

TALMUDIC METHODOLOGY
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Shiur #24: *Mitzva Ha-Ba'a Ba-Aveira*

Several *gemarot* in *Shas* (e.g. *Sukka* 30a) describe an interesting phenomenon known as *mitzva ha-ba'a ba-aveira*, in which the execution of a *mitzva* is plagued with the coincidence with an *aveira*, and therefore disqualified. Though *Tosafot* in *Sukka* (9a) famously claim that this disqualification is only Rabbinic in nature, the unqualified application of this principle implies that it is *de-oraita*. In fact, several *pesukim* are proffered as possible sources for this intriguing *halakha*. This *shiur* will explore the nature of this principle.

An interesting *Yerushalmi* delimits the application of *mitzva ha-ba'a ba-aveira* thereby asserting a model for understanding this rule. The *Yerushalmi* (*Shabbat* ch. 13) discusses the case of someone who tears *keriya* for the deceased on *Shabbat*, thereby violating a *Shabbat* prohibition while attempting to perform the *mitzva* of tearing a garment for deceased relatives. We would expect, this *mitzva* to be disqualified, since it occurs through the violation of a prohibition. The *Yerushalmi*, however, states that the *mitzva* is not ruined by the *aveira*. The *Yerushalmi* distinguishes between this case and that of someone who eats stolen *matza* (who, due to *mitzva ha-ba'a ba-aveira*, does **not** fulfill a *mitzva*): In the scenario of *matza*, the *matza* **itself** is an *aveira*, whereas in the scenario of *keriya* [only] the **person** performed a violation.

Apparently, the *Yerushalmi's* version of *mitzva ha-ba'a ba-aveira* is based on the "overlap" between the status of *mitzva* and *aveira* status upon the same item targeted as the *cheftza shel mitzva*, (the item utilized to perform the *mitzva*). Certain *mitzvot* are purely activities, requiring no object (such as *mitzvot* of emotion, thought, or speech). Others are performed upon an item, but that item is not a *cheftza shel mitzva*. For example, the aforementioned *mitzva* of tearing *keriya* must be performed upon a garment; otherwise, it would not be considered an act of tearing valuables. Being that

any garment can be chosen it is not considered a *cheftza* of a *mitzva*. Still other *mitzvot* employ a **particular** object that must be crafted or otherwise prepared under clearly defined parameters. This list of *cheftza shel mitzva* includes *tzizit*, *tefilin*, *lulav*, *sukka*, *matza*, etc. The principle of *mitzva ha-ba'a ba-aveira* disallows this *mitzva* object to be an object that was previously involved in an *aveira*. The *mitzva* object cannot be tainted by previous association with *aveira*. However, *mitzvot* that do not involve a specific *mitzva* article are unencumbered by this rule. Accordingly, *matza* can't be stolen; if it were, it would be subject to disqualification based on *mitzva ha-ba'a ba-aveira*. Tearing for the deceased, in contrast, does not involve a *cheftza shel mitzva*, and it is therefore unaffected by *aveirot* performed while executing the *mitzva*.

Evidently, this view of *mitzva ha-ba'a ba-aveira* was also adopted by the Rambam, who excludes the *mitzva* of *shofar* from *mitzva ha-ba'a ba-aveira* concerns. In *Hilkhot Shofar* (1:3), the Rambam discusses the case of a stolen *shofar* and validates the *mitzva* despite the theft. As we have previously discussed (<http://etzion.org.il/en/halakhic-definition-mitzva-shofar-0>), the Rambam defines the *mitzva* of *shofar* as **hearing** a sound, rather than as a process of **creating** a sound from an instrument. This definition disregards the *shofar* as a *cheftza* of a *mitzva*. Since the only *cheftza* of the *mitzva* is the abstract sound, which cannot be stolen and is therefore cannot be tainted by an *aveira*, no concerns of *mitzva ha-ba'a ba-aveira* apply.

If this definition of *mitzva ha-ba'a ba-aveira* is true, we might be able to constrict the principle not only based on the type of **mitzva** involved, but also the types of **aveirot** that ruin a *mitzva*.

An interesting *gemara* in *Pesachim* (35b) discusses the case of *matza* produced from *tevel* crops, from which *teruma* was not yet selected. While discussing the opinion that disqualifies this *mitzva*, the *gemara* attributes the reason to an internal *matza* consideration. Several *Rishonim* question the need for an independent *matza*-based disqualification. Why shouldn't this *matza* be disqualified because it is a *mitzva ha-ba'a ba-aveira*? Several solutions are suggested, but an interesting solution of the Ramban may reflect the "cheftza-based" understanding of *mitzva ha-ba'a ba-aveira*. Since the *tevel* status can easily be resolved (by performing the natural and pending act of separating *teruma*), no *mitzva ha-ba'a ba-aveira* concerns apply. The opportunity for simple *tevel* resolution does not mitigate the current severity of

the prohibition; in fact, according to many *Rishonim*, ingestion of *tevel* is punishable by *mita bi-yidei shamayim*, similar to consuming *teruma*. Presumably, the ease by which the *tevel* status can be removed reflects the fact that the object is not **defined** by its current but transient *tevel* identity. Since the *chefetz* is not **defined** as *tevel* – despite being forbidden to eat – there is no overlap between the item designated as a *mitzva* (*matza*) and an *aveira* designation and thus no *mitzva ha-ba'a ba-aveira* issues apply.

R. Lichtenstein *zt"l* suggested a different reason that a *tevel* status would not ruin the *mitzva* performance of *matza*. Unlike a stolen item that has undergone an ACTUAL *aveira* or that has been worshipped as *avoda zara*, *tevel* has not been involved in a halakhic crime; it is naturally forbidden. Perhaps only items that have been involved in a **criminal process** of *aveira* would taint the *cheftza* of a *mitzva*.

Either way, absence of *mitzva ha-ba'a ba-aveira* concerns for *tevel* may be based on viewing *mitzva ha-ba'a ba-aveira* as an overlap between the *cheftza* of the *mitzva* and the identity of *aveira*. *Tevel* may not possess an identity of *aveira*.

A comment of Tosafot (*Sukka* 30a) suggests a very different understanding of *mitzva ha-ba'a ba-aveira*. Tosafot comment on the absence of a *mitzva ha-ba'a ba-aveira* problem in the case of *arba minim* that were worshipped as *avoda zara*. Unlike a stolen item in which the *aveira* enabled the *mitzva*, the *aveira* of *avoda zara* did not facilitate the *mitzva*; it is merely peripheral to the *mitzva*. Without stealing the *lulav*, a person could not have performed the *mitzva*; had this *lulav* not been worshipped, the *mitzva* may still have been executed.

Tosafot assert that *mitzva ha-ba'a ba-aveira* only disqualifies the *mitzva* if the *aveira* CAUSED the *mitzva*. Tosafot are not interested in gauging the **overlap** between a *cheftza shel mitzva* and an identity of *aveira*. The disqualification of *mitzva ha-ba'a ba-aveira* is not based on tainted identity of the *cheftza shel mitzva*, but rather on any ACT of *mitzva* that is **associated** with an *aveira*. Causality (if the *aveira* enables the *mitzva*) entails association between the *mitzva* and *aveira*, which ruins the *mitzva*.

This definition of *mitzva ha-ba'a ba-aveira* as stemming from an association between the act of *mitzva* and the act of *aveira* may also be the

basis for an interesting position of the Ra'avad. As noted above, the *gemara* disqualifies a *lulav* of *avoda zara* for independent reasons, without citing *mitzva ha-ba'a ba-aveira* concerns. Noting this absence, the Ra'avad asserts (in his 40 page collection of the laws of *arba minim*) that an *etrog* of *avoda zara* would be disqualified due to *mitzva ha-ba'a ba-aveira*. Since the *etrog* is so aromatic, the person will inevitably smell it and violate the *issur* of deriving pleasure from *avoda zara*. Since an *aveira* will be inevitably performed simultaneous to the performance of the *mitzva*, the *mitzva* itself is invalidated.

Again, the Ra'avad is not concerned with the overlap between the *cheftza shel mitzva* and the identity of *aveira*. Instead, he probes association between the **performance** of a *mitzva* and a violation of an *aveira*. For Tosafot, causality was necessary to entail an association. For the Ra'avad, even simultaneity is sufficient.

Interestingly, the Meiri (in his well known *sefer* called *Magen Avot*) cites this Ra'avad with a nuanced difference: since the smell of the *etrog* is so enticing, a person will inevitably smell the *etrog* after completing the *mitzva*. The Meiri does not even require simultaneity between the *mitzva* and the *aveira*. Even if the *aveira* is violated AFTER the *mitzva*, since the *aveira* and *mitzva* are inseparable, the *aveira* taints the performance of the *mitzva*.

Tosafot the Ra'avad and the Meiri all defined *mitzva ha-ba'a ba-aveira* very differently from the earlier stated tainting of the *mitzva* through the identity of *aveira*. By contrast, these *Rishonim* were concerned with the association between the act of a *mitzva* and a criminal act of *aveira*. For Tosafot causality associates the two acts; for the Ra'avad simultaneity creates this association; for the Meiri inevitability is sufficient to create this linkage.