

**YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

TALMUDIC METHODOLOGY

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DEVARIM SHE-BALEV

The *gemara* in *Kiddushin* (49b) describes someone who planned to move to *Eretz Yisrael* and sold off his assets. Ultimately, his plans fell through and he sought to recover his sold property. Even though he only intended sell based on his plans to emigrate, since he didn't directly stipulate this condition, the sale is final. As the *gemara* puts it, "*Devarim she-balev einan devarim*" – intentions that are not verbalized are not halakhically valid. However, (as noted in a previous *shiur* www.vbm-torah.org/archive/metho68/12metho.htm), several *gemarot* suggest that under certain circumstances, unspoken thoughts can, in fact, be factored into the halakhic process. In this *shiur*, we will cite additional examples and the categorical exemptions that they reflect.

The *mishna* in *Terumot* (3:8) describes someone who WANTED to dedicate a *korban olah* but instead said the word "*Shelamim.*" Since he never intended to offer a *shelamim*, the animal is not defined as such. This is clearly an instance in which unspoken thoughts ARE taken into account in disabling the designation of the animal as a *shelamim*. However, as many *Rishonim* note, this is an exceptional situation; the person misspoke and was unable to articulate his inner thoughts properly. This is not a situation in which unspoken intentions modify actions or spoken interactions. Rather, inability to communicate intent renders the entire action inadmissible. Speech is only valid if properly articulated. This is merely a slip of the tongue!

A more intriguing exception is suggested by the Rashba. He cites a *gemara* in *Nazir* (2a) describing someone who witnesses a *nazir* passing by and exclaims "*Ahah*" (loosely translated as "I am"). Since he was responding to the passing *nazir*, his simple statement is halakhically interpreted as "I want to be a *nazir*" and he is thereby considered a *nazir*. In this case, the person's unspoken thoughts are clearly modifying his "limited" spoken statement!

Many *Rishonim* offer explanations for this deviation. The Rashba develops a novel category. *Devarim she-balev*, internal thoughts, cannot CONTRADICT or scuttle actions or articulated statements. If a person unconditionally or intended that the sale was contingent upon his relocation. What was SAID or DONE obligates him, not what was THOUGHT. In the *nazir* case, however, the person's thoughts are not contradicting verbalized speech, but merely adding or elaborating. The person issued a cryptic statement ("I am") and his obvious internal thoughts (that he wants to mimic the *nazir*) supplement his very limited statement. This represents an important qualification. Halakha ALLOWS internal thoughts TO SUPPLEMENT, but not to CONTRADICT actions and articulated statements.

A different qualification to the principle that internal thoughts are not halakhically valid emerges from a comment of the Meiri to the *gemara* in *kiddushin* (49b). The Meiri addresses a well-known story cited in *Masekhet Kalla Rabbati* (*perek* 2), which initially cites a three-way *machloket* involving R. Akiva. Subsequently, the *mishna* records R. Akiva's efforts to verify his position. R. Akiva sought to solicit relevant halakhic information from a woman; to persuade her, he vowed to accompany her to the next world if she revealed the desired details. Although he verbalized an oath, he revoked it internally. The passage recounts that he succeeded in gathering the information and his oath held no validity since he discounted it internally. Many *Rishonim* question R. Akiva's ability to internally discount a halakhically verbalized oath. Shouldn't R. Akiva's internal and unspoken thoughts be irrelevant because they are *devarim she-balev*?

The Meiri claims that unspoken thoughts are only discounted in monetary interactions. Since a *neder* is a personal oath, unspoken thoughts can, in fact, be factored in. Halakha does not OBJECTIVELY disqualify unspoken thoughts; it merely disallows them in monetary situations because it isn't fair to the other party, who cannot discern these thoughts. Personal oaths, in contrast, can be shaped by the unspoken thoughts of the oath taker.

What makes the Meiri's comments interesting is the fact that R. Akiva's personal oath was employed to solicit information from someone; he took an oath

to deliver future rewards if she would divulge information necessary for the halakhic debate. Even though the INSTRUMENT he employed was a PERSONAL oath, he implemented it in an INTERACTIVE situation. In theory, *devarim she-balev* may be acceptable in purely personal instances, but inadmissible when another party was impacted by the oath.

A similar explanation emerges from the comments of the Ra'avan to a well-documented exception listed by the *gemara* in *Nedarim* (27b), which allows someone to feign a *neder* in order to evade unfair tax collection. He may lie to the collector, claiming that if the grains targeted for collection are NOT *teruma* (and therefore edible and taxable), "they should be forbidden to me forever." This is a method of convincing the assessor that the targeted produce is holy tithes and exempt from taxation. In reality, however, the grains ARE NOT *teruma* and according to his oath, he should be halakhically prohibited from eating them, as his oath claimed that "if they are not tithes (which they aren't) they should be eternally forbidden." Since, however, in his heart he intended that the grains should only be forbidden for a day and not forever, he may wait a day and eat them. Doesn't this violate the principle of *devarim she-balev einan devarim*?

Several *Rishonim* offer solutions to this problem. The Ra'avan claims that oaths and *nedarim* CAN be shaped by *devarim she-balev*. Similar to the Meiri, the Ra'avan allows *devarim she-balev* to impact the very PERSONAL activity of issuing a *neder*. In addition, like the Meiri, he allows this EVEN in a situation in which a *neder* is implemented to MANIPULATE a different person. The *neder* in this *gemara* is a device for persuading the tax collector that the targeted grains belong to God and are thus exempt from tax collecting. Since the instrument is a *neder* and not a contract, unspoken thoughts are admissible.

The Tosafot Rid in *Kiddushin* (49b) takes this position one step further and allows *devarim she-balev* even in contractual or monetary settings. Citing several instances of *matanot* (gifts) that were qualified by unspoken intent, the Rid claims that SALES cannot be impacted by *devarim she-balev*, but gifts CAN be cancelled or qualified by these unspoken intentions. This distinction stems from the unilateral nature of gifts, as opposed to the bilateral nature of sales. Bilateral interactions cannot be shaped by unspoken thoughts since these thoughts are not discernible to each party. However, unilateral activities – even monetary ones

such as presenting gifts – CAN be shaped by unspoken thoughts. Halakha does not completely invalidate unspoken thoughts; it merely invalidates them for interactive processes. This application is obviously more radical than the positions of the Meiri and the Ra'avan, since it validates *devarim she-balev* even in monetary contexts.