

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

TALMUDIC METHODOLOGY

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GOREM

Throughout Halakha, the parameters of legal ownership are defined in a clear fashion. The ba'al (owner who enjoys legal possession) has almost unlimited rights regarding an object which he owns. Furthermore, in instances of compensatory damages (such as theft or tort), it is the owner who receives payment. Finally, it is also the owner who ultimately shoulders certain responsibilities for his possessions, such as guarding them and reimbursing that which may have been damaged by them.

On the other hand, in the absence of this formal ownership, no trappings of ownership apply. There is, however, one exception. There is one instance in which according to one opinion certain elements of ownership may apply despite the lack of formal ba'alut. This is the famous position of R. Shimon that 'davar ha-gorem le-mammon ke-mammon dami.'

R. Shimon notes two instances in halakha in which one is responsible to guarantee items even though he might not own them. One is the case of a shomer who is obliged to watch another's item and reimburse the owner in the event that it is damaged. A second refers to the case of one who has designated an animal as a korban. Even though the animal is legally owned by hekdesh, he must replace the animal if it is damaged or destroyed. These two instances share one common denominator - a person who is not legally the ba'al has accepted 'achrayut' - in other words - he has guaranteed to reimburse the owner in the event of damage.

R. Shimon maintains that the 'achrayut' of the above two cases confers a unique status upon the guarantor. Many of the standard laws of ba'alut, according to this opinion, may now apply to him as well. As R. Shimon stated, "davar ha-gorem le-mammon ke-mammon dami" - an item which CAUSES LOSS (because you have 'insured' it) is considered LIKE money which you actually own. This article will explore the nature of this halakha.

The gemara in Bava Kama (71b) discusses one application of R. Shimon's equation. If a thief steals an item or someone damages someone's property, the gemara asserts that according to R. Shimon payment should be remitted to the guarantor. This halakha seems very logical, since ultimately it is the shomer, or the donator of the korban, who stands to loose from this theft. Similarly, the Tosefta in Bava Kama (perek 4) asserts the same regarding one who damages an item which, though it belongs to hekdesh, is 'gorem le-mammon' to another person. Since he will ultimately be victimized by the damage, it is he who collects compensatory payments.

The gemara in Bava Metzia addresses another case which may potentially shed light upon R. Shimon's halakha. The mishna (56a) rules that the laws of ona'a do not apply to hekdesch. The gemara does suggest, however, that according to R. Shimon, if a sale involved a korban (whose worth was insured) ona'a would apply. If R. Shimon's halakha merely identified the guarantor as the victim of theft and damages, the item would still be legally owned by hekdesch and therefore disqualified for ona'a. Evidently, this gemara reasoned that according to R. Shimon the achrayut actually establishes SOME FORM OF BA'ALUT for the guarantor; hence, the item is not considered owned by hekdesch, but rather by this private person. The gemara understood R. Shimon's ruling as awarding a form of ownership to the guarantor despite the apparent lack of legal ownership. R. Shimon's, therefore, statement is to be taken literally - an object which may cause a loss of money (because the obligatory insurance) is to be considered as if it is HIS MONEY.

SUMMARY:

We have outlined two distinct approaches to R. Shimon's halakha. According to one view, R. Shimon has not devised a new category of ownership; he has merely reminded us that some halakhot revolve around the person who stands to loose and not necessarily the owner. However, according to a second approach, R. Shimon has innovated a new form of ownership in which the ba'al may not actually possess legal title, but because being that he has insured the item he is considered at least a partial owner.

Quite possibly, these two approaches to R. Shimon are latent within two 'versions' (leshonot) of a gemara in Pesachim (5b). The gemara suggests that a shomer who has accepted to watch chametz will violate 'bal yera'eh' if he doesn't eliminate the chametz prior to Pesach - even though he doesn't legally own the food.

The gemara first suggests that this ruling is based upon the opinion of R. Shimon - since the shomer has insured the chametz, it is a 'gorem le-mammon' and may therefore be considered the property of the shomer. Therefore, the gemara notes, according to the view of R. Shimon, we can establish a violation based upon the above logic, and would therefore not require a special pasuk to inform us of this halakha. This reasoning would seem to support the claim that R. Shimon considers the guarantor to be a partial owner.

However, the gemara then suggests that even if we adopt the opinion of R. Shimon, we might still require the special pasuk of 'lo yimatze' ('it shouldn't be found' - implying a ban on any chametz which you are associated with even if you don't own it). This version, by rejecting a necessary logical connection between R. Shimon's halakha and opting to provide a special pasuk as the basis for violating 'bal yera'eh,' may view R. Shimon's halakha as merely highlighting the halackhic significance of reimbursement obligation without actually suggesting a new form of ownership. The pasuk of 'lo yimatze,' therefore, may establish that any association between a person and chametz is in violation of bal yera'eh.

The simple question of whether a pasuk is necessary according to R. Shimon might in turn reflect two different views of the essence of his position and his halakha.

The Ketzot (siman 386) raises an additional issue which might help us determine whether R. Shimon views the shomer or the donator of a korban as a partial owner, or as one who merely receives compensatory damages. What would the halakha be regarding someone who donated a korban who also resides in an ir ha-nidachat? In this instance, the entire city and all its belongings must be burned. Would we burn this animal as well claiming that its owner (the donator who is still guarding it) is a resident, or would we recognize hekdesch as the true owners, and spare this animal? This issue could potentially be dependent upon the above question, to what extent are we willing to view the insurer as a partial owner.

The Pnei Yehoshua (in his comments to Bava Kama 66b) asserts that if one dedicates an animal to hekdesch (in a manner in which he is liable to replace it), he may still sell the animal to another person. Such a position must clearly maintain that a state of 'gorem le-mammon' establishes a sort of pseudo-ownership. Clearly, he did not view 'gorem le-mammon' as merely a re-arrangement of compensatory payments - i.e. reimbursing a victim who is a non-owner. If indeed the original owner of the animal no longer owns it, but merely suffers financially from its loss, he would have no right to then sell it to another. Evidently, the Pnei Yehoshua views financial liability as a form of ownership. (See the Ketzot 386:7 and the Achi'ezer Yoreh De'a 46 who disagree with this Pnei Yehoshua).

Similarly, some have interpreted a statement in the Yerushalmi in Pesachim (perek 1) in a manner which clearly indicates their taking the position of the Pnei Yehoshua to an extreme. In general, one is forbidden (biblically) to inflict a wound onto a korban. According to some, the Yerushalmi in Pesachim actually claims that according to R. Shimon, one is allowed to 'let blood' from a korban for which he is responsible, even though this will of course cause a wound to the animal. Since it is 'gorem le-mammon', it is considered to belong to him, and not to hekdesch, hence there is no prohibition of causing a wound.

This is indeed a radical application of 'gorem le-mammon.' Even if we were to agree with the Pnei Yehoshua that 'gorem le-mammon' reorients the chains of ownership, we might still limit it to monetary issues - theft, damages - or issurim which stem from financial ownership - chametz, ir ha-nidachat. Regarding the prohibition of inflicting a wound, we might still claim that despite the original owners residual ba'alut, since the animal has a status of hekdesch and will ultimately be sacrificed as a korban, he may not wound it. Ultimately, this interpretation of the Yerushalmi is the most extreme understanding of 'gorem le-mammom' as creating a pseudo-ba'alut.

METHODOLOGICAL POINTS:

1. Quite often, a unique case is modeled after or compared to a basic conventional one. Almost always, the primary question becomes to what extent does this unique case share the same essence as the conventional one, or does it merely mimic some of its halakhot. "Gorem le-mammon," according to R. Shimon, is compared to actual mammon. Is it truly 'like' mammon, or does it merely mimic mammon in several halakhot but is not considered the actual possession of the 'victim.'
2. Viewed from a 'logical' standpoint, whenever things are compared, they can be seen as identical, or as merely similar in a general sense.
3. Syntactically, often a 'kaf ha-dimayon' (the kaf of comparison) is employed by the gemara to compare two items (davar ha-gorem le-mammon KE-mammon dami; kocho KE-gufo; hirhur KE-dibbur; kol ha-omed lizareik KE-zaruk dami). Does the kaf establish a direct identity between the two, or does it merely associate the two as having some similar halakhot?
4. Generally, the best way to approach this question is to explore the degree of symmetry between the two phrases. Are they similar regarding every halakha, or do they display only a limited symmetry.

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