

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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Shiur 06: *Yesh Lo Matirin*

Typically, a prohibited substance which become mixed with a permissible one confers an *issur* upon the host substance – the resulting mixture is known as a *ta'arovef*. If the prohibited item is significantly smaller than the permitted item, it becomes '*batel*,' meaning it loses its identity and can be eaten along with the permitted item. In cases in which the prohibited item remains easily identifiable, it must be removed, but the remaining mixture can be eaten even though it contains traces of the prohibited item's taste. Generally the prohibited item becomes permissible if is outnumbered by a ratio of sixty-to-one (*batel b'shishim*).

There are, however, certain exceptions to these general rules. Certain items remain forbidden, and thus prohibit the entire mixture, even though they exist in quantities less than one-sixtieth of the mixture. One example is a *davar she-yesh lo matirin* – an item which is currently forbidden, but whose prohibition will eventually fade. For example, an item born on Shabbat (*nolad*, which is forbidden as a form of *mukzeh*) will become permissible after the passage of Shabbat. If it becomes mixed with permissible food, the entire mixture remains forbidden, even if the permissible substance outnumbers the forbidden material by more than sixty-to-one. How should this principle be understood?

The simplest approach to the issue stems from a gemara in *Beitza* (3b) which suspends the general principle of *safek de-rabanan le-kula* in cases of *davar she-yesh lo matirin*. Generally speaking, any *safek* (doubt as to the correct halakha) surrounding a rabbinic prohibition is decided in a lenient manner. And indeed, since a *nolad* item is only a rabbinic *safek issur*, it should be permissible. The gemara in *Beitza* explains, however, that since *nolad* is an *issur* of *davar she-yesh lo matirin*, we do not act leniently in a situation of *safek*. Because simply waiting until after Shabbat will enable the item to be eaten without trace of *issur*, we do not utilize the typical leniency that we would otherwise employ. The identical logic can be applied to the issue of eating a *ta'aroves*, even one whose permissible content outweighs its forbidden content - if the

forbidden item is *yesh lo matirin*, then simply waiting out the *issur* allows the item to be eaten with no worry.

The Ran, in his commentary to the first mishna in the 5th chapter of *Nedarim*, provides a different reason for why a *ta'arovet* of *davar she-yesh lo matirin* remains forbidden even when its ratio is more than sixty-to-one. Essentially, the concept of *bitul* results from an encounter between clashing forces – *assur* and *muttar* items. As each item's identity is independent, each one seeks to impose its identity upon the other. If the permitted item outweighs the forbidden one by a sizable enough majority, it triumphs, whereas in less lopsided cases the forbidden item retains its identity. A forbidden item that will eventually transform into a permissible one is not inherently defined as forbidden, since its title is fleeting. Without the inherent status of '*issur*,' there is no clash or collision, and *bitul* does not occur. It emerges that according to the gemara in *Beitza*, *bitul* of *davar she-yesh lo matirin* is artificially suspended, because of a general wariness to apply leniencies for temporary *issurim*. According to the Ran, however, the very dynamic of *bitul* is inherently inapplicable to *yesh lo matirin* substances.

Conceivably, the question of why a *davar she-yesh lo matirim* remains forbidden may impact upon the scope of the rule. In other words, it might effect which types of items halakha would recognize as *yesh lo matirin*, for which it would suspend the laws of *ta'arovet*. Perhaps the most famous (and practical) issue surrounds the status of *chametz*. It is clear that the *bitul* process is suspended for *chametz* – *chametz* is considered *assur be-mashehu*, forbidden in mixtures even in negligible amounts. What is less clear is why *chametz* is treated with such stringency. Many authorities claim that the stringency is intrinsic, based upon the severity of the *issur* of *chametz*. However, the Rambam (*Ma'achalot Assurot* 15:9) and the Ramban (in his comments to *Pesachim*) both claim that the strictness with regards to *chametz* stems from its status as a *davar she-yesh lo matirin*, since it may be eaten (at least on a *de-oraita* level) after Pesach has passed. Those *Rishonim* who maintain that the issue is the intrinsic strictness of *chametz* counter that *chametz* should not be considered *yesh lo matirin*, since it will continually cycle between being permissible and being forbidden (*Mordechai* in *Pesachim* and the *Ohr Zaruah*). After all, at the conclusion of Pesach the prohibition will vanish, but it will return a year hence when Pesach returns. An *issur* which fades, only to reappear later on, should not be considered *yesh lo matirin*.

Now, if the stringency associated with *yesh lo matirin* items was based on the practical logic suggested by the gemara in *Beitza* – i.e. that waiting will allow the item to be eaten under less questionable circumstances - we would certainly side with the Rambam and the Ramban. *Chametz* can certainly be eaten after Pesach, so it would be better to wait than to allow a *ta'arovet*. If, however, we apply the Ran's logic that *yesh lo matirin* is considered a not-yet permissible item, which doesn't clash with totally permitted items, we would not define *chametz* as a *davar she-yesh lo matirin* - because its *issur* is cyclical, we would consider it to be totally forbidden. As a fully prohibited item, then, it could participate in the process of *bitul*, and as such, the prohibition of a *chametz ta'arovet* must result from *chametz's* intrinsic strictness, not from the fact that it will be permitted in the future. In fact, the *Tzelach* (written by the *Noda be-Yehuda*) in his comments to *Beitza* 4b, establishes this association between the reason underlying *yesh lo matirin* and the application to *chametz*.

Conceivably, this question might impact upon standard *mukzeh* as well as items *she-yesh lo matirin*. *Nolad* items become permanently permissible after Shabbat or Yom Tov, and are therefore *yesh lo matirin*. *Mukzeh* items, however, could be seen as re-establishing their prohibition with the arrival of the next Shabbat. In fact, it appears from *Tosafot* in *Beitza* (10b) that *mukzeh* is considered *davar sheyesh lo matirin*. Many have suggested that the Rambam too would consider *mukzeh* to be a *davar she-yesh lo matirin*, in keeping with his definition of *chametz*. (See *Sefer Sha'ar Hamelech* to *Hilchot Yom Tov* 2:6).

The scope of *yesh lo matirin* might be at issue in a second question as well, regarding an item whose prohibition is based upon uncertainty. For such an item, the passage of time will not eliminate the prohibition, but rather elucidate it. One example would be an egg which is born from an animal which may or may not be a *tereifa* (terminally ill, and therefore forbidden to eat). We cannot unquestionably determine the mother's status until either a year passes (at which time it will be evident that the animal is indeed healthy), or the animal gives birth (in which case the same judgement will be rendered). Would this egg be considered a *davar she-yesh lo matirin*? Most authorities state that it would not be considered *yesh lo matirin*; however, the Kessef Mishna (in his commentary to the Rambam *Hilchot Avoda Zara* 7:10) claims that it would be. Presumably, the Kessef Mishna viewed the halakha in the practical manner suggested by the gemara in *Beitza*; since waiting will clarify the matter, and possibly remove any trace of the *issur*, there is no reason to apply any leniency. If we endorse

the Ran's logic, however, the egg should participate in some form of *ta'arovet bitul*, despite its uncertain status. The *issur* being discussed is an absolute one - if the mother is indeed determined to be a *tereifah*, then the egg will never become permitted. If the egg ever is to become permitted, it will be because we become convinced that its mother is healthy, not because the *issur* itself fades away. As such, it should participate in *bitul*, and not be considered a *davar she-yesh lo matirin*. Perhaps the *Rishonim* who disagree with the Kesef Mishnah do so for this reason.

A structurally similar question concerns an item whose *issur* will fade, but whose quality will deteriorate. Most *Rishonim* (*Mordechai* in *Pesachim* 2:573, and the *Rashba* and *Ran* on *Beiza* 4b) all claim that such an item should not be considered a *davar she-yesh lo matirin*. In fact, whichever logic we adopt would yield this conclusion. If the suspension of *bitul* were based upon the practical logic of waiting out the prohibition, the pending deterioration would not allow for such a policy. Alternatively, the item would be considered fully *assur*, and a candidate for *bitul*, even though it will eventually be permitted, because the item in its current, non-deteriorated state will never witness the removal of the *issur*. Indeed, the same *Ran*, who claimed that a *yesh lo matirin* item is inherently not a candidate for *bitul*, denies *yesh lo matirin* status to items which may deteriorate. Rabbi Akiva Eiger (in his comments to *Yoreh De'a* 102), quotes the dissenting opinion of the *Yam shel Shlomo*, who does accord *yesh lo matirin* status to items whose fading *issur* will be accompanied by significant deterioration. The best way to defend this dissenting opinion would be to adopt a modified version of the *Ran's* logic. Since the *issur* will vanish, the item cannot be defined as inherently forbidden, and thus cannot participate in *bitul*, despite the deterioration.