

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY

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Shiur #08: *Pesik Reisha*

In a well-known debate, Rabbi Yehuda and Rabbi Shimon dispute the role of "intent" in desecration of the *Shabbat*. Rabbi Yehuda claims that violations of *Shabbat* performed without direct intent are still forbidden (even Biblically, according to most *Rishonim*). For example if someone drags a bench across a field, thereby unintentionally digging furrows, he is in violation of the *melakha* of *charisha*, or plowing. Even though he only intended to relocate a bench, he is culpable for his action, since ultimately he did plow a field. Rabbi Shimon disagrees and claims that the absence of direct intent to violate *Shabbat* renders this act Biblically permissible.

In fact this debate extends well beyond the boundaries of *Shabbat*. Numerous *gemarot* present general scenarios in which Rabbi Shimon and Rabbi Yehuda disagree. For example, they debate whether a *nazir* may comb his hair with the knowledge that he may unintentionally pull out some hair (*Shabbat* 50b). Further, they disagree over whether a clothes salesman may wear his *shaatnez* garments in order to better market and publicize his clothing, knowing that he will unintentionally benefit from their warmth (see *Kilayim* 9:5). Additionally, they question whether a person who donated wine as a *korban* may pour it on the *mizbe'ach* if he will unintentionally douse the fire (which must remain lit)(*Zevachim* 91b).

There is one classic exception in which even Rabbi Shimon admits that the *issur* obtains even without intent: *pesik reisha*. If the unintended forbidden result is inevitable, the *issur* is be violated even without prior intent. The term itself derives from a scenario in which one slaughters a chicken on *Shabbat* without intending that it die. To this, the *gemara* claims '*pesik reisha ve-lo yamut*' – can the head be removed without it dying? Since the death is inevitable, it renders the slaughtering forbidden even though it was never intended. *Pesik reisha* is the instance in which even Rabbi Shimon admits that unintended violations are forbidden.

There are two different strategies toward understanding the *pesik reisha* exception. However appreciating them demands first understanding why, in general, unintended prohibitions (*eino mitkaven*) are permissible according to Rabbi Shimon. It is possible that Rabbi Shimon views intent as an essential ingredient of *issurim* and that, in the absence of this intent, even though the action was committed, no prohibition has been violated. Alternatively, Rabbi Shimon may have reasoned that in the absence of intent the action was not cognitively authored by the person. Even though I physically dug the

furrow, if my sole intention were relocation of the item, I am not considered the 'digger' of the furrow. Actions are only attributed to the person if they were intended. According to the first explanation, intent is a separate ingredient necessary for the commission of the *issur*. According to the second, intent is intrinsic in associating the action to the person.

An interesting *nafka minah* of this question may be a situation of *eino mitkaven* where only one action was performed. Typically *eino mitkaven* pertains to a situation in which two independent actions overlap in a particular context. For example a person can relocate furniture without furrowing (by lifting it) just as they may furrow without relocating furniture (by actively plowing). In this instance, by relocating and dragging furniture, the two otherwise independent consequences converge. Since a person was only interested in the consequence of relocating, but not that of furrowing, he does not commit the *melakha* of *charisha*. What would happen, however, if a single, indivisible action contained two consequences - a permitted one and a prohibited one - and the person did not intend the prohibited result? This case is presented by the *gemara* in *Shabbat* (133a) regarding a child who is born with *tzara'at* on the spot of his *mila*. Cutting the foreskin to perform *mila* would constitute a prohibition of removing *tzara'at*. The *gemara* suggests that Rabbi Shimon may allow this *mila* since the prohibited consequence (removing *tzara'at*) is unintended. If the *eino mitkaven* exemption determined that absence of intent severs the action from the author, the rule would fail in this instance. One cannot separate the act of cutting from the person since it is this very act that he intends to perform in order to fulfill *mila*. Presumably, the only way to apply the *eino mitkaven* exception is to claim that without intent the *issur* has not been violated. In this instance, even though the person clearly performed the action of cutting, he has not violated the *issur* because he did not intend the removal of *tzara'at*.

The challenge of understanding the rule of *eino mitkaven* affects the nature of *pesik reisha*, the one case in which Rabbi Shimon agrees that *eino mitkaven* is forbidden. If the unintended forbidden result is inevitable, even Rabbi Shimon concedes that it is a violation of *Shabbat*. Our understanding of *pesik reisha* would be profoundly affected by our sense of why *eino mitkaven* is permitted to begin with. If the absence of intent severs the action from the author, one could suggest that *pesik reisha* re-attributes the consequence to the author. Consequences which *may* occur are only imputed to me if I intend them; thus, in the situation of *eino mitkaven*, I am no longer the author. However if the result is *inevitable*, the consequence was rendered by me whether I intended or not. I cannot drag a HEAVY bench across a field claiming I did not intend to create a furrow if the furrow's creation is inevitable. In this instance I am the "digger" regardless of whether I intended it.

However if the *eino mitkaven* exception is based upon the independent need for intent, *pesik reisha* would be defined somewhat differently. In order for *pesik reisha* to reestablish a prohibition it would have to generate some form of intent. Intent is crucial toward the violation of the very *issur*; in its absence, the prohibition cannot develop. The inevitability of *pesik reisha* may determine that the person really does intend the prohibited consequence. Even though he claims that he had no interest or intent, if the

consequence is inevitable, it may be considered intended. Once it is considered intended, the prohibition is relevant.

The next *shiur* will *ly"H* explore various manifestations of the question surrounding the understanding of *pesik reisha*.