YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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Please daven for a refua sheleima for YHE alumnus
Rav Daniel ben Miriam Chaya Rut

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**Shiur #07: The Exemption of *Helakh***

Although many litigations yield an obligation of *shevua* (the taking of an oath), only three situations warrant a *shevua* on a *de-oraita* level. One of these scenarios is the well-documented case of *modeh* *be-miktzat*, in which a sum of money is claimed by the *tovei'a* and the *nitva* (defendant) admits to partial debt. Had the *nitva* completely rejected the claim, he would have triumphed based on the principle of “*ha-motzi mei-chaveiro alav ha-ra'aya*,” which awards default victory to the *muchzak* (possessor) of contested monies. However, since the *nitva* admitted to owing part of the claim, he must swear that he does not owe the rest of the disputed money.

 This form of *shevua* is not required in an interesting situation known as *helakh*. In a case of *modeh be-miktzat*, in which a defendant admits to owing part of a claim but not all of it, the defendant is required to take a *shevua* that he does not owe the denied part of the claim. However, if he immediately renders payment of the confessed to monies before *beit din*, he is no longer obligated to take a *shevua*. This exception is called "*helakh*." What is the reasoning behind this exemption?

Perhaps the best way to analyze the **basis**of this exemption is to study its **scope**.How broadly can the *helakh* exemption be applied? The *gemara*'s test case involves actual and immediate payment of a confessed debt in *beit din*. This rapid payment essentially **deconstructs** the typical *modeh be-miktzat* model. By rendering immediate payment, the defendant effectively splits the two monies into two separate litigations; Halakha then considers the confessed and paid money to be a different litigation from the denied money. Since the defendant has COMPLETELY CONFESSED to one litigation and ENTIRELY DENIED the second, he is no longer considered a *modeh* *be-miktzat*, and he therefore is not obligated to deliver a *shevua* regarding the denied money.

Alternatively, the *modeh be-miktzat* structure may be dismantled because the confessed to and paid money is considered to be "in the possession" of the claimant even before the litigation began. Since he received immediate payment, his demand of that money was rendered meaningless. Only ONE litigation has really been launched – regarding the disputed money - about which the defendant renders a complete denial.

According to either logic, the immediate *helakh* payment of the defendant transforms the *modeh be-miktzat* situation into a case of *kofer ba-kol* (comprehensive denial), which does not entail any *shevua*.

The Ba'al Ha-Ma'or raises an option (already discussed by the *Geonim* and supported by many other *Rishonim*) that greatly expands the scope of the *helakh* exemption. (His position can be found both in his comments to the Rif as well as in a famous exchange of letters between him and the Ra'avad known as *Divrei* *Rivot*, "Words of Dispute.") The Ba'al Ha-Ma'or claims that ANY *pikadon* (deposited item) is automatically considered *helakh* since a *pikadon* is legally in the full possession of the owner who deposited the item. Unlike the payment of loans, which entails legal transfer of monies, the reparation of a *pikadon* involves no legal exchange. Thus, if a *shomer* (watchman) admits to watching one *pikadon* claimed by the *tovei’a* but not another, even though the confessed to *pikadon* was not delivered immediately in *beit din*, the absence of any **legal transfer** renders the case *helakh* and the *shomer* does not take a *shevua*, on the denied *pikadon.*

The Ba'al Ha-Ma'or explains this expansion by analyzing the dynamics of payment, not the impact of *helakh*. Since the *pikadon* is legally owned by the *tovei'a* and the defendant has offered and confessed, Halakha views the confessed-to *pikadon* as already delivered into the possession of the plaintiff, thereby mimicking classic *helakh*.

This relates a general question in *Shas*: Can future events which are pending be considered as having already occurred? R. Shimon extends this "*kol ha-omed*' principle to many areas, whereas most of the *Chakhamim* severely limit this concept. However, regarding collection of debts, the future pending collection may be more easily envisioned as having already occurred (see Beit Shammai, *Sota* 25a). Even if, in general, future collection of debts is not envisioned as having occurred, perhaps collection of a *pikadon* (which is already legally owned) may be. According to this logic, *helakh* has not been expanded and its logic does not have to be re-examined. The *pikadon* is considered to have been returned even before it actually has been, and it is therefore treated in the same way as an immediately reimbursed debt.

However, many *Rishonim* agree with the Ba'al Ha-Ma'or but do not offer the same rationale. Perhaps extending *helakh* to include any *pikadon* essentially alters the logic of the *helakh* exemption. Even if money is not actually and immediately paid in *beit din*, *helakh* eliminates the *shevua* obligation. Typically and in non-*helakh* situations partial confession to a claim launches a legal process of recovering the confessed-to monies. While collecting the money, *beit din* can impose a *shevua* on the denied part of the litigation. If the defendant readily cooperates – either by actually paying money of by freely offering monies which are already in the legal possession of the defendant (such as *pikadon*) – the *modeh be-miktzat shevua* is not generated. Since *beit din* is not forced to process the collection of the confessed-to money, they cannot impose a *shevua* upon the denied part of the litigation.

Of course, this is based on certain assumptions about how a *shevua* *modeh* *be-miktzat* is typically generated. This presumes that something about *beit din* collecting the confessed-to money generates a *shevua* obligation for the denied parts of the litigation. According to this view *helakh* does not deconstruct the structure of *modeh be-miktzat*. *Beit din* still faces a situation of ONE integrated claim, part of which was confessed to and part of which was rejected. However, since the payment is so swift and unopposed, *beit* *din* is not involved in appropriating the payment and cannot impose a *shevua* on the second denied-part of the claim.

Several additional applications of *helakh* imply this second approach. For example, the Rif claims that if the defendant not only confessed to part of the claim, but also delivered a *mashkon* (collateral) to assure collection of the confessed-to part of the claim, he is exempt from a *shevua* on the denied part. It is unclear how a *mashkon* creates *helakh*. Many who reject the Rif’s notion evidently understood that according to the Rif, the *mashkon* serves as actual and immediate payment, thereby mimicking the classic case of *helakh*. In rejecting this claim, the Ri Migash cites a *gemara* in *Kiddushin*, which argues that the recipient of a collateral does not achieve any real “rights” or *kinyanim* over that *mashkon*. Hence, the delivery of a *mashkon* cannot mimic classic *helakh*.

By contrast, when the Re'ah (cited by the Rivash 396) rejects the Rif, he does not focus on the level of *kinyan* achieved by the recipient of a *mashkon*. Instead, he questions how much a *mashkon* actually facilitates ultimate payment. He argues that even after receiving a *mashkon*, the *malveh* (lender) must still process the collection through *beit din* and assess the worth (either of the *mashkon*, or the appropriated items for payment, or both), and he sometimes may be forced to sell the *mashkon* (under the supervision of *beit* *din*). Essentially, while a *mashkon* **eases** the collection process, it does not **eliminate** it. Evidently, the Re’ah understood that the Rif grants *helakh* status to *mashkon* primarily because it **expedites** payment. Although the Re’ah disagrees with this assessment, he does agree that if the defendant delivers the *mashkon* and allows the *malveh* to **independently** sell the *mashkon* and collect the money, the *helakh* effect has been achieved. Evidently, then, the Re'ah agrees that expedited payment can create *helakh*; he simply believes that standard *mashkon* does not sufficiently enable payment to be classified as *helakh*. If the *mashkon* is delivered in a manner which completely expedites payment, *helakh* levels of cooperation have been achieved and no *shevua* can be imposed.

A second indication that *helakh* may extend to cases of “expedited payment” comes from an interesting statement of the Rambam. He coins a new phrase that many claim is his extended definition of *helakh*. In *Hilkhot* *To'en* *Ve-Nitan* (4:4), the Rambam discusses a litigation in which the confessed-to money is written in a *shetar* (see *Bava Metzia* 4b). Since the confessed-to money cannot be disputed, this is considered a *hoda'ah* about money that cannot be denied and no *shevua* applies. Many (Rashba and Nimukei Yossef in *Bava Metzia* and the Rosh in *Ketuvot*, *perek* 2) assume that the Rambam is referring to *helakh*. Even though no actual money has been transferred; since the confessed-to money will inevitably be collected, the situation is deemed as *helakh* and no *shevua* obligation develops.

This is a very liberal application of *helakh*. No actual payment has been rendered and the process has not even "begun," as it has begun in the case of *pikadon* (which is legally owned by the *tovei'a*) or *mashkon* (which can leverage the ultimate payment). Nevertheless, the very presence of a *shetar* **assures** that payment will be made and precludes *beit din* from "intensive" processing of the confessed-to debt, and this blocks the imposition of a *shevua*!