

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
By: Rav Moshe Taragin

SHIUR #03: POSSESSING HAZARDOUS ITEMS – PART 2

Having addressed the relationship between the *lo ta'aseh* (*Lo Tasim*) and the *asei* (*Ma'akeh*) of possessing hazardous items, this *shiur* will address a further question about the nature of this broad *mitzva*. Presumably this prohibition is a personal one– the Torah legislates against individuals owning dangerous and perhaps life-threatening items. This *mitzva* would thus be akin to any personal *mitzvah*, such as *matza*, *sukka*, or *tefillin*. The rules of compensation for any damage done by these dangerous items would be identical to the compensation rules for damages caused by domestic items outlined throughout *masekhet Bava Kama*. Namely, the *mitzva* would in no way impact the rules of compensation, but would instead consist of an autonomous personal obligation not to endanger others. As such the *mitzva* would be part of the world of *Yoreh De'ah*, akin to personal *issurim* which do not carry direct monetary implications. Accountability for incidental damages performed by these items would not be determined by the guidelines of the *mitzvah* itself, but would rather be subject to *Bava Kama*'s laws of financial culpability.

There are several sources, however, which indicate that the *mitzva* is not an objective, individual one, but rather is relative, and speaks to the interactive system of rights between a person and his overall community. According to this view, the *issur* is not *bein adam la-Makom* but rather *bein adam la-chaveiro*. One indication of this can be found in the *Yad Ramah*'s explanation of a statement of Rabbi Elazar in the first *mishna* of *masekhet Sanhedrin*. The first *mishna* (2a) defines the minimum sizes of the *batei din* which adjudicate various court cases. The *mishna* states that indicting a wild animal as a *shor haniskal* (literally an ox, but in reality any animal which has murdered a human being) requires a quorum of 23 judges. Rabbi Elazar disagrees, and claims that '*kol ha-kodem le-horgam zachah*' – any ordinary citizen is allowed to eliminate these animals without waiting for due process. The simple understanding of Rabbi Elazar's position is that the wild animals being discussed are halakhically

not the property of their owners, since these owners cannot truly control them. In general, halakha defines the essence of ownership as the ability to control something, and the legal title unravels in the absence of such control. This concept is indeed borne out by the *gemara* in Sanhedrin (15b), which identifies any items which are not under their owner's dominion as *hefker*.

The *Yad Ramah*, however, presents a different rationale for Rabbi Elazar's position. Since the owner must eliminate his dangerous animals in accordance with the *issur* of *Lo Tasim*, every citizen has the right to assist him in carrying out that goal. This understanding of Rabbi Elazar's position suggests that *Lo Tasim* does not merely impose personal standards, but invites action on the part of other people as well.

A *gemara* in *Bava Kama* discusses an additional ramification of *Lo Tasim*, which casts further doubt on an understanding of the prohibition as a personal *mitzva*, which strictly adheres to the standard monetary framework of damages. The *mishna* (45b) debates the levels of protection required in order for one to be considered not culpable for the damages caused by his possessions. Rabbi Yehuda and Rabbi Me'ir debate whether minimal guarding is sufficient, or whether more extensive levels of guarding are necessary for a person to be exempt from payments. Once again, Rabbi Elazar takes a radical position: no degree of safeguarding on the part of the owner will exempt him from payment. Unless the owner disposes of the animal, he will be held accountable for any damages it causes. The ensuing *gemara* discusses this stance, and claims that it is based on the prohibition of *Lo Tasim*. Rabbi Elazar believes that the prohibition is not a personal one, but rather has unique monetary consequences. Full compensation must be rendered in any case of *Lo Tasim*, no matter what attempts have been made at mitigating or preventing the damage. As such, this prohibition does not conform to the general standards of compensation for damages. For this very reason, *Tosafot* are troubled by this reading of the *gemara*, and suggest an alternative manner of understanding Rabbi Elazar's position. However, the simple reading yields the conclusion that Rabbi Elazar believes that *Lo Tasim* does determine levels of accountability.

A third example of *Lo Tasim* being defined in relative terms emerges from an interesting statement of the Rosh (*Bava Kama, perek 1, #20*). The *gemara* applies the prohibition of *Lo Tasim* to a wild dog which consumed a sheep. The question that emerges is whether *Lo Tasim* would also apply to

domesticated animals that damage through aggressive behavior. The Rosh at first denies this possibility, and says that this prohibition cannot be applied to goring done by domesticated animals. Since such behavior could be excused as uncharacteristic, the animal cannot be labeled a 'menace,' and *Lo Tasim* cannot be applied. Once the animal damages three consecutive times, however, and becomes a *mu'ad* (meaning that its aggressive behavior has been deemed commonplace), we might expect *Lo Tasim* to apply, and to demand disposal of the animal. Although the Rosh initially adopts this stance, he later revises his position. He explains that since the owner of a *mu'ad* must fully compensate for any damages done by his animal (as opposed to the owner of a *tam*, who is only required to pay for half of the damages) *Lo Tasim* does not apply. After all, any victims will recover full payment, and the absence of any monetary loss precludes the application of *Lo Tasim*. The Rosh implicitly assumes that the basis of *Lo Tasim* is monetary loss. Thus, only in situations where the owner is exempt from payment for damage done by his animal will *Lo Tasim* be applied. Scenarios where full compensation will be offered are not included in the prohibition, since no monetary loss emerges. *Lo Tasim*, then, is not merely a personal prohibition of not possessing hazardous items! It is rather a societal commandment, with its own framework of monetary compensation.