**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

**Shiur #11: How Does *Chazaka* Operate?**

One of the most prevalent and universal solutions to cases of halakhic uncertainty is the apparatus of *chazaka*. When faced with an unknown status, Halacha applies and extends the last known status. This notion is derived (by the gemara in Chullin 10b), from the scenario of *tzara'at* of a house. A *kohen* witnesses the discoloration in its requisite size and exits the house BEFORE declaring the house impure. Even though he is no longer inside the house, he can announce that the house is impure based on the ASSUMPTION that the discoloration has not diminished in size since he left. This is the premise of *chazaka*: if the discoloration was the requisite size previously when he viewed it while inside the home, he can assume that it retained its surface area even during the time he exited the home. The last known identity may be assumed until the truth is concretely proven otherwise.

Unlike other halakhic decision tools, such as *rov* and *migu*, it is generally perceived that *chazaka* does not EMPIRICALLY prove or verify the uncertain details, but rather ALLOWS us to render a halakhic "assumption.” In the absence of any empirical proof, Halakha mandates maintaining the status quo.

What is less clear is WHICH status quo *chazaka* is maintaining. Every halakhic situation is based on an empirical reality, which yields a resultant halakhic state. In a scenario of *safek*, does *chazaka* extend the facts or just the halakhic state? For example, a previously checked *mikva* will render purity to those who immerse in it. If uncertainty about the volume of the *mikva* develops, a *chazaka* will extend the *mikva's* capacity to render *tahara*. Does *chazaka* instruct us to assume that the facts remained the same – that the volume of water remained intact – and that a person who was *tovel* is therefore *tahor*? Alternatively, *chazka* may not suggest a virtual set of facts, but rather only mandate that we continue to rule that those who immersed are *tahor*. It does not address the condition of the *mikva*, which is the primary “cause” of the halakhic ruling. It ignores the facts entirely and merely insists that we sustain our halakhic decisions until proven otherwise. Whichever way we look at it, a *chazaka* is a legal or procedural solution. Just because an identity was previously determined does not mean that it has not changed; the procedural mandate of *chazaka* demands that we maintain the previous reality. The question is whether *chazaka* maintains a reality about the facts (the *mikva* was of requisite volume and therefore the person who immersed IS *tahor*) or merely freezes the verdict (those who immerse continue to be CONSIDERED *tahor*), without addressing the primary cause.

This question would affect the manner of implementing a *chazaka*. If *chazaka* perpetuates the "facts," it may have much greater application.

A well-known debate between two *Tanna’im* (cited by the *gemara* in *Chullin* 9a) surrounds this issue. Every animal that is born is forbidden to eat because of the automatic prohibition of *ever min* *ha-chai*, and that prohibited status remains intact until concretely and absolutely proven otherwise. Any uncertain *shechita* is assumed to be invalid based of this *chazaka*. Does this *chazaka* lock-in the facts, thereby determining that the *shechita* was in fact improper? Or does this *chazaka* of being forbidden to eat merely extend that status of "forbidden to eat” until proven otherwise? If the prohibition to eat a particular animal was established by this *chazaka*, would it ALSO be considered a *neveila*, and therefore capable of conferring *tuma*?

An anonymous *beraita* cited by the *gemara* asserts that if the *shechita*’s validity is in doubt,the animal has full *neveila* status, including *tuma* conferring status. R. Elazar b. R. Yannai disagrees, claiming that while the animal in question is forbidden to eat, it is not impure as a *neveila*. Presumably, the argument revolves around the aforementioned question of whether *chazaka* locks in the facts or only the halakhic status. If *chazaka* freezes the facts, we assume that the animal had no successful *shechita* and it is therefore deemed a *neveila –* both forbidden to eat as well as impure. If *chazaka* merely freezes the halakhic status, only a legal prohibition to eat is locked in; when the animal was alive, it was forbidden to eat, but it was not impure.

A second interesting ramification of this question regards the ability to extend the *chazaka* effect to secondary elements. The *gemara* (*Ketuvot* 13a and *Kiddushin* 60a) cites a disagreement about extending a *chazaka* to the next generation. The *gemarot* describe a woman who MAY have had relations with a non-pedigreed man, which would render her unfit to marry a *kohen*. Since she enjoys a *chazaka* of permissibility to a *kohen*, this status is preserved and she may marry a *kohen*. Would this *chazaka* extend to her daughter born from the mystery man, allowing the child to marry a *kohen* as well? Since the child was “born into a *safek*,” she enjoys no independent *chazaka* and must rely solely upon the *chazaka* of her mother. Does the application of the *chazaka* allowing the mother to marry a *kohen* also permit her daughter to do so?

Presumably, if *chazaka* creates a “virtual set of facts,” it determines that the identity of the unknown man was indeed pedigreed. Once this identity is established, it affects the status of the daughter as well. Since the *chazaka* identifies the man/father as a pedigreed person, the daughter is permitted to marry a *kohen*. If, however, *chazaka* merely perpetuates a prior *pesak* while ignoring the facts, it may perpetuate the mother's prior ability to marry a *kohen* while entirely neglecting the issue of the man's identity. In the absence of knowledge of this identity, the daughter born of this relationship cannot be permitted to marry a *kohen*. Extending a mother’s *chazaka* to a child thus depends on the nature of *chazaka*'s dynamic.

The nature of *chazaka* may also affect the ability to extend *chazaka* from one prohibition to a different one, known as the principle of “*machzikin mei-issur le-issur*.” For example, if an animal was previously forbidden as *ever* *min ha-chai* (while it was alive) and was POSSIBLY slaughtered through proper *shechita*, can the original *chazaka* of *ever* *min* *ha-chai-*based *issur* launch a continued prohibition post-*shechita* as a possible *neveila*? Rashi (*Chullin* 9a) suggests this, but many authorities disagree with him. Similarly, if a person who was impure through contact with a dead person possibly came into contact with a dead rodent (*sheretz*), would the original impurity establish the basis for a *chazaka*, so that the status of impurity is maintained? This is a hotly debated issue among the *Rishonim*.

Presumably, the ability to extend *chazaka* from one prohibition to another depends upon the operating nature of *chazaka*. If *chazaka* articulates a set of facts, it cannot extend one set of facts to a completely different scenario. Just because the animal was previously *ever* *min* *ha-chai* does not mean that it is now considered *neveila*. Similarly, just because a person previously touched a corpse does not mean that he currently touched a rodent. If, however, *chazaka* does not articulate facts, but rather extends halakhic rulings, it is more feasible to extend a status established by a previous prohibition into a future one in which the same *pesak* can be maintained - even though a completely different condition is assumed. The entire dynamic of *chazaka* allows us to ignore the facts and “primary causes” and relate solely to a precedential STATUS that can now be maintained.

A further manifestation of this question regards the ability to extend a *chazaka* from a point of origin that was only established retroactively. The typical dynamic of a *chazaka* enjoys a “precedent” point, a previous moment in which the status of an item was unmistakably certain. Since uncertainty arises, *chazaka* allows Halakha to assume that the change occurred at the last possible moment or otherwise occurred in a fashion that would perpetuate the original status. What if that original “point of precedent” was never legally acknowledged, although we know that it existed? Can it serve as the point of origin for a *chazaka*?

This fascinating question is debated by the *Rishonim* (*Chullin* 11a) regarding the case of an animal that was discovered to be a *tereifa* (possessing a major physical defect). In additional to prohibiting the animal itself, does this determination demand that we discard any milk previously drawn from this animal? Conventional *chazaka* logic would suggest the application of a *chazaka* assumption that the defect developed AFTER the milking, thereby permitting the milk. Tosafot, however, are opposed to the application of this *chazaka* because there was never a point at which the animals non-*tereifa* status was empirically established. The animal was never internally checked and was never LEGALLY TAGGED as a non-*tereifa*. Although we can state with certainty that a year ago the animal was not a *tereifa* (since *tereifa* animals cannot live more than a year), the status of the animal a year before is now irrelevant. In other words, Halakha never made a legal or formal determination of this animal’s status. Some argue that since the animal was not a *tereifa* a year ago, evidence has emerged that FACTUALLY the animal was indeed healthy, but Tosafot reject this *chazaka*, whose point of origin was only determined retroactively.

Presumably, these authorities are debating the methodology of *chazaka*. If *chazaka* mandates fictionalizing events in order to assume continuity, this *chazaka* should be acceptable. We have retroactive factual evidence that the animal was not a *tereifa* a year ago, and that should serve as a point of origin to fictionalize an assumption that the animal remained healthy throughout the entire duration, including the point of milking.

If, however, *chazaka* does not address the EVENTS, but merely allows us to maintain halakhic stability and perpetuate a previously established ruling, we might require a legally established point of inception. Such an inception point was never established about this animal. At any given moment, we do not possess the capacity to rule that an animal is currently not a *tereifa* and is healthy. A year from now, we can retroactively establish the FACT that a year ago the animal was healthy. However, at that latter stage, we have no halakhic reason to render a decision about the previous year. Since *chazaka* extends halakhic verdicts, it can only extend them from a legally decided halakhic status. A *chazaka* whose point of origin can only be established retroactively does not offer that point of inception.