YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #05: “Permitted” or “Set Aside” (1):**

**An Explanation of the Concepts**

**I. Introduction**

As mentioned in the previous *shiur*, of the major questions concerning the violation of Shabbat to save a life is: In a situation of *pikuach nefesh*, are the prohibitions of Shabbat totally permitted [*hutra*], or are they only set aside [*dechuya*]? Some of the great *Rishonim* dealt explicitly with this question, and suggested various ramifications of the answer. However, in the words of *Chazal* themselves, we do not find an explicit discussion of the issue, and the terms "permitted" and "set aside" with which the *Rishonim* approach the question are borrowed from an altogether different halakhic realm.

In order to fully understand the meaning of the discussion regarding "permitted" and "set aside," this *shiur* will be dedicated to a clarification of these concepts in their original context, and we will move on in the next *shiur* to the dispute among *Rishonim* with regard to the laws of *pikuach nefesh*.

**II. The Source of the Law**

*Chazal* dealt with the issue of "permitted" versus "set aside" in only one halakhic realm: the offering of communal sacrifices in a state of ritual impurity. There is an important rule that communal sacrifices may be offered in a state of ritual impurity: "'In its appointed season' – even in a state of ritual impurity" (see, for example, *Pesachim* 77a). The need to offer a sacrifice at the time prescribed by the Torah supersedes the obligation to offer it in a state of purity.

In several Talmudic passages (*Pesachim* 77a. *Yoma* 6b, *Sanhedrin* 12b*,* and *Zevachim* 23b), *Chazal* sought to determine whether impurity was "permitted" or "set aside" in order to offer the communal sacrifices. Rashi explains that the question is first and foremost a conceptual one:

"Set aside to bring communal offerings" – Even though the communal offering sets [the impurity] aside, it permits it with difficulty, and not with a complete allowance. (Rashi, *Yoma* 6b, s.v. *dechuya*)

That is to say, all agree that it is possible to offer a communal sacrifice in a state of impurity, but the question is whether this is a straightforward allowance that can be broadly applied, or whether the allowance is applied "with difficulty." Rashi repeats this formulation of "permitted with difficulty" in his comments on the parallel passages as well, and as stated, these comments give expression to the nature and meaning of the allowance.

**III. Practical Halakhic Implications**

The obvious question is whether the difference between "permitted" and "set aside" has any practical ramifications – and indeed, the relevant Talmudic passages discuss three areas in which this distinction makes a practical difference:

**1. Obligation of *pesach sheni***

In the Gemara in *Pesachim* (80a), the *Amoraim* disagree about whether there is a make-up offering for a Paschal offering that was brought in a state of impurity. That is to say, in the event that the *pesach rishon* was offered in a state of impurity, can a person who was unable to bring it at its appointed time offer a *pesach sheni* as he can in any other year, or is there perhaps no "make-up" in a case where the original *korban pesach* was offered in a state of ritual impurity?

The Gemara proposes hanging the dispute on the question of "permitted" vs. "set aside": According to those who say that impurity is *permitted* in order to offer communal sacrifices, ultimately, the Pesach offering was brought "in the proper manner," so one who could not offer it is required to bring a *pesach sheni*. In contrast, according to those who say that the impurity is "set aside" in order to offer communal sacrifices, the offering of the *pesach* *rishon* was partial and problematic, and therefore one who missed that offering is not required to make it up with a *pesach sheni*.

Without a doubt, the Gemara's suggestion takes things to the extreme, since it understands the view that the impurity is "set aside" as indicating that the offering was flawed to a certain extent. Indeed, according to the Gemara's conclusion, this proposal is rejected, and the Amoraic dispute regarding a make-up offering for a Paschal offering that was brought in a state of impurity is explained in accordance with other laws that are connected to the Paschal offering that are not of our present concern.

**2. The pardon effected by the High Priest's front plate [*tzitz*]**

The front plate that is worn by the High Priest on his forehead is meant to atone and effect pardon for sacrifices that were offered in a state of impurity, inadvertently or intentionally. The Gemara (*Pesachim* 77a, and also *Sanhedrin* 12b) asks whether such pardon is necessary even for a communal sacrifice that was offered in a state of impurity, and hangs it on our question: If the impurity is permitted, it is as if there were no impurity at all, and thus there is no need for the atonement achieved by the front plate. On the other hand, if the impurity is only set aside, ultimately the sacrifice was offered in a state of impurity, and thus the atonement achieved by the front plate is necessary.

This determination is accepted by the Gemara's conclusion, but it has no practical halakhic significance. This is because, in parallel to this course of argumentation, the Gemara also brings a Tannaitic dispute as to whether the front plate effects pardon only when it is resting on the High Priest's forehead, or perhaps even when the High Priest is not wearing it. According to the view that impurity was "permitted" in order to offer communal sacrifices, the front plate effects pardon only when it is on the High Priest's forehead. But according to this view, communal sacrifices such as those that are brought on Yom Kippur, when the High Priest is outfitted in his white garments and he is not wearing the front plate, do not require the pardon effected by the front plate. On the other hand, according to the view that impurity is "set aside" in order to offer communal sacrifices, the pardon effected by the front plate is in fact needed, but the front plate effects pardon even when it is not on the High Priest's forehead. It turns out then that either way, offerings that were brought in a state of impurity are valid, and the only question is whether their validity does or does not depend on the pardon effected by the front plate.

To complete the discussion, it should be noted that the Rambam (*Hilkhot Bi'at Mikdash* 4:7), who rules that impurity is "set aside" in order to bring communal sacrifices, emphasizes that the pardon effected by the front plate is needed for communal sacrifices that were offered in a state of impurity – in accordance with the Gemara's conclusion that the two disputes are interconnected.

**3. The effort that must be made to locate pure priests**

A third ramification of the question of whether impurity is "permitted" or "set aside" in order to offer communal sacrifices involves a halakhic dispute that has a clear practical implication:

It has been stated: As to the impurity of a corpse, Rav Nachman said: It is *permitted* in order to bring communal sacrifices. Rav Sheshet said: It is *set aside* in order to bring communal sacrifices.

When there are both pure and impure men in the same priestly family-division, all agree that the pure ones perform the service and the impure ones forego it. The dispute concerns only the question of whether one is obligated to endeavor to search and bring pure ones from another family-division. Rav Nachman said: [The law of corpse-uncleanness is] *permitted* [in order to offer] communal [sacrifices], hence we need not search. Rav Sheshet says: It is *set aside* [in order to offer] communal [sacrifices], hence we must search [to find priests who are in a state of purity for the service].

Some say that even in a case in which there are both pure and impure priests in the same family-division, Rav Nachman argues and says that even the impure ones may perform the service, because the Torah has rendered all impurity caused by a corpse permitted [in order to offer] communal [sacrifices]. (*Yoma* 6b)

According to Rav Sheshet, impurity is merely "set aside" for the sake of offering communal sacrifices, and therefore every effort must be made to avoid offering the sacrifice in a state of impurity. When most or all of the priests of the family-division in service that week are impure, by law it is possible to offer the sacrifice in a state of impurity; nevertheless, great effort should be made to locate other priests who can offer the sacrifice in their place.

Rav Nachman, on the other hand, maintains that impurity is fully "permitted" in order to offer communal sacrifices, and therefore there is no obligation to make an effort and look for pure priests. The Gemara continues with a discussion of the extent to which one is exempt from looking for pure priests, and brings two versions of his position. However, the Rambam rules in accordance with the view of Rav Sheshet:

If a portion of the family-division scheduled to serve in the Temple that day were impure and a portion were pure, even if the majority were impure due to contact with a human corpse, only those who are pure should offer the sacrifices. If all the priests of that division were impure, the priests of another division should be brought [to serve]. If all the priests of that watch were impure due to contact with a human corpse, we look for [those of] another watch. If most of the priests who entered Jerusalem at a given time were impure, [the appropriate sacrifice] should be offered in a state of impurity.

Why do we search for a priest who is pure from another family-division? Because [the prohibition against serving while] impure was not permitted entirely [in order to offer] the communal [sacrifices]. Instead, the prohibition is still standing; it is merely set aside temporarily, because of the pressing situation. We do not set aside any prohibitions that may be superseded except in a situation where there is no alternative – and because of this, the front plate is required to bring about appeasement. (*Hilkhot Bi'at Mikdash* 4:14-15)

The Rambam clarifies that the halakhic conclusion is that the impurity is "set aside," not "permitted," and therefore, the pardon effected by the front plate is needed and it is necessary to search for a pure priest.[[1]](#footnote-1) As stated, this *halakha* is special in that the disagreement about whether impurity is "permitted" or "set aside" has practical ramifications. As we will see in the following *shiurim*, in the laws of *pikuach nefesh* as well, the practical ramification of the "permitted" vs. "set aside" debate relates to how much effort must be made to minimize profanation of Shabbat.

**IV. Impurity in the Case of Communal Sacrifices vs. Other Areas of Halakha**

In two Talmudic passages, a comparison is made between the impurity that is "set aside" in order to offer communal sacrifices and some other *halakha* that is set aside. The Gemara in *Yoma* (46b) states that even though impurity is "set aside" in order to offer communal sacrifices, the Temple service is "permitted" on Shabbat. The distinction between these cases is easily understandable, as well formulated by Rav Elyashiv:

In simple terms, the explanation is that the daily offering on Shabbat is not a chance occurrence, but rather from the outset the time for the daily offering is every day, and therefore also on Shabbat… There is no proof from here for the rest of the Torah, for there it is a chance occurrence and it could happen even on a weekday. But the daily offering must be offered on Shabbat. This is simple. (*Kovetz He'arot Yoma* 46b, s.v. *Shabbat*)

That is to say, a communal sacrifice that is offered in a state of impurity is an unusual event, that under ordinary circumstances should not happen at all. Therefore, the impurity is merely "set aside." On the other hand, offering sacrifices on Shabbat is a necessity: the daily offering must be brought on Shabbat just as on every other day, and the *mussaf* offering of Shabbat was established specifically on Shabbat. Therefore, it stands to reason that with respect to bringing sacrifices, the prohibitions of Shabbat are actually "permitted," and not just set aside, as explained in the Gemara.

This distinction also clarifies a more complex issue in tractate *Zevachim* (32b), regarding the relationship between the allowance granted to a leper to insert his thumb and toe into the Temple courtyard for his sprinklings (which serve as part of his purification process, along with the sacrifices he must bring) and impurity that is "set aside" in order to offer communal sacrifices. There too, it emerges from the passage that the insertion of the leper's digits is "permitted," since this is exactly what the Torah commands him to do as part of his purification, whereas offering communal sacrifices in a state of impurity – which is not an inherent necessity, but rather reflects a one-time mishap – is only "set aside."

This fundamental distinction will be very significant in the coming *shiurim*, because *pikuach nefesh* seems to be an exceptional event, not a routine and necessary one; therefore, it would seem right to define Shabbat in a case of *pikuach nefesh* as "set aside," rather than "permitted." Nevertheless, there is room to suggest a distinction between the cases and say that while care can be taken to avoid ever having to set aside impurity in the case of a communal offering, it is impossible to reach a state in which there will never be a case of *pikuach nefesh* on Shabbat. For example, about a seventh of births take place on Shabbat. Therefore, *pikuach nefesh* can also be understood as a built-in and necessary reality which cannot be avoided.

**V. Additional Examples of “Permitted” and “Set Aside”**

As mentioned above, the only discussions regarding "permitted" and "set aside" in the words of *Chazal* concern offering communal sacrifices in a state of impurity. It was the *Rishonim* who expanded the discussion to the laws of *pikuach nefesh*, as we will discuss in the next *shiur*.

We will conclude this *shiur* with other areas, beyond the laws of *pikuach nefesh*, concerning which the *Rishonim* and *Acharonim* raised the issue of "permitted" vs. "set aside" in an explicit manner.

**1. A priest defiling himself for one of his relatives**

The Torah forbids priests to defile themselves through contact with a corpse, with the exception of seven close relatives. The Rambam rules as follows:

The prohibition against contact with ritual impurity is set aside with regard to one's relatives; it is not permitted entirely. For this reason, a priest is forbidden to become impure for the sake of another corpse at the time he has become impure for the sake of his relatives. This is implied by "for her shall he become impure" (*Vayikra* 21:3), i.e., *only* her; he may not become impure for the sake of others along with her. He should not say: "Since I became impure for the sake of my father, I will go gather so-and-so's bones" or "...touch so-and-so's grave." Therefore, when the relative of a priest dies, care must be taken to bury him at the edge of the cemetery, so that he will not have to enter the cemetery and become impure because of other graves when he buries his dead. (*Hilkhot Avel* 2:15)

Indeed, it has long been the custom in Israel to set aside burial plots for priests so that relatives can reach the plot without becoming defiled through contact with other graves. This *halakha* appears in the *Sifra* (*Emor parasha* 1, chapter 1, 13) and in tractate *Semachot* (4:15-16, as explained in the commentaries to the Rambam), where there is no mention of the issue of "permitted" versus "set aside." It is the Rambam who bases this *halakha* on the principle of "set aside" as opposed to "permitted."

**2. Circumcision on Shabbat**

Halakha clearly allows circumcising an infant on the eighth day, even if that day falls out on Shabbat. In this context as well, the Rambam relates to the issue of "permitted" vs. "set aside," but here his position is more complex:

Similarly, if a person had two infants to circumcise, one on Shabbat and one on Friday or on Sunday, should he have forgotten and circumcised them both on Shabbat, he is exempt from bringing a sin-offering. For he was licensed to circumcise one of them on Shabbat, and [therefore] the laws of Shabbat are set aside in his regard, and he performed a mitzva. (*Hilkhot Shegagot* 2:8)

On the one hand, here too the Rambam explicitly states that Shabbat is "set aside." On the other hand, he seems to be stating a *halakha* that expresses an approach of "permitted"; that is, the exemption from a sin-offering for one who circumcised a nine-day-old baby on Shabbat. Indeed, the Rema explicitly states that circumcision falls into the category of "permitted":

It appears to me that it is permitted, as circumcision sets aside Shabbat like the Temple service, where several priests would perform the service and desecrate Shabbat, for since it can be set aside, it is like a weekday for all purposes. (*Hagahot ha-Rema*, YD 266:14)

The Rema also speaks in terms of setting aside, but he clearly means to say that the Shabbat prohibitions are completely permitted with respect to the mitzvaof circumcision, and Shabbat "is like a weekday for all purposes." (This phrase appears in the Rambam with respect to the laws of *pikuach nefesh* as well, and we will address it in the coming *shiurim*.) The Vilna Gaon, however, expresses reservations regarding the words of the Rema:

This does not seem to be a proof, for the [Temple] service is *permitted* on Shabbat, which is not the case regarding circumcision, where the implication is that it is set aside. (*Bi'ur ha-Gra*, *ad loc*.)

That is to say, it is possible that a distinction should indeed be made between the Temple service, which falls into the category of "permitted," and circumcision on Shabbat, which falls into the category of "set aside." The Netziv (*Ha'amek She'eila*, *she'ilta* 10) sides with the Rema's ruling, and explains that since about one seventh of all circumcisions will necessarily fall out on Shabbat (just as one seventh of births occur on Shabbat), we are forced to say that circumcision falls into the category of "permitted," not only “set aside,” as explained above with regard to the Temple service.

**3. Cooking Food on Yom Tov**

The Ran is one of the *Rishonim* according to whom the Shabbat prohibitions are “set aside” in cases of *pikuach nefesh*, not “permitted.” In order to clarify this argument, he draws a comparison between *pikuach nefesh* and the allowance to cook and perform other prohibited labors on Yom Tov for the purpose of food preparation:

Shabbat is set aside for a sick person, but it is not permitted… But on Yom Tov, when food preparation is permitted, even if he could have prepared the food on the eve of Yom Tov, whatever he adds to the main thing is permitted …

Moreover, it seemed to the Sages that since the Torah says: "save that which every man must eat" (*Shemot* 12:16), one need not measure and be precise so that he cooks only that which he needs. For this reason, one may add to the amount wherever that does not cause more work. (Ran, *Beitza* 9b in the Alfasi, s.v. *u-miha*)

The Ran explicitly states that labors involving food preparation were never prohibited on Yom Tov; therefore, the allowance to cook on Yom Tov is broad, and one may add to the amount and cook even more than he needs.

**4. The mitzvaof levirate marriage**

The Mishna in tractate *Bekhorot* (13a) states that, in principle, the mitzvaof *yibum* (levirate marriage) takes precedence over the mitzvaof *chalitza* (the procedure by which one declares he will not perform *yibum*), although in later generations *chalitza* became the preferred course. This was because people’s intentions became suspect and there was concern that their motives in consummating a levirate marriage would not be purely for the sake of the mitzva. The Gemara in *Yevamot* (39a) suggests that the *Tannaim* disagreed about this issue: Abba Shaul was of the opinion that it is prohibited to consummate a levirate marriage if one is motivated by anything other than the mitzva, while the other Sages argued that the verse describing *yibum* simply states “her brother-in-law will have intercourse with her” (*Devarim* 25:5), without limitations on his motivation.

As in the context of defilement of priests, here too, even though *Chazal* do not explicitly relate the matter to the issue of "permitted" versus *"*set aside," the Rambam maintains that this question is at the heart of the Tannaitic dispute:

But according to the position of Abba Shaul, the mitzvaof *chalitza* takes precedence, because he maintains that the prohibition of marrying one's brother's wife is *set aside* by the mitzva of levirate marriage, and if one's intentions were other than for the mitzva, it is as if he committed incest. But the law is not in accordance with his view. (*Responsa ha-Rambam*, no. 318)[[2]](#footnote-2)

If the allowance to marry one's brother's wife falls into the category of "permitted," then it is clear that levirate marriage takes precedence over *chalitza*. But if the allowance is only in the category of "set aside," there may be room to give preference to *chalitza*.[[3]](#footnote-3)

**5. *Kil'ayim* in *tzitzit* and in the priestly garments**

The Torah forbids wearing a garment containing *kil'ayim*, a mixture of wool and linen, but it is permitted in two cases: when woolen threads are tied as *tzitzit* on a linen garment, and in the priestly garments worn in the Temple.

There are several discussions among the *Rishonim* about the scope of these allowances. For instance, is a woman (who is exempt from the mitzvaof *tzitzit*)permitted to wear a four-cornered garment that has *kil'ayim* in it? Is a priest permitted to wear his priestly garments even when he is not performing the service in the Temple? Each of these issues requires a lengthy discussion on its own, but for our purposes, I would like to mention a few lines from Rabbi Elchanan Wasserman’s extensive discussion on the issue of "a positive commandment sets aside a negative commandment."

According to this, the law regarding *kil'ayim* in the priestly garments is *not* based on the rule that a positive commandment “sets aside” a negative commandment, but is "permitted." For since the priestly garments necessarily contain *kil'ayim*, you learn that the Torah does not prohibit *kil'ayim* in priestly garments at all. But regarding *tzitzit*, since there can be *tzitzit* without *kil'ayim*, it is because a positive commandment sets aside a negative commandment.

This seems to be the rationale of the Ra'avad, who distinguishes between *tzitzit* and the priestly garments. For in the case of *tzitzit*, it is because the prohibition is set aside, whereas regarding the priestly garments, it is permitted… But behold, the view of Rabbeinu Tam is that *kil'ayim* in *tzitzit* is permitted by the Torah… and this is also the opinion of the Ramban in his novellae to *Shabbat*. (*Kovetz He'arot* 9)

With regard to these two issues, Rabbi Elchanan Wasserman proves that the *Rishonim* disagree whether the allowance falls into the category of "permitted" or into the category of "set aside."

**6. Additional examples**

In the works of the *Acharonim*, the terms "permitted" and "set aside" are assigned great importance, and they are employed with respect to almost every issue involving two opposing factors. Thus, they discuss whether the allowance to perform a prohibited labor on *Chol Ha-mo’ed* in order to prevent a monetary loss falls into the category of "permitted" or "set aside" (*Kovetz He'arot ha-Grish Elyashiv*, *Mo'ed Katan* 11b), or whether the rule that "one who is preoccupied with one mitzva is exempt from performing another mitzva" falls into the category of "permitted" or "set aside" (Rav Asher Weiss, *Shiur le-Parashat Be-Ha'alotekha*, 5772).

We see then that the pair of terms "permitted" and "set aside" is useful for describing a conflict between two factors. In the next *shiur*,we will return to our topic and examine the dispute among the *Rishonim* on the matter of "permitted" and "set aside" with respect to *pikuach nefesh.*

(Translated by David Strauss)

1. The Rosh in his *Tosafot* to *Yoma* *ad loc*.points to a dispute among *Rishonim* whether the obligation to seek out a pure priest applies even on Yom Kippur, or whether it is better for the High Priest to perform the service in a state of impurity than to have the service be performed by an ordinary priest in a state of purity. This dispute is related to the question of which impurities would disqualify a High Priest from performing the service – a broad issue in the laws of Yom Kippur which cannot be addressed in this forum. [↑](#footnote-ref-1)
2. This is a fascinating responsum in which the Rambam deals with a "killer" wife, several of whose husbands have already passed away. Rambam’s position on this matter is very different from that of the rest of the *Rishonim*, but this is not the place to expand upon the issue. [↑](#footnote-ref-2)
3. See also *Kovetz He'arot* *Yevamot* 36, and *Reshimot Shiurei ha-Grid Soloveitchik* to *Yevamot*, letter 1 in the Introduction. [↑](#footnote-ref-3)