

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY

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**SHIUR #11: THE POSITION OF SUMCHUS:
MAMMON HA-MUTAL BE-SAFEK CHOLKIM**

Sumchus was a *talmid* of R. Meir and, like his *rebbe*, was known for his ability to think counterintuitively. He could demonstrate that an item was impure and then reverse his analysis and prove that it was also *tahor* or pure. Consistent with this ability, he adopted two famous halakhic positions that were discrepant with conventional rulings. His most well-known disagreement surrounded disputed monies about which no evidence was produced.

The halakhic-monetary system is generally predicated upon the assumption that the **possessor** retains ownership. This doctrine, known as *ha-motzi mei-chaveiro alav ha-ra'aya*, is one of the more basic principles of the halakhic judiciary system and is adopted almost universally. Strikingly, Sumchus challenged this doctrine and ruled that disputed monies are divided equally between the two litigants: *mammon ha-mutal be-safek cholkim*. In this *shiur*, we will explore his position and whether he entirely **denies** the general convention of *ha-motzi mei-chaveiro* or merely **qualifies** its application, allowing for *yachaloku* under very specific conditions that preclude application of *ha-motzi mei-chaveiro*. Since Sumchus' position is a minority opinion, very few *Rishonim* adopt his approach, and there is limited discussion about his enigmatic *shita*. This renders the analysis of his position somewhat speculative.

The simple and obvious approach would suggest that Sumchus outright **rejects** the doctrine of *ha-motzi mei-chaveiro* and instead chooses *yachaloku* - equitable division of disputed monies.

However, certain statements of the *Rishonim* suggest that he may adopt a different strategy. Perhaps he agrees that the doctrine of *ha-motzi mei-chaveiro*

exists, but he defines this doctrine in a manner that leads to its suspension in several situations. For example, Tosafot (*Bava Metzia* 2b) maintain that Sumchus only imposes *yachaloku* distribution in a situation of an objective *safek*, an **absolute** dispute that emerges independent of the respective claims of the litigants. For example, Sumchus would apply *yachaloku* if a pregnant animal were gored and a dispute emerges as to the time of birth of her stillborn offspring (*Bava Kama* 46a). If the offspring was born before the goring, its death cannot be pinned upon the owner of the attacking animal, but if the offspring was still in utero during the goring, the owner of the attacker is accountable for the death of the baby. This situation demands legal intervention even independent of the two claimants; *beit din* must investigate to determine the time of birth. In this instance, Sumchus suspends the *chezkat mammon* and chooses a *yachaloku* division. However, in a standard legal *safek*, which is merely a product of legal prosecution (such as the scenario the beginning of *Bava Metzia* (2a) in which two people mutually lodge claims to a garment), Sumchus agrees to the doctrine of *ha-motzi mei-chaveiro*.

Perhaps this limitation stems from Sumchus' scaled-down definition of *chezkat mammon*. Conventionally, it is assumed that possession establishes a basic **proof** of ownership. Halakha assumes that a possessor either legally acquired or personally manufactured an item; we do not assume average people to be thieves. In the absence of proof to the contrary, this very basic evidence awards the item to the possessor. If this is indeed the definition of *chezkat mammon*, it should apply independent of what type of *safek* emerges. Indeed, the Rabbanan, who disagreed with Sumchus and apply *chezkat mammon* almost universally, may have defined it as basic evidence, a *beirur*. It is possible that Sumchus agrees with the general doctrine of *chezkat mammon*, but defines it as a "legal procedure," as opposed to a *beirur*. We have no indication that the item truly belongs to the *muchzak*; nevertheless, Halakha retains the status quo in the absence of any counter-proof. A status quo of possession can be preserved when litigants **introduce** a litigation with their differing claims. In the absence of other proof, *beit din* will allow the possession to remain intact. However, if an **objective** *safek* presents itself, *beit din* no longer has the luxury to withdraw from the investigation and cannot default to the current status quo. In this instance, *beit din* must intervene and supervise a *yachaloku* distribution.

The Rabbanan, who all argued with Sumchus, adopted a broader definition of *chezkat mammon* that allows it to be applied in a broad range of litigations. By contrast, Sumchus envisioned a streamlined version, limiting its application to subjective *safeikot*. Since *chezkat mammon* is not a forensic **proof** but merely an option to retain the **status quo**, it cannot be applied in all scenarios. If a *safek* is an absolute and objective predicament, *beit din* loses the option of defaulting the case to the current possessor and distributes the disputed monies to the litigants.

Tosafot in *Bekhorot* (25b) record a related qualification of Sumchus's *yachaloku* doctrine. Although Sumchus adopts *yachaloku* in every empirical *safek* (*safek* in *metziyut*), he does not apply it to legal *sefeikot* (*safeika de-dina*). In the latter instances – in which the uncertainty about the money surrounds a halakhic debate – Sumchus agrees that the *muchzak* triumphs. It seems that Tosafot in *Bekhorot* is adopting similar logic to the aforementioned analysis. Empirical *sefeikot* demand legal intervention and do not allow retreat to the status quo, and therefore do not enable awarding the current possessor. In all cases of empirical *sefeikot* (even those that are only subjective), defaulting to the current state of possession is untenable. Only disputes that emerge from legal unknowns (such as halakhic uncertainties) allow *beit din* the luxury of retaining the status quo and supporting the *muchzak*.

A final application of this logic may surround the position of Rava (*Bava Metzia* 100a), who limits Sumchus with a different parameter: Sumchus only instructs *yachaloku* if the two parties do not lodge firm legal claims, known as *ta'anat bari*. In these situations, *beit din* can apply *chezkat mammon*. Sumchus denies the applicability of *chezkat mammon* in instances of *shema ve-shema*, in which the lodged claims are speculative because the two parties do not accurately remember the events. However, if the parties lodge definite claims of *bari* Sumchus agrees that the possessor or the *muchzak* triumphs. Perhaps the logic dictating *yachaloku* as opposed to the application of *chezkat mammon* is similar to the aforementioned argument. Sumchus adopted *chezkat mammon*, but only as a status quo and not as a proof of ownership. This streamlined version of *chezkat mammon* cannot apply without firm legal claims. Possession is not merely a product of a physical hold upon an item; that physical hold must be defended legally with firm and accurate claims. In the absence of such claims,

the physical possession alone is insufficient to mandate awarding the *muchzak* and maintaining the status quo. Had Sumchus viewed *chezkat mammon* as a *beirur* or proof he would have applied it more broadly even to situations of 'shema' claims

To summarize, there are two different possible qualifications of Sumchus's position. According to Tosafot, in *Bava Metzia* the *gemara* in *Bava Metzia* limits Sumchus to situations of objective and absolute *sefeikot*. In contrast, Rava limits Sumchus' policy to situations of uncertain claims. Perhaps, however, each qualification is based on similar logic. Since Sumchus defined *chezkat mammon* as solely a default to a status quo, he could not apply it under conditions in which the status quo was not actionable. In those cases alone, Sumchus selected the alternate option of *yachaloku*. According to Tosafot, if the *safek* is objective, *beit din* does not enjoy the option of relying on *chezkat mammon*. According to Rava, if the claims are merely speculative, possession loses its power and *beit din* cannot rely on it.

A different strategy toward understanding Sumchus may emerge from a Tosafot in *Bava Metzia* (97b). Tosafot claim that Sumchus views the two disputants as mutually holding an item; thus, *yachaloku* is a natural result of applying *chezkat mammon* respectively for each party. According to this approach, Sumchus fundamentally agrees to the doctrine of *ha-motzi mei-chaveiro alav ha-ra'aya*. However, the status of *muchzak* is not immediately and automatically bestowed upon the actual possessor. In litigational contexts, each disputant is considered "in virtual possession" of half of the disputed monies, and, as a legal *muchzak*, each benefits from the application of the principle of *ha-motzi mei-chaveiro*. In this view, Sumchus does not **streamline** *chezkat mammon* in a manner that limits its application. Instead, he **remaps** the definition of possession such that it yields a verdict of *yachaloku*, which is itself a derivative of *ha-motzi mei-chaveiro* applied to two disputants.

It seems logical to limit the application of this theory and, by extension, the application of *yachaloku*. Perhaps the two litigants are considered legal possessors in very **specific** scenarios in which Sumchus may readily apply *yachaloku* in light of their mutual "virtual" possession. One option emerges from the Ramban's position. In his comments to *Bava Metzia* (2b) he claims that

Sumchus only prefers *yachaloku* if each litigant has “just cause” to the item. For example, Sumchus would rule *yachaloku* in a scenario in which Reuven sold an animal to Shimon in an off-site deal in which the two parties were not in the same location as the transferred item (*Bava Metzia* 100a). The sold animal then gives birth and we are unsure whether the birth preceded the sale (in which case the baby was not included the sale) or the sale preceded the birth (in which case the baby transfers to the purchaser). In this instance, the two parties each have just cause, since the seller owned the fetus at some point and the purchaser currently owns the mother. They alone possess these claims; other parties have no rights or legal stakes. As they alone possess “relevancy” and “just cause,” we can imagine applying Tosafot’s approach that according to Sumchus, each becomes a virtual possessor and *yachaloku* stems from their jointly enjoyed status as *muchzak*.

In a classic litigation, in which two random people lodge a claim to a unknown boat (*Bava Batra* 34b) or to a random garment (*Bava Metzia* 2a), it would be difficult to envision litigants as joint virtual possessors simply because they lodge a claim that anyone “off the street” could have equally lodged. In these instances, Sumchus would agree that the **actual** physical possessor triumphs.

It seems that the Ramban’s limitation reflects Tosafot’s method (*Bava Metzia* 97b) of understanding Sumchus’ view.