

**YESHIVAT HAR ETZION**  
**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**  
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TALMUDIC METHODOLOGY  
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**Shiur #02: Possessing Hazardous Items**

In Parashat Ki Teitze, the Torah warns against possessing hazardous items: ("*lo tasim damim be-veitekha*") when you construct a new house, erect a fence (*ma'akeh*) upon your roof, and do not place blood in your house when people fall from it." (*Devarim 22:8*). In cautioning against possessing hazardous items, the Torah issues both positive (*asei*) and negative (*lo ta'aseh*) commandments - build a fence around your roof and do not "place blood in you house" – i.e. own dangerous objects. Are we to assume that the scope of both the positive and negative commandments are identical? Does the Torah intend to legislate against specific hazards and reiterates simply to emphasize and reinforce? Or do the positive and negative commandments refer to different situations (although possibly allowing for some degree of overlap)?

The most apparent distinction between these two possibilities concerns the relevance of the *mitzvat ase*i to hazardous objects. The literal reading of the *verse* suggests that the *asei* only mandates building a wall around a roof. The *Sifrei* extends this commandment to other structural hazards- pits, alcoves and other dangers must be fenced in or covered as well. However, would the *asei* also demand elimination of a hazardous animal? Or would such an action be required solely by the *lo ta'aseh* which, formulated in general terms, clearly applies to all dangers? An interesting *gemara* in *Bava Kama* seems to adopt the latter approach. Typically if one person preempts another in the performance of a *mitzva*, he must pay ten gold coins to the victim. For example, the *gemara* in *Chullin* (87a) states that if Shimon preempted Reuven and covered the blood of the latter's *shechita*, he must pay this fine. Similarly, the *gemara* in *Bava Kama* (91b) requires payment from someone who eliminated another person's animal which was 'slated for death.' The *gemara* is unclear, however, as to the conditions of an animal 'slated for death.' The Ra'avad asserts that the *gemara* is referring to a '*shor ha-niskal*' – an animal that killed a human which must be

executed by *Beit Din*. Rashi, however, claims that the *gemara* refers to any dangerous animal- even if it has not yet murdered, and has not been legally condemned. Evidently, according to Rashi, the mitzva being preempted is the *asei* of *ma'akeh*. This suggests that, in Rashi's opinion, the mitzva of *ma'akeh* does apply universally to any hazard, and not just to structural objects. In contrast, the *Yam shel Shlomo* disagrees, and claims that merely preempting the avoidance of a *lo ta'aseh* would obligate payment – implying that the positive commandment of *ma'akeh* does not apply to general objects, but the negative commandment of not placing blood upon your house does. Removing a dangerous animal fulfils the negative commandment, and preempting that fulfillment obligates payment. According to the *Yam shel Shlomo*, we could therefore differentiate between the *asei* which only governs structures, and the *lo ta'aseh* which applies more broadly.

Like the *Yam shel Shlomo*, the Rambam's classification of these halakhot does imply a difference between the *asei* and the *lo ta'aseh*. In *Hilkhot Nizkei Mammon*, chap. 11, he first cites the *asei* of *ma'akeh*, and defines the mitzva as a requirement to fence in a roof. In halakha 4 he extends the scope of the *asei* to all hazardous items – specifically, PITS and WALLS. Toward the end of halakha 4, he concludes: "and likewise any hazard which imperils life must be removed... because of *lo tasim*." Seemingly, Rambam expands *ma'akeh* to include pits and walls, but not portable items. The portable items are only encompassed by the *lo ta'aseh* of *lo tasim*. (It should be noted that regarding dangerous objects Rambam DOES acknowledge an *asei* which accompanies the *lo ta'aseh*- but not the *asei* of *ma'akeh*. He develops a novel position that the Torah instructs us to eliminate any form of life-threatening danger based on the verse of "Guard yourself, and watch yourself very carefully..." (*Devarim* 10:4). Though in context the verse instructs us not to forget the epic events at Sinai, the Rambam reads the verse as demanding safe and prudent behavior. Possessing dangerous items would constitute a violation of this *asei*. However, the Rambam does not apply the *asei* of *ma'akeh* to non-structural objects.)

An additional distinction between the *lo ta'aseh* and the *asei* emerges from a statement of the *Sefer Ha-Chinukh*. The verse refers to "*damim*," and as a result, most Rishonim claim that both the *asei* and the *lo ta'aseh* only apply to items which are life-threatening. This position may contradict the *gemara* in *Bava*

*Kama* (15b), which applies *lo tasim* to fierce dogs and faulty ladders- which would not seem to be life-threatening. One way to reconcile these Rishonim with this *gemara* would simply be to explain that these items can theoretically jeopardize life. Alternatively, the Rav *zt"l* claimed that even though the Biblical prohibition applies only to life-threatening items, the Rabanan decreed against all hazards. The *gemara* in *Bava Kama* never claimed that possession of a vicious dog violates the Torah's prohibition, but rather claimed that it violates the Rabbinic which expands the Biblical prohibition.

The *Chinukh* (546) explicitly claims that items which may cause physical harm, but which are not life-threatening, are included within the Biblical prohibition of *lo tasim*. This position may be challenged based on a *gemara* in *Bava Kama*, which determines that only a pit that is ten *tefachim* deep makes its owner liable for any deaths that it causes. This conclusion is based on the halakha that a *ma'akeh* must only be built for heights of ten *tefachim* and higher. This *gemara* implies that a *ma'akeh* is only necessary to prevent death – and thus only a height of ten *tefachim*, which can cause death, must be fenced in. How would the *Chinukh* – who extended the *lo ta'aseh* of *lo tasim* to all types of hazards- understand this *gemara*?

The *Devar Avraham* (1;37;25) answers that the *Chinukh* would distinguish between the *asei* and the *lo ta'aseh*. The positive commandment of *ma'akeh* would only obtain to life threatening situations- for example a height of ten *tefachim* or more. The *lo ta'aseh*, though, applies more universally to all sorts of perils. This understanding of the *Chinukh's* position provides yet another example of a difference in scope between the *asei* and the *lo ta'aseh*.