

YESHIVAT HAR ETZION  
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)  
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**TALMUDIC METHODOLOGY**  
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**Shiur #01: Stolen Shofar**

The gemara in the beginning of the third perek of Sukka disqualifies a stolen set of daled minim for the performance of the mitzva. As the gemara comments, this scenario represents mitzva haba'a ba'aveira. The language of this halakha as well as its underlying logic suggests a broad application of this rule to other mitzvot. In fact the gemara in Rosh Hashana (28) invalidates the use of a shofar taken from a korban presumably because its use entails an act of aveira (deriving illicit benefit from hekdesh). Ultimately, Rava determines that one may use a shofar belonging to a korban because 'mitzvot lav lehenot nitnu' - the process of performing a mitzva does not constitute the derivation of pleasure. As no pleasure results, no violation of hekdesh has occurred and the mitzva is legitimate. Based upon these two gemarot which disqualify mitzva haba'a b'aveira, presumably, a stolen shofar would not enable a valid mitzva. It is noteworthy that neither the gemara in Sukka nor the one in Rosh Hashana directly relate to a stolen shofar.

The Rambam introduces a new opinion regarding a stolen shofar. In the first perek of Hilkhot Shofar he claims that a stolen shofar MAY be used in the performance of the mitzva. He establishes this leniency based upon his position that the mitzva is performed by listening to the sound of the shofar and not by blowing. One might have claimed that the mitzva consists of blowing and individuals who listen to the ba'al tekiya blowing are 'yotzei' their responsibility to blow through his act. In contrast to this notion, the Rambam repeatedly claims that the mitzva consists of merely hearing a sound. Consequently, one may blow with a stolen shofar "since a sound cannot be stolen" (ein bekol din gezel).

The Rambam appeared to have chosen as his source a statement of the Yerushalmi in the beginning of the third perek of Sukka. Having

disqualified a stolen lulav (as mentioned above) the Yerushalmi validates a stolen shofar since "in the instance of lulav he executes that mitzva with the actual item (which if stolen is unacceptable) whereas regarding shofar he performs the mitzva with the sound (which cannot be stolen).

It would appear that the Rambam is issuing an important statement about the principle of mitzva haba'a ba'aveira. One could claim that the principle disqualifies any mitzva which was FACILITATED by a prior aveira. By stealing a lulav, an individual assists the mitzva; if not for the theft the mitzva may have been unattainable. As such there might be little room to distinguish between a lulav and a shofar - in either case the theft enables the subsequent mitzva. By distinguishing between the two, the Rambam claims that this principle disqualifies objects of mitzvot which themselves ARE ITEMS of aveira. A stolen lulav is an item of an aveira (cheftza d'aveira) and cannot be employed for the mitzva just as a dry lulav is invalid for the mitzva performance. In the case of shofar however, the object of the mitzva (the sound) is not stolen, is not an item of aveira and therefore the mitzva is not hampered.

This position of the Rambam is reminiscent of an interesting machloket between two Tosafists in the beginning of the third perek of Sukka.

Would a stolen lulav be invalid for the mitzva after the thief transformed it through a shinui and thereby acquired it? Once a thief effects a physical or chemical change upon a stolen item (shinui) he acquires the item as his (although he is still obligated to compensate the theft). Would a lulav whose legal ownership was transformed through shinui be disqualified for the performance of the mitzva? The debate between the Ri and the Rabenu Tam surrounding this issue is recorded in two Tosafots in Shas (Bava Kama 66 and Sukka 30). Conceivably, they might be disputing the structure of mitzva haba'a ba'aveira. They might agree with the Rambam that the disqualification is realized when the proscribed item of the mitzva is also an object of aveira. Once the original stolen item has been altered the original object of aveira no longer exists and the new lulav may be employed for the mitzva.

Alternatively, we may differ and claim that any aveira which facilitates the mitzva disqualifies that mitzva. Undoubtedly, the original theft continues to enable the performance of the mitzva even after the original item has been altered resulting in ownership transfer.

After validating a stolen shofar because the object of the mitzva is a sound which cannot be stolen, the Rambam applies the same rule to a shofar taken from an animal of a korban. Presumably, the Rambam, by linking these two scenarios (he employs the term v'chein preceding his description of shofar of a korban) compares their logic. Ostensibly, in the instance of korban as well, though the shofar is an aveira ITEM, since the object of the mitzva is the emitted sound - which is not the actual aveira item - the mitzva is valid. What is not altogether clear from the Rambam is why a shofar of korban is considered an aveira item and why it, like a stolen shofar, is a candidate for the disqualifying principle of mitzva haba'a ba'aveira!! A stolen item underwent an actual process of aveira and is therefore flawed for mitzva performance. A korban did not 'undergo' an aveira!! Would the Rambam maintain that any item which is forbidden to derive pleasure from is considered an aveira item which is invalid for mitzva!! An interesting gemara in Pesachim prohibits the use of matzo from tevel wheat. Though this too would seem a likely candidate for mitzva haba'a ba'aveira, the gemara cites an independent derasha to disqualify tevel for matzo. The simple reading of this gemara suggests that tevel matzo is NOT an aveira item and would not be disqualified through the principle of mitzva haba'ah ba'aveira.

Would the Rambam disagree? Would any prohibited item - even one which did not undergo a prior act of aveira, be considered an aveira item and defective for a mitzva. It is not entirely clear from the Rambam in Hilkhos Chametz U'matza 6:7 how he reads the gemara in Pesachim.

Certainly, his statement in Hilkhos Shofar would imply that he disqualifies matzo of tevel based upon mitzva haba'a ba'aveira.

The Ra'avad, in his comments to Hilkhos Shofar 1:3, validates a stolen shofar for an entirely different reason. Citing the continuation of the Yerushalmi in Sukka perek 3 he asserts that by coining the mitzva in indirect terminology, the Torah validates the use of a stolen shofar. Instead of commanding us to 'blow' or 'sound' the shofar, the Torah merely instructs 'yom teru'a' which allows the use of stolen shofarot. Does the Ra'avad view this derasha as one which directly validates a stolen shofar; by coining the mitzva in this irregular and indirect fashion the Torah is conveying a validation for a stolen shofar? Or might the Ra'avad claim that a mitzva like shofar, BY NATURE is impervious to mitzva haba'a ba'aveira concerns. Though the act

of blowing may be tainted, and the object of the mitzva may be blemished, the DAY itself has been converted into a day of sound.

Typically, the Torah legislates an act to be performed with a particular item. If the act is enabled by aveira or the object is identified as aveira, the mitzva stalls. However, by instructing 'yom teru'a' the Torah may be directing us to create an ENVIRONMENT of shofar sounds - to convert the day into one laced with shofar sound. Blowing a stolen shofar certainly accomplishes this task!!