YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

Masekhet Shevi'it

**Shiur #16: Sichat Shemen**

**By Rav Moshe Taragin**

Having described the allowable uses of shemitta produce and questioned the nature of their resident kedusha, we will now investigate the halakha of sicha (literally, smearing oil and ointments). Interestingly enough, these halakhot contain facets which comment upon the ideas expressed in previous shiurim.

The second mishna in the eighth perek of shvi'it explicitly allows smearing substances which are normally smeared (i.e. oil, as opposed to wine or vinegar). The Yerushalmi (in the end of perek 8 halakha 2) discusses one scenario in which this is forbidden – in a bathhouse. The simple understanding of the Yerushalmi is that this use is forbidden because it desecrates the shemitta substance. This would mark an important manifestation of kedushat shvi'it. We have previously mentioned the presence of kedusha and explored its nature. Does it obligate anything more than just eating in a natural manner and not profiting from it? In which way can it be compared to classic hekdesh? This Yerushalmi (which is cited by the Rambam) suggests that beyond requiring meaningful use, the kedusha of shemitta produce prohibits its defilement by employing it in an embarrassing environment. The Arukh Ha-shulchan (shemitta ve-yovel siman 24 se'if 14) rejects this explanation and offers a different basis for the prohibition of applying shemitta ointments in a bathhouse.

In fact, according to the Vilna Gaon, an interesting parallel exists to this prohibition of smearing oil in a bathhouse. The mishna in shvi'it (8:3) prohibits selling shemitta fruit by weight or any other measurement. The Yerushalmi explains that prohibiting measurement will encourage these fruits to be sold cheaply. The Rambam (Shemitta 6:3) suggests a slightly different reason: in order to avoid acting as a socher, or merchant (One may not profit from shemitta; according to the Rambam, neither may one conduct himself as a businessman with this fruit.) The Gaon, however (in Shenot Eliyahu), claimed that weighing or measuring shemitta fruit is considered insulting (bizayon) and forbidden for the same reason as is using shemitta ointments in a bathhouse.

An additional parallel appears in a tosefta in Shivi'it perek 6, which disallows rubbing shemitta ointments with tamei hands. The most logical explanation for this halakha would be that one may not directly impose tuma upon shemitta fruit, just as it is prohibited to confer tuma upon hekdesh. (See Rashi in Sukka 35b, where he writes that one may not directly bring tuma upon ma'aser sheni fruit since it possesses a status of hekdesh.) The halakha prohibiting impurifying shvi'it, suggests that shemitta possesses a status of kedusha similar to hekdesh and not just one which mandates conventional use, prevents profit taking.

The Yerushalmi continues to disallow applying these ointments to shoes or other materials (even though they may be applied to human skin). However, a person may rub these ointments onto his skin and then insert his foot into a shoe – even though inevitably some of the oil will transfer onto, and be absorbed by, the shoe. The Yerushalmi presents a similar situation by outlawing spreading the ointment onto the floor. Yet, a person is allowed to smear his body and subsequently roll on the floor, even though the shemitta oil will ultimately be absorbed into the floor. These two situations highlight an interesting facet of kedushat shvi'it: once they have been employed for primary, permissible use, they may be utilized for any purpose - even for those which were initially forbidden. Once the oil has been applied to human skin, it may then be applied to leather, even though that function (as it is not a derivative of or parallel to, eating) is in itself forbidden.

This condition strongly evokes the Ramban's position that there is an actual mitzva to eat or benefit from shemitta produce (see shiur #12). Once the primary mitzva has been fulfilled, the kedusha no longer limits the uses (and possibly doesn't even exist). A similar notion can be detected even in the case of actual hekdesh from which one may derive benefit once the mitzva has been executed. For example, the gemara in Pesachim (26a) allows benefiting from the residual fragrance of the ketoret after it has been burnt, since the mitzva was already performed. This principle is known as "na'aset mitzvato" (literally – the mitzva was already performed). The existence of a mitzva and its subsequent actual performance removes any hekdesh-related issur. Conceivably, according to the Ramban, the situation of shemitta directly mirrors the condition of hekdesh: once the initial mitzva has been executed (by rubbing the oil upon human skin), any other benefit is subsequently allowed.

Even if we don't adopt the Ramban's position and don't pattern these halakhot directly after the model of hekdesh and na'aset mitzvato, these extenuating halakhot still serve as an important reflection of the nature of kedushat shvi'it. In shiur #14 we questioned whether the kedusha is objective and primary and its presence mandates particular benefits, or whether the kedusha was merely a device which halakha installs to guarantee that benefit. These halakhot, which allow broad use after the initial, permissible uses, might indicate that the original kedusha was only a means to ensure proper benefit. Once this benefit occurs, the restrictions are lifted. Even without the actual application of the na'aset mitzvato principle, we might still envision the concept of kedushat shvi'it in a manner which would accommodate the lifting of this kedusha after normative consumption.

It should be restated that the existence of the aforementioned broader guidelines (such as not conferring tuma upon shvi'it, or not applying it in a desecrating environment such as a bathhouse), might indicate a more inherent and independent type of kedusha and not one merely designed to ensure normative consumption. This might create some difficulty within our overall explanation since the Rambam cites each of these seemingly discrepant halakhot (not impurifying and not smearing in a bathhouse). His acceptance of the first category of halakhot indicates a more objective and inherent form of kedushat shvi'it, while his citing of the latter group of halakhot (rubbing oil on a foot and then inserting into a shoe) might suggest a kedusha geared solely toward ensuring proper benefit. Evidently, there must be alternative forms of explaining either of these principles.

Which type of 'sicha' is allowed?

 The Yerushalmi allows oil to be rubbed as ointment even if employed for medical purposes. In shiur #13 we mentioned that even Rebbi Yossi, who allows a very broad range of uses (as long as the benefit is universal – shaveh le-chol nefesh), prohibits medical applications. In this case, however, as the shemitta oil is specifically harvested for the medical application, using it for medical purposes is not considered a detour and is allowed.

 However, the halakha of the Yerushalmi raises a different issue. In general, rubbing or smearing ointments is likened to eating only if the rubbing is pleasurable (performed for the sake of ta'anug). Where the rubbing is medical in nature, it is not akin to eating. For example, the gemara in Yoma prohibits rubbing on Yom Kippur, but allows it for medical reasons. Why, then, should medical and non-pleasurable application be allowed with shemitta produce?

 The obvious answer to this question is that any type of rubbing – even medical in nature - is considered akin to eating (and should be allowable on shemitta). Yom Kippur is unique in that the root of the prohibition involves the derivation of pleasure, and medical treatment cannot be classified as pleasure. In general, we designate any form of rubbing as a derivative of eating, but on Yom Kippur we adopt a different standard for determining the scope of the prohibition.

 Though this answer seems plausible, not all commentators accepted it. The Rash Mishantz, in his commentary to the last mishna of the first perek of Demai, cites a tosefta which allows using shemitta oil for rubbing the fingers of fabric weavers (so that they do not become chaffed). At first glance, this halakha seems clear: the rubbing of this oil is permissible as it falls under the category of sicha. The Rosh, however, questions this ruling as the rubbing is done for medical/preventative measures and not in a strictly pleasurable format. As this type of rubbing is not forbidden on Yom Kipper, it should also not be allowed during shemitta (since the Rosh evidently ignores the pleasure quotient on Yom Kippur, defining the issur in more formal terms). Apparently, the Rosh believed that only pleasurable rubbing can be defined as eating and only this type of rubbing is allowed with shemitta produce. (see the Chazon Ish Shvi'it 14:10)

 Even if we accept the Rosh's premise (that we can use Yom Kippur as a template to classify the permissible forms of sicha during shemitta), we might still dispute his conclusion. Indeed, rubbing can be considered a form of eating only if the benefit is pleasurable in nature. However, rubbing is permitted during shemitta not just because it can be seen as an extension of eating. As discussed in shiur #13, by writing the term 'tihyeh' the Torah broadened the category of permissible uses to include all functions in which benefit and consumption are simultaneous. When the Rambam cites the allowance of rubbing on shemitta, he doesn't even mention the equation between rubbing and eating (sicha keshtiyah), as he does in the parallel context of terumot (hilkhot terumot perek 11) or in that of ma'aser sheni (hilkhot ma'aser sheni 3:10). Evidently, he is willing to allow rubbing even when not defined as a derivative of eating: it is permissible on its own terms as a normative form of consumption. Even when performed for medical purposes and not delivering pleasure, it is permitted.