**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

**Shiur #01: The Principle of *Rubo Ke-Kulo***

Very often, a halakhic phenomenon requires a quantified “activity” or “condition.” Halakhic actions are only legitimate if a requisite quantity has been acted upon. For example, proper *shechita* demands that the trachea and esophagus be severed. However, Halakha allows a situation in which MOST of each organ has been severed. The principle that most of an item is equivalent to the entire item is known as the principle of “*rubo ke-kulo*,” - the majority is equivalent to the entire object.

At first glance, it seems that there is an explicit source for this principle in the *gemara* in *Nazir* (42a). The *gemara* interprets a *pasuk* in *Parashat Naso* to indicate that, upon completing his term, a *nazir* must shave his entire head and not merely MOST of his hair. This implies that under ordinary circumstances – when there is no *pasuk* demanding the **entire** item – most of an item is equivalent to the entire item, or *rubo ke-kulo*.

However, Rav Chaim suggested a completely different source for the *rubo ke-kulo* principle. In *Parashat Mishpatim*, the Torah states that a majority of the Sanhedrin is sufficient to adjudicate. Even though the Sanhedrin has not ruled unanimously, a majority of *dayanim* suffices, based on the *pasuk* "*acharei rabbim le-hatot.*" Rav Chaim argues that the general concept of *rubo ke-kulo* is derived from this *pasuk*.

The nature of *rubo ke-kulo* may depend upon the source of this principle. The implication of the *gemara* in *Nazir* is that *rubo ke-kulo* is a general rule. By demanding a full shaving, the Torah implies that, in general, the majority of an item will suffice. The Sanhedrin source, in contrast, suggests something entirely different. A majority isn’t merely sufficient; it actually **converts** the status of the minority! Tosafot in *Bava Kama* (27b) state that the minority opinion of a Sanhedrin is converted into the majority opinion, yielding a unanimous view of all of the *dayanim*. In fact, if this “conversion” didn’t happen, the death penalty could rarely be administered. Capital punishment can only be imposed by a *beit* *din* of “23. If we don’t adopt a “conversion theory,” any verdict that isn’t unanimous would not yield a Sanhedrin of “23” ruling toward death. Evidently, then, the majority opinion converts the opinion of the acquitting judges, rendering a situation in which all 23 *dayanim* effectively assert a conviction. If – as Rav Chaim suggested – this serves as the paradigm of general *rubo ke-kulo*, we would assume a similar dynamic for all applications of *rubo ke-kulo* principle. For example, severing MOST of the trachea of an animal would render the ENTIRE trachea as being severed.

This question yields several interesting consequences. Chief among them is the question of whether there is added value in achieving “*kol*,” the complete act or item, or if the *rov* is sufficient even at a *le-khatchila* level. Is there any added value in *shechting* the ENTIRE trachea or esophagus, or is severing MOST of the organ sufficient even *le-khatchila*? Regarding the case of *shechita*, there seem to be two positions recorded by the *gemara* in *Chullin* (27a) as to whether the *le-khatchila* requirement mandates the severing of the entire trachea.

A related issue surrounds the question of whether flaws that normally invalidate *shechita,* similarly disqualify if they occur while cutting the final part of the trachea. There are several flaws which disqualify *shechita*, such as pausing during the process or pressing rather than cutting. What would happen if the *shechita* upon the majority of the trachea was performed correctly, but the flaw occurs during the final stages? This issue is debated by Rashi, who invalidates *shechita* if the flaws occur after most of the trachea is cut, and his grandson Rabbeinu Tam, who ignores these flaws (*Chullin* 30b). Presumably, this debate revolves around the issue of whether *rubo ke-kulo* implies a conversion of the minority. If *rubo ke-kulo* asserts that the majority of an item is simply sufficient, the final stages of *shechita* after the majority has been severed are irrelevant; flaws in the process should not invalidate the *shechita*. However, if *rubo ke-kulo* entails that the minority is converted to the status of the majority, the final stages of *shechita* are still part of that process. Typically severing “only” the majority renders a state in which the entire trachea is considered severed. However, flaws during the final severing can still invalidate the *shechita*.

Rav Chaim himself articulates a limitation to *rubo ke-kulo* that appears to be based on his conceptualization of the principle as implying that an act on most of an item converts the rest of the item. He claims that *rubo ke-kulo* only applies to an integrated ITEM with a clearly defined identity that incorporates a specific volume or mass. For example, a *mikveh* is only halakhically acceptable if it contains 40 *se'ah* of water. That water is contained in the physical pool of the *mikveh* and exists as a bounded, integrated halakhic entity. Accordingly, as long as most of the water in the *mikveh* is natural (untouched by human intervention), a minority of the water may be “drawn” (*she’uvin*). Similarly, an esophagus has a clearly defined shape and identity, and the severance of most of the item is therefore sufficient. However, *rubo* *ke-kulo* does not apply to food quantities. An ENTIRE *ke-zayit* must be ingested, not merely MOST of a *ke-zayit*. This is because there is no distinct identity to an accumulation of food. Since it is not bounded by a container or by a natural definition (as in the case of an animal's esophagus), the principle of *rubo ke-kulo* does not apply.

It appears that this limitation to *rubo ke-kulo* reflects the fact that the status of the majority converts the status of the minority. If *rubo ke-kulo* asserted that the majority is sufficient to fulfill an obligation, Rav Chaim's demand for a bounded, distinct item would not be logical. Why shouldn’t we assume that when the Torah demands a *ke-zayit* of food, a majority of that volume is sufficient? If, however, *rubo ke-kulo* converts the minority into the status of the majority, we would require a bounded item in which the majority and minority are each integrated as one distinct item. Because of this structured dynamic between the two, the status of the majority can affect the halakhic status of the minority. If there is no inherent relationship between the substances, however, there is no mechanism for converting one item into the legal status of the other item.

Intriguingly, Rav Chaim developed both a limitation to the principle as well as an independent source, each of which implies that *rubo ke-kulo* entails converting the minority into the majority status.

If Rav Chaim is correct, it may be difficult to create a halakhic distinction between a situation of *rov* and one of *kol*, in which the entire item is ACTUALLY involved. After all, the principle of *rubo ke-kulo* imposes the status of the majority upon the minority, thereby yielding a situation in which the entire item possesses one status. An interesting *gemara* in *Yevamot* (78), however, **does** assert such a difference. The *gemara* describes a foreign material that covers most of a person’s body and that can potentially serve as a barrier to proper immersion in a *mikveh* (*chatzitza*). If most of the body is covered but the person doesn’t care, the covering is not considered a *chatzitza*. If, however, the entire body is covered, it is considered a *chatzitza* even if the person does not care about its presence. This discrepancy between the entire body being covered and the majority of the body being covered suggests that a situation of *rov* does not, in fact, impose a status upon the minority, and there is therefore a halakhic difference between *rov* and *kol*. Indeed, this *gemara* led R. Elchanan Wasserman to disagree with Rav Chaim’s approach and argue that *rubo ke-kulo* simply allows a majority to suffice.