarim* 8a

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ran Ibid.* s.v. *vihalo mushba* and s.v. *alav lihashkim*

who made the *neder* (which is not present in our case of a man vowing to study Torah).

...This [Rav Giddel's statement] teaches us the following: The verbal commitment to do a *mitzvah* is binding even without mentioning a vow or an oath. Similar to what is said in regards to making a *kabalah b'alma* of *tzedakah* (a verbal commitment to give charity without taking a vow or an oath). This is based on the principle of "*b'fikha - zu tzedakah*" - with one's mouth alone he can obligate charity. The same is true for anyone who vows to do a *mitzvah*.<sup>25</sup>

There seems to be an internal contradiction in the words of Ran. On the one hand, Ran states unequivocally, that it is impossible to conceive of a *neder* without an object becoming forbidden. This is why Ran is forced to reinterpret the word *neder* in the Talmud, as actually meaning a *shevua*. On the other hand, he writes that one can made a binding *neder* to do any any *mitzvah* based on the principle of "*b'fikha - zu tzedak*" implying that one can make a *neder* to do an action without forbidding any object to themselves?

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<sup>25</sup> See Rav Akiva Ager, *Gilyon HaShas, Nedarim* 3b who raises an issue with the passage in the Talmud which states that there can be a *neder* to do an action without an *issar heftza* and *Rashash* *ibid.* S.v. *baal yachel divaro* who offers an answer.

I believe the words of Ran themselves provide us with the answer. According to Ran, there is a new realm of *nedarim* that exist without an object becoming forbidden. This is what Ran refers to as making a *kabalah b'alma* - a commitment to do a *mitzvah*. Granted, there is no object becoming forbidden, but nonetheless, his words are effective to create a personal obligation. Whereas according to Ran *neder gadol nadar* is a *shevua*, only because he explicitly invoked language of a *shevua*. According to Ran, if one accepts upon himself to do a *mitzvah* without using a *neder* or *shevua*, it is binding because of the principle of *b'fikha zu tzedakah*. This appears to be a new understanding of the concept of a *neder*. Up until now, we assumed that if there is no *issar heftza*, there can be no *neder*. Ran is explaining that *B'fikha zu tzedakah* teaches us about a new realm of *nedarim* that can exist without any object becoming forbidden. One can take upon himself a personal *kabalah* to do any *mitzvah* and give that statement the status of a *neder*. This is in fact, how Ran views *nidrei tzedakah* and all *nidrei mitzvah*. They are not as classic *nedarim* containing an *issar heftza*, but rather a purely personal *kabbalah* that is binding on the individual.

Perhaps this innovative understanding of *nidrei tzedakah* is the point of contention between Ran, Nahmanides, and Rashba. According to Nahmanides and Rashba, when one pledges to give *tzedakah*, this *neder* is like all other *nedarim* - *issar heftza* and all. They do not agree to Ran's radical idea about a totally distinct category of *nedarim* learnt from *bifekha zu tzedaka*. Therefore, their approach to *yados* is simple. Since we are in doubt as to how to rule in

this case, we apply the normative principle of *safek issur lehumra*. But, as we noted, Ran looks at this pledge through a completely different lens. He views the *tzedakah* pledge, not as a *neder*, but rather, as a personal *kabbalah* not containing an *issar heftza*. In that case, we can now understand why he is lenient in case of doubt and how he derives it from the concept of *safek mamon anyim* above. Although there is a potential prohibition involved in not fulfilling this obligation, because it is primarily a *kabbalah* of the individual, we view it as a monetary obligation and not a ritual obligation. This point is precisely what Ran derived from *matnos aniyim*. In those cases, he saw examples of a monetary obligation that does have a cross section of ritual prohibition and yet is still treated as being in the realm of monetary law.<sup>26</sup>

In summation, Ran, Nahmanides, and Rashba disagree about the fundamental definition of *nidrei mitzvah* when there are monetary implications in the pledge made. Nahmanides and Rashba are of the view that this pledge in the realm of ritual law and therefore apply the principle of *safek issurin lehumra*. Whereas Ran, sees the *tzedakah* pledge as primarily in the realm of monetary law and applies the principle of *safek mamon lekulah*.

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<sup>26</sup> Regarding the prohibition of not giving *maasar ani* see Maimonides, *Sefer HaMitzvos*, *Mitzvah* 130, Rabbeinu Yonah, *Sharei Teshuvah*, *Shaar* 3, *Hullin* 131a, and *Rosh HaShanah* 4a.