YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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GEMARA Shabbat

Shiur #04 – Sin in order that your Fellow may gain thereby

Rav Ezra Bick

Sources:

1. גמרא ד ע"א "גופא ... איסור סקילה"

2. רש"י, תוס' (ד"ה וכי, וד"ה קודם), תוס' הרא"ש ד"ה וכי.

3. רמב"ן ד"ה אילימא וד"ה וכי, חידושי הריטב"א עירובין לב ע"ב ד"ה ניחא.

4. תוס' פסחים נט ע"א ד"ה אתי.

### Introduction

Rav Bibi bar Abaye asked: If one places a loaf of bread in an oven, do they permit him to remove it before he incurs the liability of a sin-offering or not? (*Shabbat* 4a)

 The act of the *melakha* of baking is performed when one places dough close to a fire. In Talmudic idiom, in accordance with the baking practices of the time, this action is called *hadbaka ba-tanur*, "attaching the dough to [the wall of] the oven." The baking process itself, however, requires an extended exposure to heat, until the dough is regarded as baked (when "it forms a crust" [*nikremu panav*]. If for some reason the dough does not reach the point that it is considered baked, the person who attached the dough to the wall of the oven is exempt from liability. This being the case, even after a person performs an act of baking, he can still "interrupt" the baking process by removing the dough from the oven – an act that is called *rediyat ha-pat*, detaching the bread from the oven – before it reaches the point that it is considered baked. *Rediyat ha-pat*, however, is forbidden by Rabbinic decree (see Rashi, above 3b, s.v. *hidbik*; *Tosafot*, 3b, s.v. *hitiru*). Therefore, Rav Bibi raises the question whether one is permitted to violate that Rabbinic prohibition in order to prevent the transgression of a Torah prohibition, which has not yet been completed.

 The Gemara initially understands the question as relating to the case of one who unwittingly performed an act of baking, and with respect to another person. That is to say: Should a person transgress a Rabbinic prohibition in order to save another person from transgressing a Torah prohibition? Based on this understanding of the question, the Gemara replies, as it were in amazement: "Do we tell a person: Sin in order that your fellow may gain thereby?!?" In the wake of this question, which is not explained or justified, the Gemara reinterprets the problem as relating to a different case, where the baker intentionally attached the dough to the wall of the oven, and with respect to himself. Our primary objective today is to understand the Gemara's question and examine the issue – should a person commit a less serious transgression in order to save another person from liability for a more severe transgression?

 The *Tosafot* (s.v. *ve-khi*) cite the Gemara in *Eiruvin* which implies the opposite: Rabbi Yehuda HaNasi (in *Eiruvin* 32b) maintains that if a *chaver* (a person who is precise in his observance of *mitzvot*) gave an *am ha-aretz* (a common, uneducated person) untithed produce, he can tithe that produce from produce that is not in close proximity to that for which it is given, even though this involves a minor offense, in order to save the *am ha-aretz* from eating untithed produce which involves a major Torah offense. The Gemara's formulation of the explanation of Rabbi Yehuda HaNasi's position is the very opposite of the formulation in our Gemara: "A *chaver* prefers to commit a minor sin in order that an *am ha-arez* should not commit a major one." The two Talmudic passages seem to contradict each other.

### The *Tosafot's*  first answer

 In their first answer, the *Tosafot* explain that in the case in *Eiruvin* the *chaver* is not an innocent bystander. It is he who supplied the untithed produce to the *am ha-aretz*, or as they put it: "The *am ha-aretz* should not eat untithed produce **because of him**." That is to say, the *Tosafot* distinguish between the case in which one person is responsible for the fact that the second person is about to transgress a serious prohibition, and therefore he is obligated to save him, even if he himself has to violate a minor prohibition in order to do so; and the case in which the first person is not responsible for the transgression of his fellow, and therefore our Gemara asserts that there is no justification for violating even a Rabbinic transgression in order to save another person from violating a Torah prohibition. What is the meaning of this distinction?

 The *Tosafot* seem to be saying that if the *chaver* is responsible for the *am ha-aretz* eating the untithed produce, this is considered his own transgression, and not just that of the *am ha-aretz*. Our Gemara asks why should a person transgress a prohibition in order to save **his fellow*,*** but the idea that a person should transgress a minor transgression in order to save **himself** from a more serious transgression seems perfectly reasonable. If so, in the case in *Eiruvin*, where it was the *chaver* who put the *am ha-aretz* in a situation where he might sin, saving the *am ha-aretz* is saving himself, and therefore it is preferable that he violate a minor prohibition so that his fellow not violate a major prohibition **because of him.**

It would seem that this argument is valid only if we say that the *am ha-aretz's* eating of untithed produce is considered as the *chaver's* transgression of eating untithed produce. But if we say, on the one hand, that the prohibition of *lifnei iver* - putting a stumbling block before the blind, which according to *Chazal* includes facilitating another in committing a sin – is merely a moral prohibition of causing another person to stumble, and, on the other hand, that a person must not violate even a minor prohibition in order to save his fellow, and only his fellow, from violating a major prohibition, it is not at all clear that in the case of the untithed produce the *chaver* should sin in order to save the *am ha-aretz*. The moral prohibition he has already violated, and saving the other person in itself is no reason to transgress a prohibition. But if we say that the law of *lifnei iver* teaches that a transgression that a person causes or assists in its execution is attributed back to him, then the *chaver* is faced with the decision whether to violate the minor transgression of tithing produce from produce that is not in close proximity to it, or to violate his own major transgression – that of eating untithed produce.

 This explanation of the *Tosafot's* answer is more explicit in the words of the *Tosafot Rosh*:

It may be suggested that they are not similar, for there the reason is that he provided him with the prohibited food… If the *am ha-aretz* eats untithed produce because of him, **it is as if he ate it.**

 The Rosh adds to the words of the *Tosafot* – "eats because of him" – the explanation "it is as if he ate it." Clearly the intention is to turn the decision into the personal decision of a single person between two courses of action, rather than a decision as to what is in the best interest of two different people.

 (The Rosh uses the expression, "he provided him with the prohibited food," that it to say, he provided the *am ha-aretz* with the untithed produce with his own hands. This may be more severe than the regular case of *lifnei iver,* where one person merely enables another person to commit a transgression. Here he actually hands over the prohibited produce to the sinner, and it might be that only in such a case do we say that it is as if he himself ate it).

### The comment of the Riva

 According to this we understand the continuation of the *Tosafot*. The Riva adds to the answer that we have already seen, that in the case of one who attaches dough to the wall of an oven, it is possible that even the person himself who attached the dough to the oven is forbidden to violate the minor prohibition of detaching the bread in order to save himself from violating the Torah prohibition of baking on Shabbat, even though we said that in the case of the Gemara in *Eiruvin* the *chaver* should commit a minor prohibition in order to save the *am ha-aretz.* The reason for this is that there the transgression of eating the untithed produce was not yet carried out, whereas by us the dough was already attached to the wall of the oven, and all that is left is the "completion" of the transgression, and one should not commit even a minor transgression to avoid that. At first glance it would appear that he distinguishes between a transgression involving a positive action (eating untithed produce) and a transgression involving inaction (refraining from detaching the bread, which allows the bread to become fully baked). But this is puzzling for two reasons:

1. Even if we say that a transgression involving inaction is less severe than a transgression involving a positive action, a Biblical prohibition involving inaction is certainly more severe that a Rabbinic prohibition. If the question is once of expedience, that is to say, it is worthwhile to pay a small price in order to earn a great profit, it is certainly worthwhile for the person himself who attached the dough to the oven to transgress a Rabbinic prohibition with a positive action, and thus avoid transgressing a Torah prohibition by inaction.

2. Also in the case of the untithed produce, the *chaver* transgresses by way of inaction, by enabling the *am ha-aretz* to eat untithed produce.

 It therefore seems that the *Tosafot's* position is not based on expedience, but rather it is a question of choosing between two actions. The transgression of "he eats because of him" turns the eating of the *am ha-aretz* into the eating of the *chaver*, and so the *chaver* is faced now with deciding between two possible actions: The one is tithing the produce with produce that is not in close proximity to that which is being tithed, and the second is eating untithed produce (because of his connection to and responsibility for the *am ha-aretz*). He must choose one of the options, and therefore it is clear that he should choose the less severe action. If he chooses to do nothing, in the end **he will perform** the act of eating untithed produce (even if his physical action is inaction). This is not so regarding the person who attached dough to the wall of an oven, where the prohibited action was already performed. As we explained at the beginning of the *shiur*, the **act** of baking is putting the dough into the oven; the **liability** will only arrive in the future, because the bread is not yet baked. Here the question is whether it is worthwhile to commit a minor transgression in order to reap the great profit of preventing liability and the completion of a major transgression. Regarding this question, the *Tosafot* understand that our Gemara's position is that the consideration of expediency does not apply to prohibitions.

 With this we have answered a moral question: Is it really so obvious that one should not sacrifice himself and pay a small price in order that his fellow should gain a great profit? What happened to the obligation to perform acts of lovingkindness and engage in mutual help? The answer is that the *Tosafot* understand that the Gemara is saying that *mitzvot* and transgressions are not subject to the consideration of expediency. That which is forbidden is forbidden, even if doing it will bring great profit, including spiritual profit. Thus it follows that a person is not obligated to help his fellow by committing a transgression, and also not to help himself. The obligation in the Gemara in *Eiruvin* is not based on expedience, but rather on deciding between two courses of action. If a person is faced with two courses of actions, both of which have negative consequences, it is clear that he must choose the course which will lead to the least damage. But there is no allowance whatsoever to commit even a minor transgression to minimize damage that has already been done.

### A great *Mitzva* is different

 The *Tosafot* raise an objection from the Gemara in *Gittin* 41b, which asserts that one who is half a slave and half free cannot marry any woman. He cannot marry a female slave because he is already half free, and he cannot marry a free woman because he is half a slave. Therefore *Chazal* obligated his master to liberate him so that he be able to fulfill the *mitzva* of procreation. The *Tosafot* ask: Surely one who liberates his slave violates the positive command of "they shall be your slaves forever" (*Vayikra* 25:46). It turns out then that we tell the master to transgress a prohibition in order that his fellow – the slave – will gain thereby. The *Tosafot* answer that the *mitzva* of procreation is different, since it is "a great *mitzva.*" This answer is based on what the Gemara there in *Gittin* says that Rabbi Eliezer liberated his slave in order that he be able to complete the quorum of ten necessary for public prayer, because "a *mitzva* involving the community is different."

 The *Tosafot*'s answer is difficult: The law that we do not tell a person to commit a transgression was stated with respect to committing a minor transgression in order to save another person from committing a major transgression. Why should the *mitzva* of procreation, even if it is "a great *mitzva*," be different? The Gemara established that even though the gain is greater than the loss, one is forbidden to commit a transgression. How does enhancing the gain by defining the *mitzva* of procreation as "a great *mitzva*" change anything?

 It would seem that the answer is found in the second example given by the *Tosafot* – "a *mitzva* involving the community is different." This should be understood to mean not there is additional importance to such a *mitzva*, but rather a broadening of the responsibility for it. Since the *Tosafot* distinguished between one who commits a transgression so that his fellow may gain thereby and one who sins so that he himself will gain thereby (as in the case of the *chaver* who gives untithed produce to an *am ha-aretz*), here the *Tosafot* explain that a *mitzva* involving the community is different, because it is the responsibility of all of Israel. This does not mean that the person liberating his slave is also in in need of a quorum (even though the simple understanding is that we are dealing with a case where he entered the Beit Midrash to pray and saw that there was no quorum), but rather that all of Israel, even those who have already prayed with a quorum, share the collective responsibility to maintain a quorum, as this is a *mitzva* falling upon the community. The word "community" (*rabim*) is not only a designation for ten Jews, but an allusion to the people of Israel as a whole. Therefore the master must choose between liberating his slave in a forbidden manner, and disregarding a need of all of Israel, himself included. Accordingly, in this case as well he prefers to commit a minor transgression, so that others – all of Israel – will not commit a major prohibition.

 If what we are saying is correct, this is also the meaning of "a great *mitzva*" with respect to procreation. This does not mean that the *mitzva* is very important. Is the non-fulfillment of the *mitzva* of procreation more severe than the desecration of Shabbat committed by the baker of the bread? In this context the word "great" means that the *mitzva* of procreation is also a *mitzva* that has a communal objective and that is a communal responsibility. This is not only the *mitzva* of the individual, but part of *tikkun olam*, making the world a better place; "He created it not a waste, He formed it to be inhabited" (*Yeshaya* 45:18). Therefore, even though each individual is obligated in his own *mitzva* of procreation, nevertheless there is a communal interest and concern that the *mitzva* be fulfilled, and this suffices so that the master has to choose between two alternatives that are relevant to him himself. Cancelling the slave's *mitzva* of procreation will be considered the master's choice and his action. For this reason, he must opt for the less damaging alternative.

 The *Tosafot ha-Rosh* (s.v. *ve-khi*) raises another question: The Gemara in *Pesachim* (59a) states that the positive *mitzva* of the Paschal offering of one who has not completed his atonement (who will complete his atonement and be allowed to eat of the Paschal offering only on the 14th of Nisan itself) sets aside the positive *mitzva* of the priests not to offer any sacrifice after the afternoon *tamid*. Here the priest commits a minor transgression (offering a sacrifice after the afternoon *tamid*) in order to save the person who lacks atonement from committing a major transgression (not bringing a Paschal offering).

 The Rosh answers that here too "a *mitzva* involving the community is different," because the Paschal offering "is called a *mitzva* involving the community." At first glance, this answer is incomprehensible: Every person is individually obligated to bring the Paschal offering. The priest will bring his offering, and only the person who lacks atonement will fail to observe the positive commandment falling upon him to bring a Paschal offering. This is not the same as maintaining a quorum for communal prayer, which is essentially a *mitzva* falling upon the community. We must say then that what the Rosh means is that the Paschal offering has the halakhic status of a communal sacrifice (*korban tzibbur*), even though each person brings his offering individually, and therefore there is a general communal responsibility concerning the sacrifice of all the Paschal offerings, because all of them together constitute a communal offering. Therefore, this is not a case of sin in order that your fellow may gain thereby, but rather a case of commit a minor sin in order that a more serious sin be performed **by you.**

 In our *Tosafot*, however, the Gemara in *Pesachim* is cited only after the *Tosafot's* next answer, implying that on the contrary, the first answer cannot explain the Gemara in *Pesachim*, and this is because the *Tosafot* do not define the Paschal offering as a *mitzva* involving the community, unlike maintaining a prayer quorum and the *mitzva* of procreation, and therefore they do not find a way to explain the Gemara in *Pesachim* according to the first answer.

### The second answer of the *Tosafot*

 The *Tosafot* offer another resolution of the contradiction between our Gemara and the Gemara in *Eiruvin*:

It may further be suggested that it is specifically where he is criminally responsible (*pasha*) that we say: Do we tell a person: Sin in order that your fellow may gain thereby?

 This answer is the exact opposite of the previous answer. Fundamentally, we always tell a person to commit a minor sin in order that his fellow should gain thereby, as is implied by the Gemara in *Eiruvin*, and our case is the exception to the rule, because the person to be saved is a sinner (even though he acted unwittingly and not intentionally, the *Tosafot* considers him a sinner, because even an unwitting infraction involves a certain level of negligance, as opposed to someone who is considered as having acted because of circumstances beyond his control). That is to say, there is a general obligation to help others and save them, even at a certain cost, but this obligation is cancelled in the case of sinners. Since he himself is responsible for his situation, others are not obligated to help him. The *am ha-aretz* in *Eiruvin*, the half of a slave in *Gittin*, and even the person lacking atonement in *Pesachim* – are all considered as having sinned because of circumstances beyond their control, and therefore in all these cases, *Chazal* obligated other people to help them. In our passage, on the other hand, the person who pasted the dough on the oven brought his trouble upon himself, and in a sinful manner, and therefore the obligation to help him is cancelled.

 Why, according to this answer, must a person pay a price, even if it is small, in order to save another person from a grave sin? It is possible to argue that this obligation stems from the law of *arevut*, mutual responsibility. All of Israel are responsible one for the other, and therefore every person must see to it that his fellow fulfills the commandments. This possibility essentially cancels the difference between a person and his fellow, because his fellows' *mitzvot* and transgressions are included in his own obligations.

 Another possibility is to say that a person's obligation to pay a price in order to save his fellow stems from the obligation to perform acts of kindness and the *mitzva* "and you shall restore it to him" (*Devarim* 22:2; the *mitzva* to rescue a person and his property). You might ask: Why doesn't saving himself, even from a minor transgression, take precedence over saving another person? Perhaps with regard to *mitzvot* and transgressions, egotistical considerations and self-interest do not justify not helping another person, because it is all part of God's reckoning, and if God wants us to help another person, we lose nothing by the sin that we commit.

 The *Tosafot* (s.v. *kodem*) assume as self-evident that with regards to the person himself, one should certainly detach the bread from the oven and thus commit a minor sin in order to save oneself from the more serious Torah prohibition of baking on Shabbat, and that this is true despite the fact that he is a sinner. But now the question arises: If the obligation to help stems from the law of *arevut*, and this is cancelled in the case of a sinner, then even with regard to the person himself, there should be no allowance to commit the minor sin. We must conclude that we are dealing here with two laws: Regarding another person, what obligates a person to commit the minor sin is the obligation to rescue another person, and this obligation is cancelled in the case where the other person is a sinner. But as for himself, there is the factor of expedience – it is certainly worthwhile to him to commit the minor sin and not transgress the major prohibition, and with regard to this there is no difference between a sinner and one who did what he did due to circumstances beyond his control. Regarding another person the expedience factor is not relevant, because it is never worthwhile for a person to commit a minor sin in order to save his fellow from a major sin – only the obligation of helping the other can obligate this, and this does not apply in the case of a sinner, according to the second answer of the *Tosafot*.

### The ramban's answer

 The Ramban brings the objection from *Pesachim* immediately after citing the second answer of the *Tosafot*, before he mentions the idea of "*mitzva* involving the community" or "great *mitzva*." He answers as follows (the Ramban's wording seems to imply that he found this answer in the *Tosafot* before him):

Priests are different, as the Torah made them the agents of Israel, and he cannot do it by himself.

This answer is clear. The Paschal offering is indeed a *mitzva* of the individual (against the Rosh), but the priests have a special responsibility vis-à-vis the offerings of the people of Israel. As opposed to another person, who would not be obligated to commit even a minor sin in order to help one who lacks atonement, the priests have a special responsibility because this is what God commanded them. They are "the agents of Israel," and therefore here too it is decision of the priest himself, whether to fulfill his obligation not to offer other sacrifices after the *tamid* offering or his obligation to see to it that other people bring their Paschal offerings.

### The Ritva's answer

 The Ritva (on our passage, and in greater detail in *Eiruvin*) proposes another resolution of the contradiction between the various Talmudic passages. The Ritva infers from a precise reading of the wording in our Gemara: "Do we **tell** a person: Sin, in order that your fellow may gain thereby?" The Gemara establishes that a person is not **obligated** to sacrifice himself for his fellow, and that we don't instruct him to do so, but the Gemara in *Eiruvin* speaks of a *chaver*, a Torah scholar who is known to be especially particular in his fulfillment of the *mitzvot*. About him it is stated that it is better that he transgress a minor prohibition so that his fellow not transgress a major prohibition. That is to say, committing a sin in order to save another person is an optional course of action, rather than obligatory or forbidden, and it falls upon each individual to decide the matter. This opinion raises very delicate moral considerations, and is worthy of a separate discussion, but for now we will leave this to each reader.

(Translated by David Strauss)

**Sources for the next *shiur*** which will deal with the issue**:**

קלוטה כמי שהונחה דמי:

An object intercepted by [air] is as though it rested there. (4a-4b)

1. גמרא ד. "פשט עני" עד ד: "הא עקירה בעי."
2. תס' ד"ה אבל וד"ה דאמרינן; תוס' ישנים בגליון, ד"ה ודילמא.
3. חי' הרשב"א ד:, ד"ה אבל
4. תוס' הרא"ש ד"ה מאי.