

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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Shiur #13: *Davar Ha-Gorem Le-Mammon* (Part 1)

An item can sometimes provide monetary benefit for someone who does not legally own it. For example, an animal dedicated as a *korban* is legally owned by *hekdesh*, yet the person who dedicated the animal remains responsible to deliver the *korban*; failure to do so would incur additional replacement charges. This animal, although not under his legal ownership, **does** provide monetary benefit in that it exempts him from potentially purchasing a different replacement *korban*. R. Shimon adopted an interesting theory known as “*kol ha-gorem le-mammon ke-mammon dami*” – items that provide this benefit are considered equivalent to legally owned items. Consequently, if someone steals a *korban*, he is halakhically obligated to compensate the original owner who dedicated the *korban*. Even though the original owner is not in full legal possession, as the *korban* is legally owned by *hekdesh*, the original owner still receives compensation for this *gorem le-mammon* theft. This *shiur* will explore the nature of R. Shimon’s *chiddush*.

The question of how to understand R. Shimon emerges from the syntax of his principle. In asserting that a *gorem le-mammon* is “**ke-mammon**,” R. Shimon employs the letter *kaf* to create an analogy. The “*kaf ha-dimayon*” associates two items – a known template and a derivative. In this case, the known template is legally owned *mammon*, while the derivative is an item that provides monetary interest (*gorem le-mammon*). A strict reading of this association would assume absolute **parity**; the derivative is identical to the template. A looser reading would merely assume similarity of *halakha*, not absolute or inherent identity.

In this instance, a strict reading of R. Shimon’s association would assume that a *gorem le-mammon*, although not adhering to classic legal ownership, is still owned by the beneficiary. Halakha defines ownership not only based on purely legal factors, but also upon pragmatic issues. If a person derives potential monetary benefit from an item, he is considered a partial owner even though he doesn’t possess legal ownership.

A looser reading may yield a very different conclusion. The original owner does not enjoy ownership, but he receives monetary reparation **as if** he owned it. A *gorem le-mammon* item is not owned, but the damage to the financial interests does warrant compensation. The theft of a *korban* obligates the owner to purchase a replacement *korban*, and these costs must be reimbursed. Although he doesn't own an item, he still enjoys certain compensatory payments.

To help determine whether *gorem le-mammon* is actually owned by the subject of the monetary interest, we must first study the breadth of this *halakha*. What *halakhot* apply to *gorem le-mammon*? The classic base example was stated earlier: The original owner receives payment from thieves. Other *gemarot* broaden *gorem le-mammon* consequences to additional monetary consequences. Thus, although the *halakhot* of overcharging (*ona'ah*) do not apply to *hekdesh* items, they do apply to *korbanot* designated to *hekdesh* that contain monetary interests for the original owner (*Bava Metzia* 56). A *shomer* who guards classic *hekdesh* items is not obligated to swear upon returning the item, but if he guards designated *korbanot* that are *gorem le-mammon* for the original owner, he must swear when returning the item (*Shavuot* 42b).

These applications may reflect either model of understanding the *gorem le-mammon* association. Even if the item isn't owned by the subject, the financial interests **are** halakhically significant and must be protected through laws of *ona'ah* or laws of *shomrim*. Would *gorem le-mammon* items, however, be treated as possessions in the context of non-monetary applications?

One striking example is provided by the Yerushalmi (*Pesachim perek 1*), which appears to claim that a person is allowed to intentionally let blood from a *korban* for which he is still responsible and which is classified as *gorem le-mammon*, even though it is usually forbidden to cause a wound to a *hekdesh* animal. The ability to willfully cause a wound to this animal indicates that according to R. Shimon, the financial interest regarding the item has redefined the ownership; it is not fully owned by *hekdesh*, and the prohibition of causing a blemish therefore does not apply.

The question of whether *gorem le-mammon* impacts non-monetary conditions similarly emerges from a *gemara* in *Pesachim* (5b) debating the application of the *bal yeira'eh* prohibition to *chametz* that a Jew is guarding for a non-Jew. The Jew does not possess legal ownership over the *chametz*, but he does maintain an "interest" in it, as he would be required to purchase replacements if the *chametz* were to disappear. Would the Jew violate *bal yeira'eh* based on this item's

definition as *gorem le-mammon*? This is not a question of compensating for damages to *gorem le-mammon* items or protecting that interest. This question rests squarely upon the issue of whether the person of interest **actually** owns the *gorem le-mammon* item. If he owns the item, he would be prohibited from possession over Pesach; if he doesn't own the item but merely receives financial compensation for it, he would not violate *bal yeira'eh*. The dispute in the *gemara* between two different opinions may reflect two fundamentally different ways of viewing *gorem le-mammon* according to R. Shimon.

This question also seems to arise in a different but parallel *gemara* discussing the laws of burning the property of an *ir ha-nidachat* (*Sanhedrin* 102). The *gemara* asserts the even *korbanot* that were designated by city residents are destroyed, even though these animals are legally owned by *hekdesh*.

The *gemara* offers two opinions as to whether this anomaly can be attributed to R. Shimon's position about *gorem le-mammon*. According to Reish Lakish, the city resident who dedicated the animal still partially owns a *gorem le-mammon* and therefore imparts the status of "*ir hanidachat* animal." Evidently, Reish Lakish maintained that *gorem le-mammon* creates an ownership profile upon the item. R. Yochanan disagreed and offered a different logic to justify the animal's burning, implying that *gorem le-mammom* cannot establish an ownership profile and cannot mandate the burning of this animal. This well-known question is first addressed by the *Ketzot Ha-Choshen* (386:7).

An additional question relates to proactive rights and duties upon items of *gorem le-mammon*. The person of interest can receive compensation for *gorem le-mammon* because his interests were damaged by the theft, damage, or overcharging. But would this person be obligated to compensate if the *hekdesh*-designated animal damages other animals? The Tosefta (*Bava Kama*, perek 4) implies that he is obligated, indicating that the designator still retains partial ownership. In a related question; may the person of interest **sell** the animal or perform other owner-based halakhic activities (such as performing *bittul chametz*)? The Pnei Yehoshua (*Bava Kama* 66b, cited by the aforementioned *Ketzot*) allows the *gorem le-mammon* party to sell while the Sha'agat Aryeh (chapter 77) does not allow him to perform *bittul*. Presumably, they debate this very issue: whether a financial stake of *gorem le-mammon* yields para-ownership or merely compensatory rights.

Perhaps the most striking indicator that the *gorem* party enjoys partial ownership rights stems from a statement of the *Ketzot* (100:1). A collector whose debt

cannot be paid may typically seize monetary items of the debtor. According to the *Ketzot*, he may also seize items that are not owned by the debtor but upon which he still maintains a financial stake. For example, if the debtor is guarding an item on behalf of another person, that item is defined as *gorem le-mammon* status (since its disappearance will require expenses in compensating the original true owner). As it is a *gorem le-mammon* for the watchman/debtor, it can be collected by his creditor. This very provocative position can only be explained by redefining the *gorem le-mammon* item as partially owned by the watchman.