

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY

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Shiur #22: Chatzi Shiur – Part 3
Classifying and Categorizing the Issur

Having asserted two different models toward understanding chatzi shiur, and having questioned the status of chatzi shiur when the shiur itself qualifies the action (melakha, manufacturing ketoret), this shiur will address the categorical status of chatzi shiur according to Rabbi Yochanan. In his view, chatzi shiur is prohibited, but no penalty is administered in the case of its violation. Should the prohibition of chatzi shiur be seen as a conventional one, with the caveat that no penalty applies, or does the absence of penalty reflect a fundamentally unique nature of this issur?

This question might yield an interesting consequence. As stated above, even Rabbi Yochanan, who forbids chatzi shiur on the level of Torah law, agrees that no malkot (corporal punishment) is administered. What is the source of this exemption? Tosafot in Yoma (74) assume that no malkot applies to chatzi shiur simply because less than a ke-zayit does not constitute a halakhic act of eating. Since the Torah portrays the various prohibitions as acts of eating, naturally, no malkot can obtain. Essentially, since the issurim are conditioned upon eating, chatzi shiur does not fall within the classic parameters of eating and presumably of punishment. As such, we might question Rabbi Yochanan's decision to prohibit chatzi shiur at all. Quite possibly, our answer might be that it is only forbidden as a seyag (preventive measure) to ensure against actual violation of the REAL, ke-zayit-based issur.

Though initially compelling, this approach invites an important question: why shouldn't issurim which are not conditioned upon akhila be subject to malkot even for chatzi shiur? Several poskim point to kil'ei ha-kerem and basar be-chalav as two issurim which were not conditioned upon akhila, and are thus possible candidates for malkot penalty even in the absence of a full shiur. To be sure, the aforementioned logic for malkot exemption would certainly not apply to issurim which were not articulated as akhila-based.

An entirely different possibility can be suggested as to why chatzi shiur carries no malkot penalty according to Rebbi Yochanan. By drafting a specific pasuk ("kol cheilev" – see shiur #20) to account for chatzi shiur, Rabbi Yochanan might have been implying a tacit exclusion for malkot. Some actually contend that a halakha le-Moshe mi-Sinai directly exempts chatzi shiur from malkot. Either way, the message and the structure of chatzi shiur are very different from the previous model. Chatzi shiur constitutes the basic issur and would logically be a candidate for malkot were it not for an explicit pasuk/halakha le-Moshe mi-Sinai which excludes it. This portrays the second model of chatzi shiur - it constitutes the issur proper, rather than a check against future violation.

An additional but possibly related question pertains to the categorical status of chatzi shiur. Is there a lav - actual negative prohibition – in partaking of chatzi shiur, or does it belong to a category of items which are prohibited, but not by any explicit pasuk? Tosafot in Shavuot (23b s.v. ein) write explicitly that no lav exists, while the Magen Avraham appears to dispute this position. He addresses the ruling of the Shulchan Arukh (O.C. 328:14) that shechita should be performed on Shabbat to feed kosher food to a dangerously ill person ("choleh she-yeish bo sakana") rather than allowing him to eat already prepared non-Kosher food. Most Rishonim explain this decision based on the principle that Shabbat has been completely nullified ("hutra") for this gravely ill patient, and we thus conduct ourselves as we would on a weekday. The Ran, however justifies this ruling based on the fact that shechita entails just one violation, while the consumption of non-Kosher food involves multiple violations; simple calculus demands the performance of shechita to limit the amount of violations. The Ran adds that even the option of feeding the sick person less than ke-zayit amounts of non-Kosher food is not preferable, since it will still yield multiple, rather than one, issur. This position is clearly premised on the opinion that chatzi shiur is forbidden as a lav, and therefore does not present a viable alternative to shechita on Shabbat.

An interesting offshoot of this nominal question is whether or not chatzi shiur is considered an 'explicit' issur. Generally, halakha does not differentiate between textually explicit mitzvot and those which Chazal derived from the 13 exegetical tools of interpretation; laws of both categories are afforded de-oraita status. One difference, though, is whether the given halakha was included in the various oaths which we collectively took when vowing to adhere to the Torah. Several gemarot establish the principle of 'mushba ve-omed' – that we have already vowed to perform mitzvot - and trace various connotations of that vow. For example, a personal oath to violate a mitzva will generally be invalid, since it contravenes the previous oath to adhere to mitzvot. Would chatzi shiur be included in the Biblical oath, such that an oath to consume a chatzi shiur of prohibited food would be valid, since it doesn't conflict with any previous oath? The aforementioned Tosafot in Shavuot (23b) indeed claims that no oath applies to chatzi

shiur, while the Rashba in Shavuot (23b) and the Ritva (22b), citing the Ramban, argue that an oath to violate chatzi shiur would not apply, since, evidently, it is considered an explicit issur.

Presumably, those Rishonim who affirm chatzi shiur's status as an explicit violation would regard Rabbi Yochanan's issur as inherent; chatzi shiur of neveila is, essentially, neveila with a malkot exemption. By designating it as the essential issur, it is categorically subsumed under the title of neveila, which is explicitly mentioned. However, Tosafot might view the issur as a mere hedge against a full violation. Inherently, the issur of neveila is not being violated; inasmuch as this 'new' concept of a 'precautionary' issur is not explicitly mentioned, it cannot be considered part of the Biblical oath.

An interesting corollary to this debate emerges from a statement of the Ramban in his celebrated work "Torat Ha-adam," a composition detailing halakhot applying to sickness, death and bereavement. In the section entitled "inyan ha-sakana" (de'ah 1), the Ramban cites the gemara's ruling (Yoma 83a) that when feeding prohibited food to a deathly-ill person, we should try to obtain and feed the less severe issurim before offering more severe ones. For example, if we must choose between tevel (untithed produce) and shevi'it (shemita produce after the permitted period of eating), we would feed the latter, since it only possesses a lav, whereas tevel warrants mita be-yedei shamayim. This principle is known as "ha-kal ha-kal kodem." The Ramban claims that this policy applies even if we feed less than a shiur, since even minimal quantities constitute different 'levels' of issur. Less than a ke-zayit of shevi'it food is considered less severe than less than a ke-zayit of tevel. Namely, items maintain their identity even when present in less than requisite quantities; hierarchies of issurim can be established even with less than ke-zayit. The Ramban's position is squarely consistent with his earlier stance that chatzi shiur is considered an explicit issur. Each and every issur stated in the Torah refers to chatzi shiur, as well, and consequently, a chatzi shiur bears the identity of the 'parent' issur. One would seriously question whether Tosafot would adopt the Ramban's policy of chatzi shiur hierarchies when feeding ill patients. Presumably, in Tosafot's view, chatzi shiur is just a check – a vehicle designated by the Torah to steer people clear of issur. Conceivably, then, it is an undifferentiated category, and chatzi shiur of neveila would be no different from chatzi shiur of tevel.