

**TALMUDIC METHODOLOGY**  
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**Shiur #05: Resolving a *Safek* that can be Further Clarified**

The halakhic system provides an assortment of tools to help decipher uncertainties or *sefeikot*. Many of these tools, such as *rov* and *chazaka*, are *mi-de'oraita*, while others were introduced by the *Chakhamim*. Can these tools be employed if an alternate option exists to collect **actual** factual evidence? This *shiur* will explore the question of “*efshar le-varer*,” the scenario of a *safek* in which an option for further inquiry exists.

The *gemara* in *Chullin* (12b) assumes that people who perform *shechita* are almost always trained to do so. Hence, at least according to the base *halakha*, meat that is identified as “*shechted*” (ritually slaughtered) based on physical evidence is assumed to be kosher, even if we do not know the aptitude (and in some cases, even the identity) of the *shochet*. This is an application of “*rov*” or reliance upon the halakhic tool of “*rov*.”

The Rif (*Chullin* 3b in the pagination of the Rif) applies a condition. We can rely upon this *rov* – the assumption that most *shochetim* are trained – only if the *shochet* in question is unavailable for questioning. If we can identify the *shochet* and he is local, we must query him about the *shechita*, rather than relying upon the *rov* to determine that his *shechita* was legitimate. If the *safek* can be further investigated – *efshar le-varer* – we cannot rely upon a *rov*.

This idea is reinforced by a *gemara* in *Pesachim* (4a), which discusses the case of someone who rents a house proximate to Pesach. May the renter assume that the owner already performed *bedikat chametz*, or must the renter perform his own? The *gemara* assumes that if the owner is available, he must be questioned as to whether he performed a *bedika*. In this instance, we cannot assume that most owners perform *bedikat chametz*. This reflects the Rif's opinion that we cannot rely upon a *rov* assumption for a *safek* that is *efshar le-varer*.

Presumably, the logic behind this qualification of *rov* is based upon a general policy which mandates, when applicable, more strict behavior in

resolving a *safek*. A scenario in which the *safek* can be further clarified demands stricter behavior and disallows reliance upon an assumption/*rov*, which, though compelling, is certainly not indisputable. *Rov* may be employed if we possess no alternative option in clarifying the uncertainty. If, however, the option of further inquiry exists, Halakha may demand a more strict policy, in which *rov* cannot dictate behavior.

A self-understanding of the *efshar le-varer* rule may surround how the *safek* is defined. If information is available, perhaps the situation cannot be deemed a true **safek**, even if the individual in question (the person who finds the meat or the renter of the home) isn't currently aware of that information. Perhaps a halakhic *safek* only exists if **no one** possesses that information, and not if the information exists but is currently unknown to the individual facing a halakhic decision. *Efshar le-varer* doesn't merely impose stricter standards; it redefines the halakhic situation into one that is not considered a *safek* and is not compatible with halakhic *safek*-resolution policies.

The question of how to understand the qualification of *efshar le-varer* may have several interesting *nafka minot*. Tosafot (*Pesachim* 4b, s.v. *lav*) suggest that it may be sufficient to ask a *katan* whether *bedikat chametz* was performed, instead of asking the owner of the rented home. Usually *katan* or minor cannot provide halakhically meaningful evidence, yet Tosafot claim that his testimony may be sufficient to satisfy the demands of *efshar le-varer*. Evidently, Tosafot maintain that *efshar le-varer* does not radically alter the definition of the *safek*; rather, it imposes a demand to not rely upon a *rov* and to be more diligent in gathering information. As long as "some" effort was taken – even by gathering the non-halakhic testimony of a *katan* – those demands have been met. If *efshar le-varer* redefined the case as a non-*safek*, disallowing reliance upon a *rov* and demanding actual evidence, the testimony of a *katan* would not be acceptable. It is unclear whether Tosafot ultimately adopt this policy, as they raise this logic within a preliminary stage of the *gemara*, which may not be the *gemara*'s final conclusion.

A second question surrounds a situation in which theoretical information exists, but no one has actual current access. Tosafot in *Beitza* (16b) claim that most eggs do not contain blood, and therefore can be eaten without prior checking. Tosafot adopt this position even though the eggs can be inspected, and the situation resembles the spirit of *efshar le-varer*. In theory, it is possible that this Tosafot does not accept the Rif's general position about *efshar le-varer*. However, it is also possible that Tosafot accept the general *efshar le-varer*

requirement, but do not apply it to the situation of eggs. A classic case of *efshar le-varer* concerns a situation in which **someone** has information – just not the person facing the *safek*. In this instance, **no one** has acquired the information about a particular egg, even though it can be easily accessed through inspection. If the *efshar le-varer* clause demands more scrupulous measures, since the eggs can be inspected, they should not be consumed based upon *rov*, even if no one currently has that information. However, if *efshar le-varer* redefines the situation as a non-*safek* since someone already knows the halakhic reality, perhaps this case would still be deemed a *safek*. As if no one has discovered this information, the case is still defined as a halakhic uncertainty.

A third question concerns the ability to rely upon halakhic **decision-mechanisms** that may be more powerful than a classic *rov* / assumption. Several *gemarot* discuss an assumption that reputable fruit sellers (*chaverim*) have already attended to the *teruma* and *ma'aser* obligation before they sell fruit. The *gemara* never assumes that these sellers must be consulted even if they are available. Tosafot (ibid) claim that this assumption about fruit sellers is overwhelming. As they know that their customers will **immediately** eat their produce, the sellers are extremely diligent in attending to the *teruma* responsibilities. In contrast, people who rent out houses are less attendant to the *bedikat chametz* issue, since the potential *issur* isn't immediate. Tosafot assume that strong assumptions can be relied upon even in an instance of *efshar le-varer*.

Similarly, the Ramban (*Milchamot Hashem* on the Rif) claims that the assumption that all *shochetim* are capable is not overwhelming, and thus cannot be relied upon in a situation of *efshar le-varer*. The Ramban implies that if the *rov* assumption is, in fact, overwhelming (referred to as *mi'ut she-eino matzuy*), the *rov* can resolve the *safek* even in a situation of *efshar le-varer*.

Clearly, these two opinions view the *efshar le-varer* qualification as a demand for stricter halakhic procedures. A classic *rov* is too risky to be relied upon if alternate options exist. A more overwhelmingly compelling *rov*, however, may be convincing enough to decide the *safek* even if alternate options exist. If the situation of *efshar le-varer* redefined the *safek* as a non-*safek*, presumably no *rov* – no matter how convincing – would be applicable. Once the case is no longer defined as a *safek*, none of the halakhic principles can be applied.

A final application concerns a *safek* that can be clarified, but only through significant effort. The classic situations – inquiring of the shochet or the renter, or

checking the eggs – are cases in which alternate forms of resolution are straightforward and relatively easy. What if a *safek* posed *efshar le-varer* options, but only through significant *tircha* (effort)? One such example surrounds the aforementioned case of a renter who is uncertain about the *chametz* status of his rented home. Some *Rishonim* (see Maharam Chalava) claim that even without the availability of the owner, the *safek* can be reconciled through the alternate option of actually performing a *bedika*. Even if the owner is unavailable for questioning. Why should the renter rely upon a *rov* that most owners deliver their rented houses in an already cleaned state when they can perform their own *bedika*? Yet other *Rishonim* reject this option, presumably because this extra *bedika* would entail significant effort.

Again, this question may stem from the original question as to how to understand the qualification of *efshar le-varer*. If this is merely a responsibility to act more meticulously, perhaps the existence of **any** other option renders the case as *efshar le-varer*. Even if the alternate option entails some exertion, the situation still demands more strict behavior. However, if the option of acquiring alternate evidence renders the case as a non-*safek*, perhaps we redefine the case only when the information is easily accessible. If the alternate option includes significant complication, perhaps the case isn't redefined; it remains a *safek*, which can be resolved through the application of a classic *rov*.