

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH

TALMUDIC METHODOLOGY

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Tzeida - The Prohibition of Capturing on Shabbat

One of the more fascinating of the 39 melakhot is the prohibition against capturing or trapping live animals. In earlier periods this prohibition was more limiting as it severely affected food preparation. With the advent of refrigeration of food preservation we have little need for capture on Shabbat or Yom Tov. This shiur will explore the nature of this melakha especially with respect to the structure of 'classic ' melakhot.

The gemara in Shabbat (106b) introduces a very troubling halakha - according to one opinion if the particular species of animal is never trapped or captured no prohibition applies. Even if the specific individual has use for this item - since, in general, the item is never caught the prohibition does not apply. Why should this formal requirement apply specifically to the melakha of capturing. After all when it comes to prohibition of baking or ploughing on Shabbat - any variety of that act is forbidden even if it deviates from the standard format that a baker or a farmer would follow. Why should this melakha in particular be dictated by such formal considerations such as the usual manner of capture (in terms of the species being caught).

A possible answer lies in better understanding a discrepancy which exists between the melakha of tzeida (capturing) and the rest of the 39 melakhot. In general a melakha IMPACTS upon a particular item and renders a change.

Baking and cooking render a chemical change while tearing and ploughing a mere physical change. The common denominator however is that the melakha has produced a constructive change . This constructive change is a fundamental part of the prohibition. the gemara recognizes instances of mekalkel (destructive change) - such as tearing an item without intent to repair - as a diminished violation. In fact in the absence of any change we might not admit any prohibition. For example the gemara in Beiza (13b) disqualifies stacking wheat into a pile as a melakha since it cannot be defined as melekhet machshevet - in a sense no change has occurred. Even the prohibition of transportation of shabbat (hotza'a and hachnasa) entail some degree of change because the location or zone of the item has been altered. (IN fact many Rishonim refer to these melakhot as 'melakha 'geru'a'- inferior acts specifically because the change they impart is so slight). In short the Torah did not ban actions as much as it prohibited certain acts which impact constructively upon items which undergo change.

Given this backdrop we might have difficulty defining tzeida as a standard melakha simply because it does not in any way alter the item. as the animal is not changed by the act of capture we might wonder as to tzeida's classification as a melakha.

In response to this discrepancy we might be forced to view tzeida in an entirely different light. Instead of prohibiting the result of the capture the Torah might have been legislating against the very ACT of capture independent of its consequences to the item. One is not allowed to engage in hunting or trapping animals because the very act itself is forbidden. If this is the case we might easily understand additional requirements which apply to the melakha and not to others. In standard instances of melakha the OUTCOME was forbidden and the specific manner by which this outcome was achieved was less significant. In the case of tzeida however in which the very act is forbidden the issur only applies if

a classic act of hunting occurred. If a person catches a species not normally caught we cannot conclude that the formal act of capture has been violated.

A similar clause is presented by the continuation of the gemara in Shabbat (106b) which allows the capture of a sick or old animal since 'ein darcan lir'vuyei.' The Rishonim differ as to the basis of this exemption. Rashi interprets that a sick animal will not attempt to flee and hence you are not performing the act of capture. The difficulty with Rashi's view lies in its being so obvious that it might not warrant mention by the gemara. It is unquestionably true that an animal which does not attempt any form of flight or escape but instead willingly presents itself does not pose a candidate for the prohibition of tzeida. The Chidushei Haran to Shabbat offers a different reading. Since a sick or old animal does not have to be hunted or trapped in the normal manner of hunters who lay in wait for their prey no prohibition applies. Even though a person might have to extend himself to capture a sick or old animal since he does not have to employ the tactics of professional hunters he does not violate tzeida. Again we witness the necessity of performing a professional act of capture in order to violate the prohibition.

A third gemara which indicates the need for a formal act of tzeida appears in the continuation of the gemara which claims that one who snags locusts while they are swarming has not violated the prohibition. Again some Rishonim claim that the sheer volume of locusts prevent any specific locust from moving and attempting an escape. In truth the person has not performed any act of capture. By contrast others claim that even though the locust which was ultimately captured can potentially escape since the individual merely stuck out his hand and grabbed what fell in rather than engage in an act of tzeida no violation has occurred. Again we witness the formal requirement of some act of capture ; otherwise the act of tzeida has not occurred.

This factor might reflect itself in an interesting machloket about animals which may be captured on Yom Tov. If an animal is already caught within a trap of cage he can be taken on Yom Tov for Shechita and preparation (food preparation being permitted on Yom Tov). If however the animal is found in a large cage which still allows his movement and temporary evasive tactics he cannot be taken since an additional act of tzeida is required. How might we technically measure a large vs. small cage. The gemara (Beiza 24a) supplies two different opinions. the first suggests various alternatives toward measuring a cage- objective size, does the cage have corners or is it a 'straight' area, or finally is it small enough to allow the access of the animal in one leap. These yardsticks are all logical in our attempt to determine the status of the animal as already captured (and therefore permitted to take) or not yet captured. If the cage is so large that repeated efforts at grabbing the animal are necessary we cannot define the animal as already captured .

The Gemara subsequently introduces a variant opinion of Raban Shimon ben Gamliel that even if the animal is being held in a large cage - as long as the owner doesn't have to invite trappers and/or their tools to assist him in retaining the animal - the animal can be taken from its cage. As long as professional measures are not necessary to capture the animal the animal is considered in a captured state and may be 'taken.' Why should such a lenient standard apply. Evidently Raban Shimon ben Gamliel demands professional tools as a requirement for the issur of tzeida. When these tolls are no longer necessary an act of tzeida will not be performed and the animal may be taken.

Summary:

We have examined tzeida as a possible exception to standard forms of melakha. As it might not impact upon a change a specific item, the prohibition might be a function of the formal act committed. This view might explain some of the formal requirements noticeable in the melakha of tzeida.