YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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In memory of Alice Stone, Ada Bat Avram, A"H, beloved mother, grandmother and great grandmother whose Yarzheit is 2 Tammuz.

Dedicated by, Ellen & Stanley Stone,

Jake & Chaya, Micah, Adeline, Zack & Yael, Allie,

Isaac, Ezra & Talia, Yoni & Cayley, Marc & Eliana, Adina, Gabi & Talia.

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**Shiur #15: Defining the Prohibition of a *Shevu’a Le-Haba***

**(Part 2)**

In a [previous *shiur*](http://etzion.org.il/en/defining-prohibition-shevu%E2%80%99-le-haba-part-1), we discussed the essence of a *shevu’a le-haba*, an oath about the future. Is this type of *shevu’a* structurally similar to a past *shevu’a*, a *shevu’a* *le-she'avar*, in which the *issur* consists of taking a false oath? Or does a future *shevu’a* remap certain neutral actions as being forbidden or obligatory, such that failure to fulfill the *shevu’a* is an active violation? Evidently, this question was debated among the *Tanna’im* and *Amora’im*, as outlined. The debate between R. Akiva and the *Chakhamim* about the *shi’ur* of food that must be consumed, the *machloket* about *hatfasa* suitability, and the dispute between R. Akiva and R. Yishma'el all may be traced to this fundamental question. In this *shiur*, we will explore additional issues which also stem from this question.

The *beraita* (*Shavuot* 22a) asserts that a half *shi’ur* from two distinct objects banned through separate *nedarim* can combine to form the requisite *shi’ur* of *kezayit*. If a person took two *nedarim* to forbid two different loaves of bread and subsequently consumer a half *kezayit* of each, he receives *malkot* for violating a *neder* (*bal yachel*). The *beraita* records a *machloket* between the Tanna Kama and R. Meir as to combining two different *shavu’ot*. If a person took an oath not to eat from two separate loaves of bread and subsequently consumed a half *kezayit* of each, has he violated the rules of *shavu’ot*?

Perhaps this *machloket* is based on different understandings of the violation of *shevu’at* *bitui le-haba*. If the problem of a *shevu’a le-haba* is issuing a false statement, it is highly unlikely that two half-*zayits* from different loaves should combine to form the requisite *shi’ur*. The two different *shavu’ot* can only be considered false if each was independently violated by ingesting a minimum of *kezayit*. However, if a *shavu’a* creates new prohibited actions, these two *shavu’ot* have created parallel and identical forbidden acts. Just as two particles of *neveila* may be *mitztaref* to combine to form one minimum *shi’ur* of *kezayit*, perhaps half quantities of objects prohibited through *shavu’a* can combine to form one *kezayit*.

A second issue relates to the possibility that one formulated *shavu’a* may create multiple prohibitions. The *mishna* (22b) describes a *shavu’a* not to eat *pat* (bread) of wheat and *pat* of barley and *pat* of spelt. Assuming clear intentions this *shavu’a* creates **independent** prohibitions for each item. Even though a person articulated one oath, **multiple** items become forbidden. Perhaps the differentiation of items creates a multiplicity of *shavu’ot*; it isequivalent to his having articulated a separate *shavu’a* about each item.

However, the Ri Migash implies that only **one** *shavu’a* has been rendered, which prohibits **different** acts of eating. Consuming solely wheat bread would be considered only one act of eating; eating wheat bread and subsequently eating barley bread would be considered multiple acts of eating and would entail a **double violation** of the **original** singular *shavu’a*. This model clearly indicates that a *shevu’a le-haba* does not merely assert a declaration that must be upheld to avoid the incidence of falsehood. If this were true, **one** *shavu’a* could only yield **one** violation, as the status of the declaration would be **one** binary condition – either true of false. This model of **one** oath which can be **repeatedly** violated through different acts of consumption certainly supports the model that a *shavu’a* remaps certain activities as obligatory or prohibited. In theory, multiple (analogous) activities can entail repeated violations of the one original *shavu’a*. In fact the Ri Migash consistently views a *shevu’a le-haba* as creating new prohibited activities, consistent with his understanding of this model of multiple violations of one *shavu’a*.

A different issue stemming from this question surrounds the relationship between eating and drinking. The *gemara* (22b) describes that if someone takes an oath not to eat, and he then drinks, the oath has been violated. What is interesting is the rationale behind this *halakha*. One version of the *gemara* attributes the *halakha* to the commonplace association of drinking as part of eating; most people do not differentiate between the two. However, a second version of the *gemara* develops a halakhic principle that considers the act of drinking as similar to the act of eating, *shetiya bichlal* *akhila*.

Although each logical basis yields the same *halakha* – that drinking violates a *shavu’a* not to eat – these differing ideas may influence the question of the *shi’ur* the requisite volume of liquid necessary to violate the oath not to eat*.* Should violation of this *shavu’a* be measured after a *shi’ur* of *revi'it* has been drunk or only after a *kezayit* has been ingested? Is drinking per se forbidden, in which case a *revi'it shi’ur* seems to be the likely yardstick? If drinking is only considered a violation of the *shavu’a* because it is halakhically equivalent to eating, perhaps the *shi’ur* should be a *kezayit*. The Rambam (*Shavuot* 4:3-4) rules that the *shi’ur* is measured by *revi'it*, although the *gemara* in unclear.

If a *shevu’a le-haba* is merely a question of false and true declaration, drinking would violate a *shavu’a*, simply because most people equate the two. By adopting an oath not to eat and subsequently drinking, a person has rendered his declaration false by all standards of human communication. If, however, an oath not to eat creates new and personal prohibitions of **eating**, drinking would only entail a violation if it is halakhically analogous to eating. If it were halakhically different – even if commonly associated – the autonomous act of drinking would not be proscribed by an oath taken not to eat.

An interesting issue surrounding the definition of the *issur* is raised by Rabbenu Chanael (*Pesachim* 63) regarding the timing of *hatra'a*. If a person violates a *shveu’a le-haba* intentionally by disregarding the warning, he is liable to *malkot*. Should the warning be issued at the point of the oath or at the point of consuming food, when the person breaks the oath? Rabbenu Chanael tags the *hatra'a* to the time of the oath. Clearly, if the prohibition consists of a false declaration, this timing is appropriate. If, however, a *shavu’a* creates personally forbidden activities, perhaps the warning should be issued at the point of violation, when these personally forbidden activities are transgressed.

A final question surrounds a situation in which someone takes an oath to reinforce a prohibition, such as eating *neveila*. The *gemara* (23b) challenges that this oath should not apply, since Jews already swore at Har Sinai not to eat *neveila* (or any other prohibited foods), and a subsequent oath cannot be taken merely to restate a previous one. Most believe that **in addition** to this concern, the *gemara* implies a secondary concern of *ein* *issur chal al* *issur*. Independent of the concern of redundant *shavu’ot*, objects which are already forbidden cannot become prohibited a “second” time. For example, a divorced woman who subsequently loses a husband does not **also** become a widow; if a *Kohen Gadol* were to marry her, he would only be punished for marrying a divorcee, but not for marrying a widow (*Kiddushin* 77a). Since *neveila* is already Biblically forbidden (even in the absence of a prior *shavu’a*), it cannot become prohibited through the device of *shavu’a* that seeks to impose an *issur*.

Not all agree that attempting to prohibit *neveila* through *shavu’a* violates the *ein issur chal al issur* redundancy clause. For example, the *Noda BeYehuda* (*Orach Chayim*, *Kama* 36, in footnote) suggests that a *shavu’a* for *neveila* is thwarted by the inapplicability of redundant *shavu’ot*, but not by the problem of dual *issurim* and *ein issur chal al issur*. He does not fully articulate the logic; Typically, an object or action that is already forbidden cannot be prohibited a second time. Indeed, if *shavu’a le-haba* redefines an action as prohibited, it could not **add** a prohibition to an already illegal activity. However, *shavu’a le-haba* may **not** redefine activities; it may merely be a declaration that must be implemented to avoid falsification. In theory, it could apply to already prohibited activities – were it not for the other rules disallowing the double imposition of a *shavu’a*, *ein shavu’a chal al shavu’a*.

It must be stated that the position of the *Noda BeYehuda* – as logically appealing as it seems – is challenged by the ensuing *gemara*. Having questioned a *shavu’a* forbidding *neveila*, the *gemara* nonetheless justifies this *shavu’a* based on the aspect of *kollel* – a secondary *issur* can apply to an already forbidden item if the newer one is more broad than the original prohibition. By asserting this exception, it appears that the original issue was not merely redundancy of *shevu’a* (*ein shavu’a chal al shavu’a*), but also redundancy of *issurim*, which is resolved through the phenomenon of *kollel*. The subsequent discussion about *kollel* as a solution does imply that the original conflict surrounded *ein issur chal al issur*. This seems to suggest that a *shavu’a* **does** redefine activities as forbidden, thereby causing a problem in trying to overlap two **prohibitions** about one action.