

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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Kitutei Mikhtat Shiurei -
The Halakhic View of 'Shiur' in Items Designated to be Burnt

The gemara in several locations addresses the halakha known as kitutei mikhtat shiurei. Translated literally, this halakha is defined as follows: Any item which demands a requisite quantity to be rendered halakhically meaningful, 'looses' that quantity (shiur) when the item in question must be burnt. For example, if a person chooses a lulav from a tree which has been worshipped as avoda zara (known as an asheira), is subsequently forbidden for use, and must be burnt, he is not yotzei the mitzva. For a lulav to be valid it must be four tefachim in length. Even if such a lulav presents the necessary physical dimensions, since the item must be burned "kitutei mikhtat shiurei" (literally – its shiur is cut down) and the item is invalid for the performance of the mitzva (see Sukka 31b). The same claim is made about a shofar (Rosh Hashana 28) which was taken from an animal which was worshipped as avoda zara and is now forbidden. This series of articles will explore the nature and application of this halakha.

Obviously our first step must be to provide some logic or understanding for this halakha. Why should an item, sufficient in its physical dimension, have those dimensions 'cut-down' simply because the item must be burned? Rashi in Chullin (89b) and Rosh Hashana (28a) addresses this issue. He associates this halakha with a well-known statement of R. Shimon's. The gemara in Menachot (102b) cites the position of R. Shimon who ruled that items slated to be burnt (such as para aduma and notar) are considered as having been ALREADY burnt. According to R. Shimon "kol ha-omed le-sreifa" (anything slated to be burnt), "ke-saruf dami" (is considered as already burned). Hence, according to R. Shimon, these items do not receive tum'a since only foodstuffs a beitzta in SIZE can receive tum'a. A beitzta of notar is considered as burnt ashes and no longer retains its spatial dimensions. In

other words, according to R. Shimon, halakha allows us in certain instances to view that future as having already occurred. In fact, the gemara in Menachot considers analogous applications of this principle: the collected blood of a korban even before it has actually been sprinkled, is considered as having been sprinkled (so that any resulting disqualification which occurs is deemed less problematic since 'zerika' had already occurred; an item which is ready to be harvested, is considered as having been reaped even before it has actually been cropped (for purposes of classifying that produce as attached to land or portable). Evidently, R. Shimon (and many who adopted his opinion) allow for the future to be realized in the present.

Rashi believes that OUR halakha of "kitutei mikhtat shiurei" is merely a derivative of R. Shimon's. Anything, which must be burnt, is considered as having already been burned. Once we envision the burning as having already occurred, the item cannot possibly retain its physical size and is invalid for the performance of the mitzva.

Similar sentiments seem to be expressed by the Ba'al Ha-ma'or in his commentary to Sukka (17a in the Rif's pages) when he writes that when something is kitutei mikhtat shiurei it is considered 'ke-man de-lesei' as if it no longer exists; evidently, he viewed this halakha in the same way that Rashi did: the designated burning is considered as having already occurred and hence the item is halakhically reduced to a heap of ashes.

We might suggest an alternate manner of understanding this halakha. After all, the gemara makes no attempt to associate our halakha with R. Shimon's. In fact, they are classified differently in terms of the way they are referred to - one is referred to as kitutei mikhtat shiurei while R. Shimon's halakha is referred to as kol ha-omed lehisareif ke-saruf dami. Generally, when halakhot are referred to in different manners they are not identical (though they might be similar). In addition, R. Shimon's halakha is not universally accepted. After all, the Chakhamim reject his principle of visualizing the future as having already occurred. How might we explain the concept of kitutei mikhtat shiurei according to the Chakhamim?

This view, that kitutei mikhtat shiurei represents a completely different concept, might be voiced by Tosafot in Sota (25b). Tosafot claim that even the Chakhamim who reject R. Shimon accept the concept of kitutei mikhtat shiurei in the case of avoda zara. As opposed to notar or para aduma an

item of avoda zara is not just designated to be burned; it is also assur be-hana'a (forbidden) and hence the law of kitutei mikhtat shiurei applies. Might Tosafot be arguing with Rashi and claiming that kitutei mikhtat is really an independent halakha? Even though the Chakhamim reject kol ha-omed li-sereifa, they might accept kitutei mikhtat.

If indeed kitutei mikhtat is a separate halakha we might have to consider its definition. One suggestion is to view the item not as burned but simply as INCONSEQUENTIAL. We do not envision the future as having already occurred but the very fact that something is designated for burning subverts its significance and renders it similar to something without a shiur. After all, the purpose of a shiur is to confer significance upon an item. Less than a kezayit of matza is not a significant mass while more than a kezayit is significant. Less than 4 tefachim of a lulav is not significant enough a lulav to be used for the mitzva while more than four is chashuv. Something which is slated to be burned has a limited future and this factor might offset the significance, which the quantity generally confers. Kitutei mikhtat does not reduce the physical shiur; rather it counteracts and counterbalances the effect of a shiur and renders the object meaningless.

A clear articulation of this principle can be found in the Ran to Gittin (20a). The gemara allows writing a get on paper, which is assur be-hana'a. The Ran questions this halakha based upon the principle of kitutei mikhtat. The Ran responds that there is no inherent quantity of paper necessary for a 'get.' The paper must only be large enough to contain the requisite text. Since the size of the paper is not a question of shiur or significance, the disqualification of kitutei mikhtat cannot apply. This problem is only relevant when the shiur distinguishes between a significant quantity and an insignificant one (for example 4 tefachim of a lulav). When the shiur does not characterize the item as significant (but is only necessary to assure a background to the required text) the lack of future in no way affects the item. Had the Ran understood kitutei mikhtat as Rashi did (we view the item as already burnt) he would not have been able to draw his distinction. The 'get' would be considered ashes regardless of the role or function which the shiur plays.

A second position which differentiates between kitutei mikhtat and kol ha-omed lehisareif can be found in the Ra'avia (in his commentary to Chullin chapter 1140). He poses the following question: Why should orla and kil'ei

ha-kerem become impure? The shiur to receive impurity is a beitzah and these items must be burned. Applying the concept of kitutei mikhtat would render these items shiur-less (just as R. Shimon suggested in the gemara Menachot about notar and para aduma which must be burned and do not receive tum'a due to a lack of the beitzah shiur).

His answer is illuminating. He claims that kitutei mikhtat does not render the item as non-existent (as Rashi and the Ba'al Ha-ma'or explicitly state). Rather, the limited future renders the item as 'broken' (in his words broken into little pieces - mukhtot le-chatukhot chatukhot). Hence, these items cannot be used for a lulav or shofar since these lulav and shofar must maintain a distinct form. A lulav is not just a mass of palm tree material equaling 4 tefachim in volume - it must have a certain shape and form. Similarly, a shofar is not merely a certain mass of horn-material but must resemble a shofar. If the item will be burnt (read: deformed) such shape is meaningless. However, for food to receive tum'a it does not have to assume a certain form or shape. Simply a beitzah's worth of that food will receive tum'a. Even if I apply kitutei mikhtat and deform the food the same mass still remains and tum'a is conferred.

What emerges unmistakably from the Ra'avia is that kitutei mikhtat does not constitute an imaginative burning of the item based upon its future burning. Had this been so, the halakha would invalidate items even to receive tum'a. Instead, he viewed the halakha as attacking the shape of the item because the present form is unstable due to its limited future. If so, the invalidation would only apply in cases in which the form is vital. Interestingly, the Ra'avia does claim that according to R. Shimon who adopts the kol ha-omed concept (which views the future as having already occurred) we might consider invalidating orla from receiving tum'a if the burning would reduce the volume beneath the beitzah level. He clearly differentiates between kitutei mikhtat which affects shape (and has no relevance where a shape is not necessary) and kol ha-omed which renders a burnt state on the item and might even affect volume or size.

To be sure, the Ra'avia articulates kitutei mikhtat in a manner which differs slightly with my definition. I assumed that the limited future stripped the item of the inherent significance which the physical volume conferred. The Ra'avia suggested that the significance isn't offset but rather the shape is compromised (because it will be so temporary). However, both approaches

separate kitutei mikhtat from kol ha-omed. In the latter case, according to R. Shimon, we view the item as being completely reduced to ashes. If so, kitutei mikhtat would apply across the board. A lulav would be invalid, a parchment could not serve as the backdrop for a 'get' and food would not receive tum'a. According to the Chakhamim, this never occurs but the VERY PROSPECT of future burning influences the item, its significance or its shape even in the present. This condition might only be problematic in cases in which the shiur confers significance (as opposed to 'get' in which the shiur is necessary for purely practical reasons) or cases in which the shiur is accompanied by a distinct shape.

SUMMARY:

We have witnessed two distinct approaches toward understanding the intriguing halakha of kitutei mikhtat shiurei. It might be a derivative of R. Shimon's concept of realizing the future as already having arrived in the present (a theory known loosely as kol ha-omed). Alternatively, we might define it as reducing the shape or significance of the item even in its present state because of its limited future. Next week, ly"H we will address various ramifications of this distinction.

METHODOLOGICAL POINTS:

1. When we are confronted with a new halakha consider its relationship to already established concepts.
2. If two concepts are in fact similar, we might question the gemara's use of different terms to describe them. Rashi's suggestion that kitutei mikhtat is in fact identical to kol ha-omed might be challenged by the fact that the gemara refers to them through different terminology.