

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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IN LOVING MEMORY OF
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לע"נ

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Shiur #13: Non-Conventional Forms of Benefit from *Issurei Hana'ah*

The *gemara* in *Pesachim* (24b) cites two opinions regarding deriving *hana'ah* in a non-conventional fashion or “*she-lo ke-derech hana'ah*.”

While it is clear that **eating** forbidden items in a non-conventional fashion is not punishable by *malkot*, *hana'ah* may be different from *akhila*. Eating is a precise and defined act that is governed by various halakhic parameters, such as time (*kedei akhilat perat*) and volume (*ke-zayit*). If the formal act is not performed, the violation is diminished and no *malkot* are delivered. Thus, a non-conventional form of eating does not yield *malkot*, as a formal act of eating has not occurred. By contrast, the prohibition of deriving *hana'ah* is not defined by a particular act. There are many diverse forms of forbidden *hana'ah*, including passive forms of benefit, such as selling an item for financial gain. Presumably, the prohibition of deriving benefit from a forbidden item is not tethered to the performance of a formal act. Hence – as the first approach of this *gemara* suggests – *hana'ah* is forbidden even *she-lo ke-derech hana'atan*. Even without a classic *ma'aseh* or act *hana'ah* should be forbidden.

However, the *gemara* cites a second opinion, which disqualifies *hana'ah she-lo ke-darko* from *malkot*. There are two different strategies toward understanding this second opinion.

One approach concedes that *hana'ah*, like *akhila*, is only forbidden if a formal **action** is performed. Any flaw – such as deviance from conventional forms of benefit – ruins the **action** and diminishes the severity of the prohibition, thereby eliminating *malkot*. Rabbeinu Dovid pursues this approach, based on the fact that

the prohibition to benefit from items is derived from the term *akhila*, which classically refers to eating. By subsuming prohibited *hana'ah* under the term *akhila*, the Torah may be stressing that just as eating is only forbidden if an action is performed, *hana'ah* is similarly only *malkot*-deserving if an action of deriving benefit is performed. Essentially, by diminishing *malkot* for *hana'ah shelo k'darkho*, the Torah is equating the prohibition of benefit-derivation and the prohibition of eating. They each require a halakhic formal act, and when that act is disrupted by a deviance, the complete *issur* has not been perpetrated.

Alternatively, by diminishing the prohibition of *hana'ah* in an instance of *she-lo ke-darko*, the *gemara* may be redefining the nature of *hana'ah*. If the benefit derived was not the classic and maximal benefit, perhaps the Torah doesn't define it as *hana'ah*. An *issur hana'ah* forbids benefit, but only the maximal and classic form. Accordingly, *hana'ah she-lo ke-darko* is not exempt from *malkot* because of the absence of a *ma'aseh hana'ah*, but rather because the benefit-yield is not considered legally prohibited benefit.

The most immediate *nafka mina* of this question pertains to the question of whether *hana'ah she-lo ke-darko* is merely exempt from *malkot* or is also permitted *le-khatchila*. Many *Rishonim* (see the Ritva and Maharam Chalava in *Pesachim*) claim that *mi-d'oraita*, *hana'ah she-lo ke-darko* is completely permissible; only a Rabbinic prohibition bans this practice. More radically, the Mordechai (*Pesachim* 545) claims that this behavior is **completely** permissible even *le-khatchila*, without any *de-rabbanan* prohibition. By contrast, the Lechem Mishnah (*Hilkhot Ma'achalot Assurot*, ch. 10) claims that although *malkot* do not apply, even non-conventional forms of *hana'ah* are Biblically forbidden.

Presumably, the *machloket* may be traced to the aforementioned question. If *hana'ah she-lo ke-darko* is considered halakhic benefit but the act of deriving *hana'ah* is flawed if, we would expect the practice to be forbidden but without *malkot*. Legally prohibited *hana'ah* has been experienced, but a classic action has not been performed, and therefore no *malkot* can be applied. However, if deviant *hana'ah* is not considered legally forbidden or halakhic *hana'ah*, since benefit has not been maximized, we may expect this practice to be completely permissible, at least on the *d'oraita* level.

A second question surrounds the extent of *she-lo ke-darko*. What types of deviant behavior would classify as *shelo ke-darko*? Typically, *akhila she-lo ke-darko* pertains to eating the item in an atypical fashion - either an atypical mechanic of eating or by eating food that has not been prepared for normal human consumption (such as raw animal fat that has not been cooked or processed). We would expect *hana'ah she-lo ke-darko* to be similarly classified: deriving pleasure in a strange manner or utilizing an item that has not been processed to the point of typical human benefit. However, Rashi (*Pesachim* 24b) describes a situation of **underusing** an item, a case in which a person uses prohibited animal fat to heal a wound instead of manufacturing and lubricating

hides. Even though the item is ready for classic utility and he **has** utilized it in a normal fashion, he is exempt because he did not maximize the utility. The financial benefit of processing hides far exceeds the minimal benefit of healing a wound. Thus, this activity is considered an underuse and *she-lo ke-derech hana'ah*. It seems that Rashi defines *she-lo ke-darko* as a lack of halakhic *hana'ah*. Though the **action** performed is not deviant, since the benefit derived is not maximal, no forbidden *hana'ah* has been experienced.

It appears that the Rambam (*Ma'achalot Assurot* 14:11) agrees with this definition, as he includes very provocative situations of *she-lo ke-derech hana'ah*, such as the case of one who eats food that is too hot and thus burns his palette. This person has performed a completely normal act of eating (everyone eats hot food), but his benefit is tainted by the burn effect. The Rambam lists another instance in which a person eats completely normal and processed food but flavors it with a bitter tasting item. Even though he has performed a fully normal activity of eating, he is exempt because his benefit level has been severely reduced.

Of course, the Rambam is discussing forms of *akhila she-lo ke-darko*, not *hana'ah she-lo ke-darko*. However, the exemption of *hana'ah* may deeply impact the exemption of *akhila*. If *hana'ah she-lo ke-darko* is defined as non-prohibited *hana'ah*, we may similarly explain the exemption of *akhila she-lo ke-darko*: Since the person has not received benefit, he has not violated the prohibition. This, of course, depends of how we define the prohibition of eating forbidden foods. Is eating so different that it is forbidden even without classically forbidden *hana'ah*? Or is eating only forbidden if it mediates classically forbidden *hana'ah*?

A final *nafka mina* concerns the application of this rule to disqualify *mitzva* performance when the food is eaten *she-lo ke-darko*. The Minchat Chinuch (430) explores this issue and posits that a person is not obligated to recite *Birkhat Ha-Mazon* after eating in a non-conventional manner. Clearly, the Minchat Chinuch views *she-lo ke-darko* as a breakdown in the action of eating. When actions of eating are necessary for the execution of a *mitzva* or to launch an obligation for *Birkhat Ha-Mazon*, *shelo ke-darko* is not sufficient. Had *she-lo ke-darko* been an exemption based on the lack of halakhically forbidden *hana'ah*, it would have no relevance to the performance of *mitzvot* that are not contingent upon *hana'ah*!