**YESHIVAT HAR ETZION**

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

**Shiur #10: The Prohibition of *Eiver Min Ha-Chai***

The prohibition of *eiver min ha-chai*, the prohibition to consume an animal limb or animal flesh while the animal is still alive, is typically viewed as autonomous from the *issur* of eating *neveila*, an animal that died through any means other than proper *shechita*. Presumably once the animal dies, the prohibition of *eiver min ha-chai* is discontinued. If a correct *shechita* was performed, the animal becomes halakhically permissible to eat. If the *shechita* was not properly performed, a new prohibition of *neveila* devolves upon the animal.

Proof of the independent nature of the *neveila* prohibition is the added *tuma* (impurity) entailed. A live animal, although prohibited to eat, is not *tamei*, whereas a *neveila* confers several varieties of *tuma*. This seems to indicate that a completely new prohibition has emerged once the animal dies.

However, an interesting statement of Rashi may indicate that the prohibitions of *neveila* and *eiver min ha-chai* are one continuum. A well-known statement of R. Huna, (*Chullin* 9a) claims that any doubts regarding the validity of *shechita* yield a “prohibition” upon the animal meat. This ruling is based upon the principle of *chazaka*, which assumes that halakhic identities remain intact until incontrovertibly proven otherwise. Before the questionable *shechita*, the animal was prohibited; since we are unsure about the status of the *shechita*, we extend the original prohibition based on the laws of *chazaka*. R. Huna does not specify the basis of the original prohibition which determines the *shechita* extension, and several *Rishonim* develop solutions to explain why the animal was “originally” prohibited before *shechita*. Rashi claims that the original *issur* was the *eiver min ha-chai* prohibition, which predated the questionable *shechita*. Since the animal was forbidden to eat because of *eiver min ha-chai*, we assume that the questionable *shechita* was invalid and the animal is deemed a *neveila*.

Presumably, Rashi assumes that the prohibition of *eiver min ha-chai* and *neveila* are not separate or distinct prohibitions. If they were, it is unlikely that *chazaka* could extend the original prohibition (*eiver min ha-chai*) to create a NEW one (*neveila*). Indeed, the Rashba reads Rashi in the latter manner, implying that Rashi endorses a *chazaka* extending a halakhic status despite a discrepancy between the original status and the currently extended one (a principle known as “*machzikin mei-issur le-issur*”). However, many authorities (see, for example, R. Akiva Eiger) assume that a *chazaka* CANNOT fuse an original *issur* with a completely independent and emergent one. Accordingly, it appears that Rashi maintains that *eiver min ha-chai* is the precursor prohibition to *neveila*. The Torah describes two related phenomena; animals that did not undergo *shechita* are prohibited: If the animal is still alive, the *issur* is deemed *eiver* *min* *ha-chai* and does not confer *tuma*. If the animal dies without proper *shechita*, the original prohibition is deemed *neveila* and, in addition to the prohibition to eat, also confers *tuma*.

There are several intriguing applications of this approach. An interesting *machloket* about the scope of *eiver min ha-chai* appears in the *gemara* in *Chullin* (101). Intuitively, we would assume that the prohibition of *eiver min ha-chai* extends to all animals. Indeed, R. Yehuda adopts this expanded scope of the prohibition. Subsequently, the *Chakhamim* limit the prohibition to animals that are permissible to eat if slaughtered properly. Animals that are otherwise forbidden are not included within the prohibition of *eiver min ha-chai*. Although this limitation could have been justified on different counts – for example, the inability of one prohibition (*eiver min ha-chai*) to overlap with a primary *issur* (eating non-kosher animals) – the *Chakhamim* derive this limitation from a *pasuk*. The source of *eiver min ha-chai* (Devarim 12:23) prohibits eating the “soul” (*nefesh*) with the meat; interpreting the term “*nefesh*” as the life-force of an animal, the *gemara* derives the prohibition of *eiver min ha-chai*. Since the *pasuk* is referring to animals that can be eaten, the *Chakhamim* limit *eiver min ha-chai* to animals that can be eaten if *shechted* properly.

Perhaps this limitation of the *issur* of *eiver min* *ha-chai* implies that *eiver min ha-chai* is based on a lack of successful *shechita*. Only animals upon which *shechita* can be effective are prohibited pre-*shechita* as *eiver min ha-chai*. Those which are unaffected by *shechita* – that is, non-kosher animals – are thus immune to *eiver min ha-chai*.

Further linkage between “*shechita*-dependence” and the prohibition of *eiver min ha-chai* can be found in a statement of the Tosefta (*Terumos*, *perek* 9), which excludes grasshoppers and fish from the *eiver min ha-chai* prohibition. The Tosefta does not explain the rationale for this exemption, but the Rambam (*Hilkhot Shechita* 1:3) develops a theory that only animals that require *shechita* are prohibited while still alive due to *eiver min ha-chai*. Since grasshoppers and fish do not require *shechita*, they are not subject to the prohibition of *eiver min ha-chai*.While others have suggested alternate logic for the exclusion of fish and grasshoppers from the *eiver min ha-chai* prohibition, the Ramban’s theory is reminiscent of Rashi’s comment and suggests that the prohibition stems from a need for *shechita*.

Similar logic emerges from the exemption of human flesh from the prohibition of *eiver min ha-chai*. Most *Rishonim* assert that cannibalizing a live person would not violate the *eiver min ha-chai* prohibition and suggest different rationales for the prohibition. In his commentary to *Ketuvot* (60a), the Ran cites a statement of the Ramban, who justifies the lack of the *eiver min ha-chai* prohibition upon human flesh because *shechita* is irrelevant. Since human flesh cannot be affected by *shechita*, it is not labeled as *eiver min ha-chai*. Once again, it appears that *eiver* *min ha-chai* is not simply a prohibition of eating flesh from a living organism. Rather, it is defined as circumventing *shechita* and eating flesh. In situations in which *shechita* is inapplicable, *eiver min ha-chai* does not apply.

The intriguing situation of *ben peku'a* provides an additional example of a live animal which is not prohibited as *eiver min ha-chai*. The *gemara* (*Chullin* 74a) allows (under certain circumstances) a live fetus of a slaughtered animal to be eaten without performing a separate *shechita*. According to some opinions, even a full term animal discovered in the womb of a *shechted* animal may be eaten without an additional *shechita*. Logically, it is unclear why this live baby does not require separate *shechita*. Is the *shechita* performed upon the mother considered as having been executed upon the baby as well? Or has the Torah established a new category, establishing that *shechita* is not required until a living organism has been born? Either way, this is a practical example of an animal that may be consumed without *shechita*. According to the majority of opinions – at least on a Biblical level – this baby may be eaten alive! Presumably, this allowance also confirms that the prohibition of *eiver min ha-chai* only applies to animals that require *shechita* because the *issur* is defined as *shechita* circumvention. Animals that do not require *shechita* do not pose an *eiver min ha-chai* prohibition.

Perhaps the most compelling indicator of a linkage between *eiver min ha-chai* and the *shechita* requirement is not the absence of the prohibition when *shechita* is unnecessary, but the absence of the *issur* if *shechita* has been executed. This scenario sounds unlikely; if *shechita* has been executed, presumably the animal is dead and *eiver min ha-chai* is no longer relevant. The *gemara*, (*Chullin* 121b) however, conjures up an interesting case in which *shechita* has been rendered but the animal is still alive. This situation is known as “*mefarcheset*” and relates to an animal who still responds with signs of life even after successful *shechita*. The *gemara* in *Chullin* claims that the animal may be eaten, since successful *shechita* has been completed. Even though the animal is still halakhically alive, *eiver min ha-chai* does not apply! One might argue that this exemption of *eiver min ha-chai* in fact indicates that the halakha defines such an animal as legally dead. However, a similar *mefarcheset* animal that was killed through IMPROPER *shechita* is still considered alive and prohibited as *eiver min ha-chai.* Evidently, then, the parameters of *eiver min ha-chai* are not dictated by whether the animal is considered legally dead or alive but rather by whether a proper *shechita* was rendered. If proper *shechita* was performed, the prohibition of *eiver min ha-chai* is eliminated even for live animals. This strongly indicates that *eiver min ha-chai* is based on *shechita* circumvention and not merely eating live animals.

Determining a linkage between *eiver min ha-chai* and the *shechita* potential would affect the applicability of *eiver min ha-chai* to a gentile. A gentile is prohibited from eating *eiver min ha-chai* despite the absence of a *shechita* requirement on his part. If *eiver min ha-chai* for a Jew is defined as *shechita* circumvention, this "category" cannot apply to a gentile. Consequently, a gentile’s prohibition of *eiver min ha-chai* must represent an entirely distinct category and autonomous prohibition of *eiver min ha-chai* from that of a Jew, and some of the guidelines that govern *eiver min ha-chai* for a Jew may not govern the prohibition for a gentile.

Finally, the possible linkage between the prohibition of *eiver min ha-chai* and the absence of *shechita* may also influence an abstract but important debate about the chronology of this *issur*. The *gemara* in *Chullin* (102a) cites a dispute as to whether the prohibition emerges before a body limb is severed from the animal. This question has very limited practical application. One consequence would pertain to a person who consumed an entire live bird whose size is smaller than the typical *ke-zayit* requisite. If the prohibition of *eiver min ha-chai* applies to the bird even BEFORE any limb has been severed, the *issur* would apply even to a small "less than *ke-zayit*" bird. If the *issur* of *eiver min ha-chai* only applies to an actual severed limb of a live animal, no prohibition would apply in such a case. Most *issurim* are only considered violated once a *ke-zayit* sized item has been ingested, but *eiver min ha-chai* may be unique in that eating even less than a *ke-zayit* of flesh constitutes an *issur*.

If *eiver min ha-chai* represents a circumvention of the *shechita* process, it may only emerge in the wake of an action that can be cast as *shechita* circumvention. Tearing a limb from an animal (which ultimately advances its death) can be framed as executing a substitute for *shechita* and thereby circumventing it. This would be a clear violation of *eiver min ha-chai*. Perhaps eating AN ENTIRE animal may constitute "avoiding" *shechita*, but not circumventing or advancing an alternative process. This may explain why the prohibition might not evolve unless a limb is actually severed.