YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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# THE LAWS OF SHABBAT

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Shiur #33:

*Kotzer*, Part I

Is taking flowers out of a vase filled with water permissible? Is there a problem with walking or sitting on grass? May one sniff a fruit or plant which is still attached to the ground? Can one retrieve a ball which is stuck in a tree or a bush?

I) Defining the *Melakha*

The term *ketzira* (reaping; the *melakha* is known as *kotzer*) refers specifically to harvesting grain. What about collecting other produce? The Gemara (73b) says:

Reaping, vintaging, date-gathering, olive-picking, and fig-plucking are all the same *melakha*.

The examples mentioned all involve removing *giddulei karka* (things which grow in the ground) from the ground itself or a plant attached to it. Is the prohibition of *kotzer* applicable also to plants which are not attached to the ground? Is one allowed to pluck a leaf from a severed branch or from a flowerpot? The rule in this follows the following statement from the Gemara (107b-108a), which formulates the prohibition as *oker davar mi-giddulo,* uprooting something from the place of its growth.

Abbayei said: “One who pulls fungus from the handle of a pitcher is liable on account of *oker davar mi-giddulo.”*

Rav Oshaya cited a disproof: “If one plucks from a perforated pot, one is liable, but if it is unperforated, one is not liable”!

There, that is not its growth; but here, this is its growth.

In other words, the prohibition of *kotzer* does not relate specifically to *telisha* (detachment) from the ground, but to **uprooting something from the place of its growth**. A fungus grows on the handle of a vessel, so its *telisha* from that spot constitutes *kotzer*, since this is the place of its growth. On the other hand, if a plant grows in an unperforated pot, *telisha* of its parts is not forbidden by Torah law because of *kotzer;* the pot is not considered its place of growth, as generally one does not sow seeds in a pot such as this (Rashi).[[1]](#footnote-1)

According to this, there is no prohibition of detaching fruits or leaves from a severed branch, since the fruit and the leaves already have already been uprooted from the place of their growth by the chopping off of the branch; and indeed the Rema rules accordingly (336:8).

**Breaking the Connection or Interrupting the Nourishment?**

One may ask whether the prohibition is linked to the severing of **the physical connection** of the produce to its place of growth or its being detached from **its point of sustenance.** The ramification would be, for example, for a plant which is attached to the ground but no longer is being nourished by it. The *Rishonim* debated this question, based on the Gemara in *Chullin* (127b). The Gemara there rules that fruit which have dried-up while on the tree are still considered attached to it and thereby to the ground, and the prohibition of *kotzer* is applicable to them. However, Rashi (ad loc., s.v. *I De-yaveshu*) indicates that a fruit which is so desiccated that its stem has dried-up is considered detached, and the prohibition of *kotzer* does not apply to it. On the other hand, the Rambam (8:4) writes that the prohibition of *kotzer* applies to a tree with dried-up fruits, and the Magen Avraham (336:1) understands his view to be that even if the stem is totally dried-up, one is liable for *kotzer* if one picks the fruit.[[2]](#footnote-2)

The dispute ostensibly depends on the question we have mentioned: according to Rashi, the prohibition of *kotzer* relates to **uprooting something from the point of its sustenance,** and therefore if the fruit does not draw nourishment from the ground, there is no prohibition in detaching it; according to the Rambam, on the other hand, the prohibition relates to **severing the physical connection of the plant** to the ground, and there is no significance to the question of whether the plant draws nourishment from the ground at all.[[3]](#footnote-3)

**II) The Prohibition of *Kotzer* for Animals**

We have seen a debate regarding the applicability of *kotzer* to items which are technically attached to their place of growth but not drawing sustenance from it. What about the inverse case? What is the law regarding things which draw nourishment from a certain place but are not attached to it? In this context, the Yerushalmi (7:2) cites the following ruling on this matter:

# The rabbis of Caesarea say: “One who fishes or removes anything from its sustenance is liable because of *kotzer*.”

# In other words, one who catches a fish and takes it out of the water has violated the *melakha* of *kotzer* because one has removed the fish from its place of sustenance.[[4]](#footnote-4) According to the *Yerushalmi*, removing something from the point of its growth is not limited to plants; it applies to any living thing which is being removed from its point of sustenance.

# The Bavli (107b) seems to dispute this:

# Shmuel said: “If one removes a fish from the sea, as soon as the size of a *sela* thereof becomes dry, he is liable.”

# In other words, one is not liable immediately for removing a fish from the sea; one is liable only once a portion of the fish’s body, of the diameter of a shekel (*sela* in Talmudic terminology), becomes dry. Rashi (s.v. *Chayav*), Tosafot (Taanit 24a, s.v. *Ha-sholeh*), and most *Rishonim* explain that the liability is for a different Shabbat prohibition, taking a life (*netilat neshama*), and the assumption is that after a spot on the fish’s body of the diameter of a *sela* dries up, it has no chance to live, even were it to be thrown back into the water. From the Gemara, it appears that if the fisherman catches and releases the fish back into the water before it has dried out to this extent, he does not violate a Torah prohibition. This goes against the implication of the Yerushalmi, that someone who takes a fish out of the water is liable immediately because of *kotzer*, even if one returns the fish to water later.[[5]](#footnote-5)

# What is the basis of the dispute between the Bavli and Yerushalmi?

It is possible that the dispute depends on the question which we discussed above. According to the Bavli, the prohibition of *kotzer* focuses on **the severing of a physical connection**, and since the fish is not actually attached to the water, there is no prohibition to remove it from the water because of *kotzer*. The Yerushalmi, on the other hand, believes that the prohibition is focused on **separating something from its point of sustenance**, and naturally the prohibition is applicable also to the removal of fish from water, as this is its point of sustenance.

On this understanding, the Bavli concedes that the prohibition of *kotzer* may apply to animals, as long as one is talking about the severing of a physical connection. Indeed, the Gemara states that someone who births an animal by manually entering the birth canal and pulling out the fetus is liable. The simple meaning of the Gemara is that one is liable for *kotzer*, and this is how the Me’iri explains it. In this case, there is the severing of an actual connection, not only a removal of a living thing from its point of sustenance, and therefore the prohibition of *kotzer* is applicable even according to the Bavli, even though we are talking about animals.

However, the Ramban and the Rashba (ad loc., s.v. *Ha de-amrinan*) explain the dispute in a different way. According to them, the Bavli believes that the prohibition of *kotzer* does not apply to animals at all, even if one is severing an actual connection, as removing hairs or cutting nails makes one liable for the *melakha* of *gozez* (shearing), not *kotzer*.[[6]](#footnote-6) The Ramban explains this as follows:

If one shears [an animal] or plucks a bird’s wing while they are alive (74b), this does not render one doubly liable, one count being for *oker davar mi-giddulo*. So too, if one cuts hair or nails or one trims his mustache (94b), there is no law of *oker davar mi-giddulo* rendering one doubly liable. Thus, we see that there is no law of *oker davar mi-giddulo* as a subcategory of *kotzer* except for *giddulei karka*…

Furthermore, reaping and threshing are certainly derived in the same way from the *Mishkan* (Tabernacle); just as the rabbis (75a) rule that threshing applies only to *giddulei karka*, so we should certainly say that *ketzira* applies only to *giddulei karka*…

As for what they said in the Yerushalmi… this does not accord with the view of our Gemara.

The Ramban and the Rashba understand the view of the Bavli in the following way: just as there is no prohibition of threshing except as it applies to *giddulei karka*, as it was in the *Mishkan*, so too there is no prohibition of *kotzer* except as it applies to *giddulei karka*.[[7]](#footnote-7) Based on this understanding, the Ramban and the Rashba explain the Gemara that says that one who uproots a fetus is liable as referring to *netilat neshama*, not to *kotzer*, because *kotzer* applies only to *giddulei karka*.[[8]](#footnote-8)

In other words, the view of the Yerushalmi, that one who removes a fish from the water is liable for *kotzer*, is based on two assumptions about the prohibition of *kotzer* — that it is a) based on severing something from the point of its sustenance; b) not limited to *giddulei karka*, but applicable to animals as well. In parallel, the view of the Bavli is that one who removes the fish from the water is liable because of *netilat neshama* and not because of *kotzer*, which may be understood in two ways:

1. Me’iri — The Bavli disputes the first assumption, and holds that the prohibition of *kotzer* applies only to severing a physical connection.
2. Ramban, Rashba — The Bavli disputes the second assumption, and holds that the prohibition of *kotzer* applies to *giddulei karka* alone.

**Summary**

In conclusion, on Shabbat it is forbidden by Torah law to detach produce, flowers, leaves and the like from a plant attached to the ground; similarly, it is forbidden to detach plants or fungi from the place in which they grow, even if they are not attached to the ground.

It is forbidden to detach produce or branches **even from a desiccated tree** (OC 336:12). According to the Rambam, it may be that there is a Torah prohibition involved, while according to Rashi and Tosafot**,** this is forbidden rabbinically (Bei’ur Halakha ad loc., s.v. *Chayav*).

It is forbidden to remove **a fish from water**; however there is a dispute as to whether the prohibition is because of *kotzer* (Yerushalmi) or because of *netilat neshama* (simple reading of the Bavli; Ramban and Rashba).

**It is forbidden to detach anything from a plant growing in a pot.** Detaching anything from a plant growing in a perforated pot is forbidden by Torah law, while detaching from a plant growing in a unperforated pot is rabbinically prohibited (OC 336:7).

It is permitted to detach fruit or leaves from a branch that was chopped off before Shabbat (Rema 336:8).[[9]](#footnote-9) However, if it is an action which is regularly performed in the field, one must be careful to avoid violating the *melakha* of *dash* (see our *shiurim* on that topic).

It is permissible to remove flowers or branches from a water-filled vase, and there is no prohibition of *kotzer* (*Shemirat Shabbat Ke-hilkhata*, 3rd ed., Ch. 26, n. 96, in the name of Rav S.Z. Auerbach), as it is permissible to put them back in the water; the prohibition of *zoreia* does not apply to these actions (Rema 336:11), as we saw in our *shiurim* on that topic.

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1. However, *telisha* of part of a plant growing in an unperforated pot is forbidden rabbinically (**OC** 336:7). For additional details of the laws of flowerpots on Shabbat, see our analysis of the *melakha* of *zoreia*. [↑](#footnote-ref-1)
2. There are other ramifications of this dispute pertaining to a tree which dries up. The Sages forbid the use of a tree on Shabbat, lest one come to detach something from it, as we shall see below; however in the Gemara (Eruvin 100b), it appears that one may use a dried-out tree in the summer. Rashi explains that a dried-out tree is not considered attached to the ground, and the prohibition of *kotzer* is not applicable to it; therefore, there is no reason to prohibit its use. (Nevertheless, during the winter they forbid it because of *marit ayin*, the appearance of impropriety, since during this season it is difficult to determine whether a tree is dried-out or not). Rashi is consistent with the approach presented above, that the prohibition of *kotzer* does not apply to a plant which is totally dry. On the other hand, the Rambam (21:6) rules that it is forbidden to use a dried-out tree, and the Magen Avraham (ibid.) explains that the Rambam**,** consistent with his view cited above, believes that the prohibition of *kotzer* applies to a dried-out tree as well on a Torah level; therefore, one even using a tree of this type is prohibited.

   However there are those who dispute the Magen Avraham’s understanding of the Rambam. From the words of the Maggid Mishneh (ibid.), it appears that he believes that the Rambam would concede that there is no prohibition of *kotzer* from the Torah upon a dried-out tree, and in any case it is forbidden to use a dried-out tree because of a precaution. Similarly, there are those who understand that the Rambam concedes to Rashi that there is no prohibition of *kotzer* for picking desiccated fruit if the stem has dried out (see Bei’ur Halakha 336:12, s.v. *Chayav*). [↑](#footnote-ref-2)
3. Based on this principle, one can explain another dispute between Rashi and the Rambam. The Gemara (81b) says that one who raises a perforated pot from the ground and leaves it in the air (on top of pegs) is liable because of *kotzer*. Rashi (s.v. *Chayav*) and Tosafot (s.v. *Ve-hinnicho*) explain that the Gemara should not be taken to mean that actually liable (in violation of a Torah prohibition); rather, it is a rabbinic prohibition, because the pot continues to draw sustenance when it is still in the air, and thus its nourishment has not been interrupted. Opposing this, the Rambam (8:4) writes that this is indeed a Torah prohibition and one is liable. The Rambam may concede that the pot draws sustenance when it is still in the air, as appears from the Gemara in *Gittin* 7b; however, his understanding is that the prohibition of *kotzer* does not depend on drawing sustenance but on a physical connection, and therefore one who picks the pot off of the ground is liable even though it continues to draw sustenance (see Chiddushei Ha-Gram Ha-Levi of Rav Mosheh Soloveitchik zt”l on the Rambam ad loc.).

   This dispute would have the opposite ramification of detaching leaves from a pot suspended in the air: according to Rashi and Tosafot, *telisha* such as this is forbidden by the Torah, since the pot is considered to be attached to the ground, while according to the Rambam, *telisha* such as this is forbidden at most rabbinically, since this pot is considered detached. [↑](#footnote-ref-3)
4. We are speaking, apparently, about fish that do not need to be caught per se — i.e., in a small pool, in which there is no difficulty to catch them; therefore, there is no separate liability for the *melakha* of trapping. [↑](#footnote-ref-4)
5. It makes sense that the Yerushalmi would concede that if one leaves the fish outside of the water until it can no longer be returned and survive, one violates the prohibition of *netilat neshama*. The novelty of the Yerushalmi is that even one who does not keep the fish out of the water to such an extent is liable for *kotzer* immediately upon removing the fish from the water. [↑](#footnote-ref-5)
6. One should note that the words of Yere’im (Ch. 274, 135b) indicate that cutting fingernails, hair, etc. is indeed forbidden because of *kotzer* and not just because of *gozez*. [↑](#footnote-ref-6)
7. Indeed, the category of *giddulei karka* may include things which are not attached to the ground and do not draw sustenance from it directly, because the Gemara says that there is a prohibition of *kotzer* also if one pulls fungus from the handle of a pitcher, as we saw above. It may be that fungi are considered, for these purposes, like *giddulei karka*, since they grow with a certain assistance of the ground, as arises from the words of the Gemara in Berakhot 40b (“They certainly grow from the ground”) and Rashi ad loc. (“They grow from the moisture of the ground”). [↑](#footnote-ref-7)
8. The Gemara equates the detaching of the fetus to detaching dodder (hops) from thorny bushes. Dodder is a parasitic plant; it draws its nourishment from the bushes and not from the ground. The Gemara sets out that just as one who detaches dodder is liable for uprooting something from its place of growth, even though the dodder is not attached to the ground, so too one who detaches the fetus from the animal is liable because of uprooting something from where it grows. The Gemara seems to say explicitly that the liability is because of *oker davar mi-giddulo*, and this is how the Me’iri understands it; however, the Ramban and the Rashba explain that the comparison the Gemara makes is not to be taken narrowly, and the intent is only to compare different *melakhot*: there is a prohibition of *kotzer* on dodder, even though it cannot live on its own, but only by way of the bushes upon which it grows; similarly, there is a prohibition of ***netilat neshama*** on the fetus, even though it has no life of its own in utero, but survives only through its mother. [↑](#footnote-ref-8)
9. Indeed, the Sha’arei Teshuva (651:3) cites authorities who rule that one should not remove leaves from the *lulav* on Yom Tov, even though it is detached, and therefore one who wants to bind a *lulav* using some of its leaves must remove the leaves from the *lulav* before the holiday (see *Shemirat Shabbat Ke-hilkhata*, 3rd ed., Ch. 26, n. 38). [↑](#footnote-ref-9)