YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

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**Shiur #22: *Chezkat Eino Zavu'ach***

An animal is forbidden to eat while alive due to the prohibition of *eiver min ha-chai*. Once the animal dies, the prohibition of *eiver min ha-chai* no longer applies, but the prohibition of *neveila* may come into effect. If the *shechita* (ritual slaughter) was performed correctly, the prohibition of *neveila* does not apply. However, if the *shechita* was not done properly, the prohibition of *neveila* emerges. Essentially, before death, the only prohibition affecting the animal is *eiver min ha-chai*. After death, a new prohibition, depending on the validity of the *shechita*, may arise.

There is a fascinating question regarding the relationship between the pre-death prohibition of *eiver min* *ha-chai* and the post-death prohibition of *neveila*. Specifically, if *neveila* does not arise immediately after a failed *shechita* but may remain latent, it raises the question of whether *eiver min ha-chai* and *neveila* are essentially one continuous prohibition with different labels at different stages. If they are, then a successful *shechita* would be necessary to remove both prohibitions. Alternatively, if the two prohibitions are distinct, *neveila* only emerges in the absence of proper *shechita* and does not preexist it.

This *shiur* will not directly analyze these topics. Instead, it will focus on whether an additional prohibition applies to both the pre-death and post-death stages. Specifically, many *Rishonim* assert that there is an additional prohibition known as "*eino zavu'ach*," which prohibits eating an animal that was not properly slaughtered.

Several *Gemarot* suggest the existence of this additional prohibition. Firstly, the gemara in *Shevuot* (24a) discusses the principle known *as ein issur chal al issur* — an additional prohibition cannot be imposed upon something that is already forbidden due to a different prohibition. For example, if pig meat is cooked with milk, it is not considered *basar* *be-chalav* because the meat was already forbidden as pig meat before being cooked with dairy. The new prohibition of *basar be-chalav* cannot be added to something that is already prohibited.

Applying this principle, the Gemara in *Shevuot* (24a) asserts that if *neveila* (meat from an improperly slaughtered animal) is eaten on Yom Kippur, there is no additional violation of Yom Kippur, since the meat is forbidden as *neveila* independently of Yom Kippur. The Gemara does not clarify when the meat became *neveila*, but it is presumed that the prohibition of *neveila* predates Yom Kippur, thereby preventing the Yom Kippur prohibition from overlapping with the original *neveila* prohibition. Most Rishonim adopt this approach.

*Tosafot* ( *s.v. ha-ochel*), however, disagree, arguing that even if the animal became a *neveila* only after Yom Kippur began, the prohibition of Yom Kippur cannot apply. Before the animal became *neveila*, it was already forbidden based on a separate prohibition known as "*eino zavu’ach*," which prohibits eating meat that hasn’t been properly slaughtered. This prohibition is independent of *neveila* and exists from the moment the animal is born, continuing even after death. Since the prohibition of *eino* *zavu’ach* predates Yom Kippur, it prevents the Yom Kippur prohibition from applying to the meat, which is already forbidden. *Tosafot* infers from this Gemara that there is an additional prohibition against eating improperly slaughtered meat that applies both before and after the failure of *shechita*.

A second Gemara that may indicate the existence of a separate prohibition of *eino* *zavu’ach*, is found in *Chullin* (9a). This Gemara addresses the laws of *chazaka* and states that if there is uncertainty about whether the *shechita* was performed correctly, the meat remains forbidden. According to the principle of *chazaka*, a preexisting state of prohibition is extended to cover the current uncertain state. In this case, since the animal was initially forbidden before the *shechita*, the uncertainty surrounding the shechitah leads us to assume that it was not performed properly and that the animal remains forbidden.

The Rashba raises a pertinent question: before its death, the animal was forbidden due to *eiver min ha-chai*. After its death, this prohibition ceases, and we are left to determine whether the shechitah was performed correctly, which introduces the prohibition of *neveila*. Why should the previous prohibition of *eiver min ha-chai* influence the current uncertainty that will determine the status of *neveila*?

Assuming we cannot extend a *chazaka* status from one prohibition to another, the Rashba infers from the Gemara that prior to its death, the animal was forbidden for two reasons: both because of *eiver min ha-chai* and because it was *eino zavu’ach*. Although the prohibition of *eiver min ha-chai* has ceased, the question of whether the animal was properly slaughtered will affect whether the initial prohibition of *eino zavu’ach* has been eliminated or continues after death. This represents a classic application of *chazaka*. Since the animal was certainly forbidden as *eino zavu’ach* before its death, we assume that the *shechita* was not properly performed and extend the previous state into the current uncertain state.

The question of whether an animal is forbidden based on an independent prohibition of *eino zavu’ach* may be traced back to an intriguing issue raised by Rav Yirmiya in *Chullin* 17a. According to Rabbi Akiva, during the forty years in the desert, we were permitted to consume *basar nechira* —meat from animals slaughtered without proper *shechita*. Rav Yirmiya inquires: if meat slaughtered through *nechira* while we were still in the desert was subsequently brought into Eretz Yisrael, where proper *shechita* is required, would we still be allowed to eat it?

Logically, the meat should remain permissible in Eretz Yisrael. Once it was permitted (or in Gemara language, "it underwent a *matir* "), why and how should it revert to being forbidden?

Rav Yirmiya may be exploring this question: if the mitzva of *shechita* introduces a prohibition against eating non-shechted meat, then meat that was previously permitted could now become forbidden. In the desert, only the prohibitions of *eiver* *min ha-chai* and *neveila* applied, both of which could be resolved with *nechira*. However, upon entering Eretz Yisrael, a new mitzva and prohibition emerged. We are commanded to perform *shechita*, and a new prohibition against eating meat that is *eino zavu’ach* arises. The introduction of a new mitzva thus generates a new prohibition.

The question of whether *eino zavu’ach* constitutes an independent prohibition that preexists *shechita* has significant implications for the other two prohibitions. If *eino* *zavu’ach* already forbids the animal from birth, how can *eiver min ha-chai* emerge? Wouldn't the principle of *ein issur chal al issur* prevent this overlap? This is central to the Ritzva's (a 12th century *Tosafot* who was a student of Rabbeinu Tam) disagreement with *Tosafot*.

Furthermore, if the prohibition of *eino zavu’ach* exists before *shechita*, how does this affect the nature of the prohibition of *neveila* ? Presumably, *neveila* is not latent in a living animal, waiting to emerge in the absence of a proper *shechita*. Instead, *neveila* likely has no preexisting latency and only materializes as a result of an unsuccessful *shechita*.

A related question impacted by the separate prohibition of *eino zavu’ach* is whether there is a mitzva of *shechita*. Assuming, as the Rambam claims, that there is a mitzva, is this mitzva linked to achieving a *matir* (permit) or is it an independent obligation? Most *mitzvot*, such as *lulav* and *matza*, do not trigger a *matir*; they do not permit what was previously forbidden. Instead, most *mitzvot* are ritual actions that do not induce a halakhic change in the status of items.

Is the mitzva of *shechita*, assuming it exists, similar in nature? In addition to serving as a halakhic *matir* to remove prohibitions, is it also an act of mitzva, akin to *tefillin* or *sukka*? Or is the mitzva of *shechita* essentially fulfilled through the achievement of the *matir* itself? This distinction has significant implications for how we understand the mitzva of *shechita*. By positing the presence of an *eino zavu’ach* prohibition stemming from the mitzva, *Tosafot* and the Rashba each assume that: There is a mitzva of *shechita* and that the mitzva is defined by the achievement of the *matir*.