YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

**Shiur #04: *Kinyan Chatzer* as a Form of *Yad***

One of the most intriguing forms of *kinyan* is known as *kinyan chatzer*, in which a person acquires an item when it is placed on his property. Most acts of *kinyan* that are implemented to transfer ownership of an item are physically demonstrative acts that reflect the newfound ownership of the recipient *lokei’ach*. For example, a purchaser can draw the acquired animal into his *reshut*, performing *meshicha*, demonstrating control and signifying that he is the new owner. Additionally, anything firmly clutched in the hand of a person is considered owned by the possessor through a *kinyan* known as *yad*. Obviously, in the case of *kinyan chatzer*, the *chatzer* itself is not acquiring ownership, but is rather affecting a transition of ownership to the owner of the *chatzer*. How does this work?

The *gemara* in *Bava Metzia* (10b) suggests that a *chatzer* can operate as a form of *shelichut*, a well-documented halakhic apparatus allowing actions of one person to effect halakhic changes for a different party. However, viewing *chatzer* as a form of *shelichut* has certain limitations. The *gemara* *Bava Metzia* (12a) therefore raises another possible mechanism by which a *chatzer* can acquire an item on behalf of its owner – a *chatzer* can act as a *yad.*

What is unclear is how precisely to interpret the analogy between a *chatzer* and a hand. Is an item contained in a *chatzer* literally considered grasped within a person’s hand, and thereby acquired? Several *gemarot* discuss *kinyan* on items contained within attached baskets or other bodily appendages. The items contained within these physical extensions are considered grasped within a hand, and thus acquired through *yad*. Does the same apply to *chatzer*? Do we say that items lodged within a person’s landing zone are considered grasped or contained in his extended hand?

Alternatively, perhaps the *gemara* intended only to loosely affiliate *chatzer* with a person’s hand. According to this reading, a *chatzer* is not considered an extension of a hand, but rather constitutes a different form of *kinyan.* It is referred to as *yad* merely to distinguish the relationship of the *chatzer* to the owner from the apparatus of *shelichut*. A *chatzer* does not operate as an extension of *yad*, but it does represent the owner in ways that differ from *shelichut*, and the *gemara* refers to it as *yad* merely to demarcate it from *shelichut*.

Several interesting disputes may reflect disagreement about how much a *chatzer* must resemble a *yad.* For example, the *gemara* in *Gittin* (77b) cites a debate between Ulla and R. Oshiya about a *chatzer* that is not **near** its owner. Ulla requires adjacency between an owner and a *chatzer* and justifies this demand based on the analogy with a hand; just as a hand is adjacent to a person, a *chatzer* operating as *yad* must be adjacent. Apparently, Ulla took this association quite literally, insisting that in order for a *chatzer* to serve as an extension of a person it must resemble a hand. R. Oshiya, in contrast, may not have interpreted the definition of *chatzer* as *yad* literally, allowing a *chatzer* to operate even without physical contiguity, as long as the owner is able to supervise objects lodged in the *chatzer*.

Another interesting *machloket* *Amoraim* (*Gittin* 21a) relates to a *chatzer* that was not previously owned by the person utilizing it to acquire an item. Can a seller place the item to be sold in **his** own *chatzer* and then transfer ownership of the *chatzer* to the purchaser, intending that the purchaser utilize his newly acquired *chatzer* to acquire the contained item? From a purely logistical standpoint, this should be a valid method of acquisition. Ultimately, the item to be sold is found in the *chatzer* of the would-be *lokei’ach*. Abaye disagrees, however, claiming that in order for a *chatzer* to mimic *yad*, it must be owned by the *lokei’ach* **before** being deployed as part of a *kinyan*. A person’s actual hand is involuntarily associated with him and does not have to be **acquired** as part of the current transaction. A *chatzer* that was not previously owned by the *lokei’ach* and must be acquired as part of the transaction does not parallel an actual hand and cannot operate as an extension of the hand. Evidently, Abaye took the *chatzer* as *yad* analogy quite literally and disqualified a *chatzer* that does not exhibit hand-like tendencies.

A third possible question surrounds a *chatzer* operating on behalf of a sleeping person. The Rashba Gittin (78) cites the Ra’avad, who claims that a *chatzer* can effect a *kinyan* on behalf of a sleeping person, even though he cannot acquire an item with his own hand during this state. The Rashba himself counters that since a sleeping person cannot utilize his hand for a *kinyan*, he cannot utilize a *chatzer*, which is an extension of the hand. Evidently, the Rashba read this association between *chatzer* and *yad* literally and disqualified *chatzer* from operating during a period or state in which a hand cannot be effective. Perhaps the Ra’avad interpreted the analogy to a hand less literally and viewed *chatzer* as an autonomous element capable of enabling a *kinyan* even when the hand’s capacity for *kinyan* is impeded.

The need to structure a *chatzer* on the model of an actual hand may inform a different aspect of *chatzer.* Several *gemarot* disqualify a *chatzer mehalechet*, a moving *chatzer*, from effecting a *kinyan*, but none of them explicitly trace the reason for this limitation. Tosafot (*Bava Metzia* 9b and *Gittin* 21a) claim that a mobile *chatzer* is not analogous to a hand, which does not have inherent or independent movement. For a *chatzer* to represent the owner, it must comprise an extension of the person’s hand. Since a hand is not independently mobile, a *chatzer* cannot be either.

It is possible that the question of how a *chatzer* represents its owner as a *yad* is reflected in the discussion regarding which *pasuk* serves as the source for *kinyan* *chatzer*. The *gemara* cites Gittin (76) a verse in *Parashat Ki Teitzei* that describes the delivery of a *get* with the phrase “*ve*-*natan be-yada*” and somehow extrapolates *chatzer* from this phrase. Tosafot claim that the *gemara* is deriving *chatzer* from a *kelal u-perat* *u-kelal* – two more generalized phrases bracketing a more particular word. This literary arrangement yields the halakhic conclusion that the precise element (*perat*) implied by the particular word is not necessary; however, the derivative must resemble the particular word (*ke-ein ha-perat*). In the context of this *pasuk*,by bracketing the word *yad* with general terms, the Torah allows acquisition of a *get* or other items through a *chatzer*, because a *chatzer* is viewed as *ke-ein ha-perat* – or similar to the word “*yad*” which is bracketed by two general terms. This form of derivation would suggest that a *chatzer* serves as an extension of the hand.

By contrast, the Yerushalmi claims that the word *yad* in the Torah sometimes refers to an actual hand, but also refers to a person’s financial portfolio. By describing the acquisition of a *get* with the term *yad*, the Torah allows the *get* to be deposited in a person’s **area**, not necessarily into their actual hand. This approach to establishing the validity of a *chatzer* does not view a *chatzer* as an extension of hand, but rather as an autonomous *kinyan-*enabler that happens to be described by the word *yad*, which sometimes refers to a hand but other times simply refers to an area owned by the acquirer.

Finally, an interesting comment of Rashi may highlight the fact that a *chatzer* is indeed considered an extension of a person’s hand and its grasp. Alongside the scenario of acquiring a *get* through a *chatzer*, the Torah also describes finalizing a theft through a *chatzer*. Tosafot describe a scenario in which a person actively leads the stolen animal into his *chatzer*. By contrast, Rashi describes a situation in which someone else’s animal wanders into a person’s *chatzer*, who then locks the animal in, thereby stealing the item. Rashi depicts a situation in which a theft is committed without performing an action to the stolen animal.

Perhaps Rashi’s view is based on a novel understanding of the act of *geneiva*: Even without physically removing the item, *geneiva* is violated any time financial interests are compromised by withholding property. Alternatively, Rashi may be viewing *chatzer* as a direct extension of a person’s hand. By closing the *chatzer* and clutching the item in his extended hand, a real act of *geneiva* has been performed upon the stolen item.