

**YESHIVAT HAR ETZION
VIRTUAL BEIT MIDRASH PROJECT(VBM)**

**TALMUDIC METHODOLOGY
By: Rav Moshe Taragin**

THIS SHIUR IS DEDICATED BY MR. AND MRS. HERBERT SEIF IN MEMORY OF
HER FATHER, YISROEL ALTER BEN MORDECHAI YAACOV Z"l, WHOSE
Yahrzeit is 15 Sivan.

THIS SHIUR IS DEDICATED IN MEMORY OF DR. CHARLES S. NAIMAN, YECHIEL
SIMCHA BEN MOSHE TZVI NAIMAN Z"l.
- HIS SON, AHARON NAIMAN

THE ISSUR OF LO TACHMOD - COVETOUSNESS PART II

Two weeks ago we addressed the fundamental question underlying "lo tachmod": Does the prohibition involve merely an ugly character trait or does it resemble some form of gezeila (robbery)? We witnessed how this issue impacted both upon the type of action required to cause a violation, and upon whether we consider "lo tachmod" a lav she-ein bo ma'aseh (a violation which involves no action). This week's segment will continue examining this issue.

Having already established the need for a ma'aseh in order to transgress this commandment, we will now shift our attention to other criteria which should help probe the similarity (or lack thereof) between "lo tachmod" and gezeila. For example: if the pursuer offers a full price, has he committed this issur? This question is alluded to by the gemara in Bava Metzia (5b) which discusses a person who is accused of having absconded with an item which he was supposedly guarding on behalf of its owner. In addition to full compensation, we impose upon the suspect a shevu'a (oath) to the effect that he did not secret the missing object. The gemara wonders exactly what this shevu'a will accomplish since this alleged thief will presumably have no qualms about lying to protect his fraud. In response, the gemara asserts that people THINK that "lo tachmod" has been transgressed only in instances in which moneys have not been paid. Hence this person who has paid for the item he illegally extracted does not view himself as a criminal and will not willfully lie.

What may we infer from this? Potentially, we can deduce that IN TRUTH "lo tachmod" applies in all instances - even if moneys are paid; most people are merely under a mistaken impression. This indeed is the dominant position in the commentators (see Tosafot Bava Metzia and Sanhedrin 25b, and Rambam). According to one position of Tosafot in Sanhedrin, however, "lo tachmod" does not apply if the full price was offered; in effect the reigning opinion regarding "lo tachmod" is correct. Evidently, Tosafot view

"lo tachmod" as a subset of gezeila; accordingly, when the full price is paid it cannot be classified as a form of gezeila.

A second question regarding the actual transfer concerns the acquiescence of the victim. What if the owner, after being subjected to pressure, ultimately agrees to sell the coveted item? Does this agreement redefine the case as a more legitimate - though certainly not ideal - type of sale?

This issue is debated by the Rambam and the Ra'avad. The latter claims that "lo tachmod" applies only in cases in which the victim remains opposed to the sale and the item is forcibly removed. In contrast, the Rambam rules that regardless of the compliance of the seller, the pursuer has violated "'lo tachmod'." Might these positions be reflective of, and consistent with, their stated positions? We already noted that the Rambam, by declaring "lo tachmod" a lav she-ein bo ma'aseh, was in fact viewing it as a prohibition governing emotions which are outwardly expressed. The Ra'avad, by emphasizing the role of the actual seizure and thus defining "lo tachmod" as a lav she-yesh bo ma'aseh, was grouping "lo tachmod" together with gezeila. It would seem logical for the Rambam to consider a sale based on pressure tactics a violation of "lo tachmod" regardless of the victim's ultimate consent. The buyer has still violated the essential prohibition of desiring and craving the possession of another and acting upon this instinct even if he managed to "convince" the owner to sell it. However, for the Ra'avad, "lo tachmod" resembles gezeila only if the owner does not willingly concede the item in question.

A third interesting position taken by the Ra'avad concerns the obligation to return the appropriated item. According to the Ra'avad, such an item must be returned under the same biblical law which requires that an ordinary thief return stolen property. His reasoning is, for our purposes, very enlightening: "The item must be returned because the perpetrator of "'lo tachmod'" is in truth a gazlan (robber)." It seems that once again the Ra'avad is consistent in emphasizing the similarities between gezeila and "lo tachmod". The act of appropriation is central to the prohibition (which is why it is considered a lav she-yesh bo ma'aseh), one violates it only if the victim remains opposed to the transfer, and the extortionist must return the item like any other form of gezeila. Evidently, the Rambam differs by distancing "lo tachmod" from the world of gezeila.

Another point of inquiry into the nature of "lo tachmod" pertains to whether the perpetrator becomes invalid for testimony (pasul for eidut). Generally, people are disqualified for two reasons - for having violated a biblical prohibition which carries a penalty of malkot (which "lo tachmod" does not), and for having committed a theft-related crime. Would "lo tachmod" fall into the latter category? The Tosafot Rash Mi-shantz in Sanhedrin (25b) claims that the violation of "lo tachmod" does induce pesul eidut. The Rambam, however, claims (Hilkhos Eidut 10) that he does not become invalid, at least on a biblical level. Once again we see the Rambam's insistence on distinguishing the prohibition of "lo tachmod" from that of gezeila.

Having probed the two different options for understanding this prohibition, we might now inquire as to whether each concept might be true and whether there might be in fact

two different forms of the issur. Though the expression of this issur in the second dibrot is fairly identical to the formulation in Shemot there is one notable difference: the appearance of the words "ve-lo tit'aveh." (Devarim 5:17) What does the Torah intend to convey by distinguishing between these two terms? The Semak claims that they differ only in linguistics; substantively, however, they refer to the very same issur of lo tachmod. If we dispute the Semak's classification we take lo titaveh to refer to the issur relating to internal emotions which are expressed, while lo tachmod prohibits actions which border upon actual gezeila. This distinction is seen from the commentary of Tosafot on the Torah (Shemot 20:24) in the name of R. Yosef Bekhor Shor, and from the Rambam as well, each of whom clearly distinguish between the two considering them as separate issurim.

The discussion regarding the Rambam's position, however, is a bit more complicated. Though he clearly separates the two issurim, it is impossible to classify them in the above manner. We cannot, according to the Rambam, consider "lo tachmod" as an issur gezeila and "lo tit'aveh" as a ban on a corrupt character trait, for we have already established that according to the Rambam "lo tachmod" itself has nothing to do with the world of gezeila. Evidently, according to the Rambam, in distinguishing between "lo tachmod" and "lo tit'aveh" we must define two forms of the issur, both pertaining to the actual corrupt feelings.

A careful inspection of the Rambam does, in fact, convey a subtle but important difference. One does not transgress "lo tachmod" until his action has succeeded in extracting the item, whereas "lo tit'aveh" has been violated from the moment he plans and conspires to implement a strategy which will land him the item. (Indeed the issur only applies if he SCHEMES to actually acquire the item - mere musings aren't sufficient to entail an issur.) These two issurim reflect different stages of a prohibition which governs the emotions within the human heart. Neither, then, is related to the world of gezeila.

METHODOLOGICAL POINTS:

1) As we have often noted, sometimes a halakha for which we have suggested two essential concepts might display both of them. In simpler terms instead of something being A or B, it can be both depending upon the circumstance. After questioning whether "lo tachmod" was related to gezeila or to the emotion per se, we noticed that the Torah might have legislated two distinct prohibitions - "lo tachmod" and "lo tit'aveh" - one pertaining to each of these.

2) Very seldom do Rishonim clearly outline the true essence of a halakha. In most instances the particular (atomic) halakhot themselves are discussed and we must induce the theme of a halakha which inspired the particular application. In some cases, however, a commentator will describe the essence of a halakha with unusual clarity. Such a case occurs in our sugya when the Ra'avad, in describing the existence of a chovat hashava (a biblical obligation to return the item), actually defines "lo tachmod" as a form of gezeila. Such formulations are rare and must not be overlooked.

Shabbat Shalom

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