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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This week’s shiurim are dedicated in memory of Israel Koschitzky zt"l, whose yahrzeit falls on the 19th of Kislev. May the worldwide dissemination of Torah through the VBM be a fitting tribute to a man whose lifetime achievements exemplified the love of Eretz Yisrael and Torat Yisrael.

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**Shiur #08: *Meita machmat melakha*:
Exempting the *shoel* from work related accidents**

A *sho'el*, someone who borrows an item for use, usually bears full liability for damages incurred to the item, regardless of his degree of negligence. In fact, even if the item incurred a completely accidental and unavoidable loss, the *sho'el* must compensate the original owner. The only scenario in which the *sho'el* is excused from payment is one in which the item is damaged as a result of the utility for which it was designated, *meita machmat melakha*. There is a debate among the *Rishonim* regarding how to reconcile this exemption with the overarching nature of a *sho'el*'s liability.

The Ramban asserts that the *sho'el* is exempted from payment because the owner of the item was HIMSELF negligent in lending a faulty item which was prone to malfunction. Of course, by suggesting this logic, the Ramban implicitly limits the exemption to situations in which the owner was aware of and could have predicted the flaw. However, even if we embrace the Ramban's assumption, the underlying logic of the exemption is still unclear. In general, Halakhadictates that the gross negligence of the victim can cancelthe negligence of the culprit and thus exonerate him from payment. For example, if someone leaves his fruit in a public domain (*reshut ha-rabim*), the owner of an animal that consumes the food is exempt from payment. The negligence of the victim in exposing his produce to damage offsets the negligence of the culprit. However, the reason that a *sho'el* is usually obligated to pay for damage does not have to do with his negligence; since he is also obligated to cover accidental damages, it is clear that his liability has little to do with negligence. Why, the, should he be exempted from payment if the owner was negligent in delivering a faulty item?

It may have been in an attempt to address this concern that the Ritva introduces a secondary element. The negligence of the owner in lending a faulty item is tantamount to his forfeiting payment rights. In certain situations, grossly irresponsible behavior with one’s possessions is equivalent to forfeiture. The negligence of the owner does not offset the negligence of the *sho'el*. Rather, the owner’s negligence cancels any right to payment.

Intriguingly, the Ritva adds an additional corollary, which might exempt the *sho'el* from payment based on a different consequence. The *sho'el* contractually accepted liabilities. Thus, his payment obligations do not stem from his negligence, but rather from his voluntary obligation. Presumably, the *sho'el* did not accept liability for derelict behavior on the part of the owner.

Whether we adopt the Ritva's initial comments or final comments, the result is similar: the negligence of the owner in lending a defective item either constitutes monetary forfeiture or simply entails a situation in which the *sho'el* never embraced liability, and that cancels the liability of the *sho’el*.

As noted above, the Ramban's position would invite an interesting exception to the rule of *meita machmat melakha*. In situations which could not have been predicted, no negligence of the owner is apparent and the exemption should not apply. However, the *gemara* appears to broadly apply *meita* *machmat melakha* as a *petur* in all situations, thereby contradicting this theory. Beyond this logical flaw, the Ramban's *shita* is strained in light of the *gemara*'s syntax. The *gemara* asserts that the *sho'el* is exempt from payment because he can counter to the owner (who seeks reparation), "I didn’t borrow the item to store in a warehouse or barn." Since he borrowed the item for use, he should not need to compensate for damages incurred during use. According to the Ramban, the exemption is based to some degree upon the negligence of the owner, and THAT factor should have appeared in the *sho'els* counterargument defending his innocence

Based on these concerns, the Machaneh Ephraim articulates a novel and slightly different understanding of the exemption. Since the borrowing agreement was based on exchanging utility for liability, defects render the agreement invalid, a *mekach ta’ut*. Any time one party to a sale does not receive the expected and assumed item, the entire sale is cancelled and item and monies are returned. Since the *sho'el* did not receive his expected utility potential, the rules of *mekach ta’ut* invalidate the agreement. Unlike the Ramban, who claims that the defect cancels payments, the Machaneh Ephraim assumes that the flawed item invalidates the ENTIRE *sho'el* agreement. Retroactively, the recipient is not considered a *sho'el* and subsequently none of the *sho'el* laws – including payment liability – apply.

This approach is appealing because is casts *meita machmat melakha* not merely as a payment exonerator, but a cancellation of the entire *sho'el* agreement. This would explain why the Torah does not mention the exemption and why the *mishnayot* in *Bava Metzia* (93a) and *Shavuot* (56a) that list the laws of *sho'el* do not explicitly mention *meita machmat* *melakha*. If the Ramban were correct and *mieta machmat melakha* were a payment exemption, we would expect it to be included in the Torah's roster of payments and liabilities. If, however, *meita machmat melakha* cancels the entire agreement, its exclusion from the Torah and *mishna* is understandable. The *mishna* and the Torah delineate payments and exemption for the various *shomerim*; they do not list situations in which the entire agreement is invalid!

Furthermore, this logic better addresses the *gemara*'s rationalization of the *meita machmat melakha* exemption: the borrower can legitimately claim that "I didn’t borrow the animal to idle away in the barn." Since the animal was discovered to be incapable of working, the entire agreement is faulty and is therefore invalid.

The Machaneh Ephraim assumes that the *sho'el* interaction can be modeled after classic sales and is subject to the rules of *mekach ta'ut*. This is not entirely clear and could potentially represent a flaw in the Machaneh Ephraim's approach.

The common denominator between the Ramban's theory and the approach of the Machaneh Ephraim is that a malfunction of the item represents a breakdown in the agreement. The original agreement revolved around functional utility; the malfunction cancels part of the original agreement.

Several *Rishonim* allude to an entirely different approach. Perhaps the language of the Nimukei Yosef expresses it best: The owner [by lending the item for labor] delivers the ENTIRE item, even to the point of exhaustion and consumption. Since utility was loaned to the borrower, he has the ability to drain or deplete the item without compensating the owner. The death does not represent a malfunction that alters the terms of the original agreement. Rather, the *sho'el* can employ the item and entirely sap it – up to and including ruining it. The Rashba also alludes to this idea when he writes "what difference does it make if the borrower depletes the item partially or entirely (by ruining it)?” The assumption is that UTILITY was delivered to the borrower and he enjoys even consumptive utility. (For an extensive amplification of the idea see the *Even Ha-Azel She'eilah U-Pikadon*.

Essentially there are two distinctively different methodologies toward understanding the exemption of *meita machmat melakha*. At some level the original arrangement may be hampered. Perhaps the negligence of the owner in not informing the borrower exonerates the payment. Relatedly, the malfunction cancels the arrangement in the manner of *mekach ta’ut*. Either way, the death and malfunction cancel or significantly alter the original terms of this loan.

A completely different view suggests that the malfunction doesn’t re-arrange the original deal. A loan includes the ability to completely exhaust or deplete the borrowed item – even to the point of its death or ruination. Since this was INCLUDED in the original deal the borrower is exempt from payment.

The most obvious *nafka mina* would be a malfunction which isn’t directly related to the tasks for which the item was borrowed but could easily have been anticipated. The first version of *meita machmat melakha* would include even these scenarios. By not informing the recipient the owner was still negligent and the original deal has to be adjusted. Alternatively, since the malfunction was not a direct extension of the utility the liability may not be exempted.

This may very well be a situation which the gemara itself considers. The gemara in *Bava Metzia* (98a) discusses a situation in which someone borrowed a cat to hunt down mice. The stalked mice ‘teamed up‘ to kill the cat. The gemara records Rav Ashi’s original uncertainty as to whether *meita machmat melakha* should apply. Presumably Rav Ashi was probing the two previous models of this exemption in deciding its potential application to his scenario. Interestingly enough the gemara cites Rav Mordechai who did apply the exemption to this situation. Perhaps he believed that the exemption can apply even to situations which aren’t directly related to the task for which the item was borrowed. Alternatively, Rav Mordechai may have claimed that being overwhelmed by a mob of rats IS an INSTRINC hazard and is treated like any other inherent malfunction. In fact the gemara records a very different version of Rav Ashi’s deliberation – about a different scenario. This second version surrounds a cat who ATE TOO MANY MICE while pursuing them. In this version Rav Ashi questions whether THIS situation is exempted through the *meita machmat* *melakha* rule. Perhaps the scenario of ‘gangs of mice’ overwhelming the cat was considered an obvious *meita* *machmat melakha* and CLEARLY within the exemption.

In any event this gemara serves as the basis for several interesting responses trying to define the types of accidents which are considered *meita machmat melakha*. For example, the Tur I Choshen Mishpat 340 cites a debate between the Rosh and the Rama about an animal who was killed by highwaymen during the intended journey. This death isn’t inherently linked to the task but will occur as a consequence. Clearly the definition of *meita* *machmat melakha* will affect the scope and whether it applies to accidents which aren’t intrinsic to the utility