

**YESHIVAT HAR ETZION  
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**  
\*\*\*\*\*

TALMUDIC METHODOLOGY  
By: Rav Moshe Taragin

**THE INADMISSIBILITY OF THOUGHT IN INTERACTIVE  
HALAKHA**

The *gemara* in *Kiddushin* (49b) recounts an episode in which a person sold his land, ostensibly because he planned to make *aliya*. However, he did not stipulate this at the time of sale. Rava ruled that "*devarim she-ba-lev einan devarim*;" and we can only process the case based on what was actually verbalized. Even though we trust that he intended the sale solely because of his upcoming move, since he did not articulate the condition, the sale is valid even if he is unable to relocate. Although this principle itself is understandable, it appears to conflict with several *gemarot* that indicate a formative role for non-verbalized intent.

Several *Rishonim* cite an interesting *gemara* in *Nedarim* (27b) which allows someone to feign a *neder* to evade unfair tax collection. He may lie to the collector, claiming that if the grains targeted for collection are NOT *teruma* (and therefore edible and taxable) "they should be forbidden to me forever." This is a method of "convincing" the assessor that the produce is holy tithes and exempt from taxation. In reality, the grains ARE NOT *teruma* and according to his oath, he should be halakhically prohibited from eating them; he claimed that if they are not tithes (which they aren't) they should be eternally forbidden. Since, however, in his heart he intended that the grains should only be forbidden for a day and not forever, he may wait a day and eat them.

The Rashba in *Kiddushin* questions this *gemara's* sanctioning of internal musings to qualify spoken words. Shouldn't this violate the principle of *devarim she-ba-lev einan devarim*?! The Rashba ultimately cites a position of the Yereim which suggests that contextually, the word "forever" literally connotes a more limited time frame. As illegal or discriminatory tax collection was pervasive, people often were compelled to hatch this ruse to protect themselves. The preponderance of this hoax creates an alternative lexicon! On the run from tax manipulators, voicing the words "forever" actually means "one day."

However, the simple reading of the *gemara* implies a different solution. The *gemara* itself raises the specter of the non-viability of *devarim she-ba-lev* and questions the translation of the word "forever" as "for a day." It concludes that coerced situations are different and allow reorientation based upon inner intent.

Presumably, the *gemara* adopts a unique view of the *devarim she-ba-lev* disqualification. Conventionally, this disqualification is understood as an ABSOLUTE dismissal of personal thought as a source of halakhic input. *Halakha* (particularly interactive *halakha*, such as sales and oaths) is determined by spoken words and not internal reflections. Both because of practical considerations (thoughts are not discernible to the other party) and perhaps even on fundamental grounds (thoughts are too insubstantial), internal thoughts are excluded and only the spoken word is adopted.

This *gemara* appears to offer a different reasoning. In theory, thoughts should factor into a halakhic activity. The fact, however, that they were not expressed indicates that they may not be firmly held. The non-expression subverts the authenticity of internal thoughts and renders them non-factors. In the case of tax evasion, however, faced with looming threat, the owner possesses legitimate reason for concealing his thoughts. As his thoughts are no longer mistrusted by their lack of expression, they may indeed qualify his spoken word.

Tosafot in *Gittin* (32a) cite an additional example of acceptable *devarim she-ba-lev* when a person has an "alibi" for non-expression. The *mishna* speaks of a husband who dispatches a *shaliach* to divorce his wife and subsequently aims to rescind the divorce. If he cancels the *shaliach* before delivery, the *get* is neutralized; if he delays until after the delivery, the *get* becomes final. The *gemara* suggests that even if he had been pursuing the *shaliach* prior to the ultimate delivery with full intent to cancel, since he never voiced his cancellation of *shelichut*, the *get* is final. Presumably, the intent to cancel prior to delivery is inadmissible because it is merely *devarim she-ba-lev*.

Tosafot, however, claim that fundamentally we should recognize his intent as valid and we should rescind the *get*. Since he made every attempt to locate the *shaliach* and verbalize his cancellation, his thoughts toward cancellation should be sufficient. Tosafot conclude that we dismiss his

thoughts for secondary and technical reasons. Conceptually, however, the husband's *devarim she-ba-lev* should influence the situation.

In a manner similar to the gemara in *Nedarim*, *Tosafot* also appear to qualify the disqualification of *devarim she-ba-lev*. Non-verbalized intent is typically ignored since its non-expression casts doubt regarding its authenticity. As this particular husband endeavored to voice his position but was unable to, we may theoretically validate his thought, just as we may validate the thoughts of the tax victim of *Nedarim*.

A final example of this principle may be detected in a passage cited by *Masekhet Kalla Rabbati (perek 2)*. In the course of describing a three way *machloket* involving Rabbi Akiva, the *mishna* records his efforts to verify his position. Rabbi Akiva sought to solicit relevant halakhic information from a woman; to persuade her, he vowed to accompany her to the next world if she revealed the desired details. Although he verbalized an oath, he revoked it internally. The passage recounts that he succeeded in gathering the information and his oath held no validity.

Questioning the logic of this story in light of the *devarim she-ba-lev* disqualification, the *shitta lo noda le-mi* (an anonymous commentary to *Kiddushin*) claims that since Rabbi Akiva was trapped in an impossible situation, Halakha DOES recognize his internal thoughts. Had he revealed the revocation of his oath, he would not have succeeded in gathering the information and supporting his halakhic position. Given the lack of alternate options, his non-expression is not debilitating and we may affirm his internal thoughts.

What is striking about the final application of this principle is the broadened definition of *ones*. The tax victim of *Nedarim* and even the husband of *Gittin*, sincerely interested in canceling his *get*, each find themselves in impossible situations, where they cannot overtly express their views. Rabbi Akiva was not exposed to pressure or stress but merely employed a ploy to collect halakhically relevant information. Rendering this situation as *ones* highlights the significance that halakhic mediation held for Rabbi Akiva. Unable to establish his Torah perspective through conventional means, Rabbi Akiva felt "coerced" to utilize deception. Although the morality of his actions still needs to be explored, his conduct and the definition of his predicament as *ones* do inspire us regarding the impact and connotations of Torah study.