



Volume 2. Issue 6.

Mitzvah Ha'ba'ah Be'aveirah

If someone tears [their garment] out of anger or for one who passed away (*meit*)... they are exempt.

Shabbat 13:3

This *Mishnah* introduces the exemption of *mekalkel*; when one performs a *melacha* where the result is destructive, they have not transgressed the biblical prohibition. This is particularly pertinent when it comes to the *melacha* of *kore'ah* (tearing) implying that one would only be *chayav* on a biblical level if they tore for a constructive purpose.

The *Gemara* (*Shabbat* 105b) brings a *Beraitah* that flatly contradicts the *Mishnah* explaining that one would be *chayav* in both the cases described in the *Mishnah*.

The *Gemara* first resolves the contradiction regarding one who tore his clothing for one who passed away (*kri'ah*). It explains that if one performed *kri'ah* for a close relative, i.e. a relative for which he is halachically obligated to perform *kri'ah*, he would be fulfilling his halachic obligation by doing *kri'ah*. Consequently, the *kri'ah* is constructive, not defined as *mekalkel* and the person would be *chayav* for *kore'ah*. If however one performed *kri'ah* for a distant relative for whom he is not obligated to perform *kri'ah*, the tearing would be considered destructive and he would be *patur*.¹

One question stands out - if someone transgresses *Shabbat* when performing *kri'ah* for a close relative, how can they fulfil *mitzvah* of *kri'ah*? Is it not considered a *mitzvah ha'ba'ah be'aveirah*? The *Gemara* (*Sukkah* 30a), for example, explains that a stolen *lulav* may not be used in the performance of the *mitzvah* as it is considered a *mitzvah ha'ba'ah be'aveirah*.

The *Yerushalmi* (*Shabbat* 13:3) cites the case of stolen *matzah* being invalid when asking this same question. It answers that by stolen *matzah* the sin affects the object of the *mitzvah*. In the case of the *Mishnah*, the person is performing the sin. In other words, the disqualification of *mitzvah ha'ba'ah be'aveirah* only applies when the object with which the *mitzvah* is to be performed has been affected by the sin.²

A number of alternative solutions may be found in the *Rishonim*. The *Tosfot* (*Sukkah* 30a) explain that *mitzvah ha'ba'ah be'aveirah* only applies when the sin is the act that made the *mitzvah* available. For example, before the person stole the *lulav* he had no means of performing the *mitzvah*. In this case however, the mourner is ready and able to perform the *mitzvah* at any time.

The *Ramban* (*Pesachim* 35b) cites the opinion of the *Tosfot* (*Rabeinu Peretz*) that maintain that the disqualification of *mitzvah ha'ba'ah be'aveirah* only applies to *lulav* and *korbanot* as these are used for praise. Rav David Silverberg³ explains that ordinarily past wrong doings do not disqualify one from performing a *mitzvah*. The only exception is where the *mitzvah* is an instrument for praising *Hashem*.

The *Ramban* (*Pesachim* 35b) prefers a different understanding. He explains that *mitzvah ha'ba'ah be'aveirah* is in fact a rabbinic disqualification. Using this understanding, one appreciates that when it comes to the performance of the *mitzvah* of *lulav* with a stolen object, this rabbinic disqualification is affective as they are operating in a stringent manner. Yet, in the case of *kri'ah*, since on a biblical level one still would have performed *kri'ah*, one has transgressed the prohibition of *kore'ah* on *Shabbat*. (Had the rabbinic disqualification been applied, it would have indeed been a leniency rather than a stringency.)

David Bankier

¹ It is strongly advised that those who are interested in how the *Gemarah* resolves the case of tearing out of anger, see *Shabbat* 105b. Also see *Rashi* there and *Rambam* (*Shabbat* 10:10). For a resolution of *Rambam's* ruling with the *Gemarah's* conclusion see *Magid Mishnah* (*Shabbat* 8:8). The

endeavour not only promises a satisfying learning experience, but also moral lessons (*musar*).

² See www.dafyomi.co.il/shabbos/insites/sh-dt-105.htm where this explanation of the *Yerushalmi* is presented in the name of the *Ritva*.

³ www.vbm-torah.org/archive/salt-chagim/sukkot-vezot-7.htm

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Revision Questions

שבת י"א: ב' – י"ג: ג'

- What is *moshit* and in what case specifically is one *chayav* for performing such an action? (י"א: ב')
- What are the dimensions of a rock, such that it is defined as a *reshut ha'yachid* even if it is in the *reshut ha'rabim*? (י"א: ב')
- When calculating whether a hole in *reshut ha'rabim* is considered a *reshut ha'yachid*, would one consider the walls around the top of the hole when calculating the height? (י"א: ב')
- In which of the following cases is one *chayav* for *hotza'ah* if:
 - One threw an object for a distance of more the four *amot* in *reshut ha'rabim* yet it got stuck on wall at a height of greater than ten *t'fachim* from the ground.
 - One threw an object further than four *amot*, yet the object rolled back to a distance of less than four *amot*.
 - One threw an object less than four *amot*, yet the object rolled further to a distance of greater than four *amot*. (י"א: ג')
 - One threw an object further than four *amot* in the ocean. (י"א: ד')
- Explain the case of *rekak mayim* and why does the *Mishnah* repeat itself? (י"א: ד')
- Is one *chayav* for *hatza'ah* if they threw an object from: (י"א: ה')
 - The sea to the land?
 - From a boat into the sea?
- When can one carry from one boat to another? (י"א: ה')
- What are the four cases where one throws an object four *amot* in *reshut ha'rabim* yet is *patur*? (י"א: ו')
- What is the minimum measure for one to be *chayav* for performing:
 - *Bo'ne*?
 - *Ma'ke be'patish*? (י"א: ז')
 - Plowing?
 - Collecting wood? (NB: List both cases.) (י"א: ז')
- Using which hand to write, would an ambidextrous person be *chayav* for writing? (י"א: ז')
- Is one *chayav* for writing in Japanese? (י"א: ז')
- Explain the debate regarding drawing symbols? (י"א: ז')
- Is one *chayav* if they intended to write the name "שמעון" yet stopped after writing "שמ"? (י"א: ז')
- Explain the debate regarding whether one is *chayav* from scratching letters into their skin? (י"א: ז')
- Provide a definition of the *melacha* of *kotev* (writing). (י"א: ז')
- Is one *chayav* if they wrote letters in sand? (י"א: ז')
- Is one *chayav* if they wrote over existing letters? (י"א: ז')
- Explain the debate regarding one who wrote one letter in the morning and another in the afternoon? (י"א: ז')
- When would one be *chayav* for *oreg*? (י"א: ח')
- How many stitches are performed before one is *chayav*? (י"א: ח')
- Is one *chayav* if they tore something out of anger? (י"א: ח')

[NB: For all of the questions above, when asking whether one is *chayav* it is asking whether, if they performed the act *be'shogeg*, they are *chayav a korban chatat*]

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Shabbat 13: 4-5	Shabbat 13: 6-5	Shabbat 14: 1-2	Shabbat 14: 3-4	Shabbat 15: 1-2	Shabbat 15: 3 - 16: 1	Shabbat 16: 2-3

