YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 24: Catching Harmful Animals on Shabbat, and Killing Them**

**Introduction**

In the previous two *shiurim*, we discussed the issue of a hot metal ember in a public domain, and the view cited by the Ramban and his disciples in the name of the *Halakhot Gedolot* and Rabbeinu Chananel – according to which, in a situation of potential "harm to the public," one is permitted to violate even Torah prohibitions of Shabbat.

As we saw, the Ramban disagrees with this interpretation and with the idea that potential harm to the public is considered a situation of *pikuach nefesh.* Among other things, he draws our attention to a passage in tractate *Shabbat* which deals with catching venomous animals and killing them on Shabbat, and ponders how that passage should be interpreted according to the *Halakhot Gedolot* and Rabbeinu Chananel, who expand the category of *pikuach nefesh* to include all cases of potential harm to the public.

The Ramban's position with regard to that passage is summed up in a short sentence and is subject to interpretation. But the passage itself seems to be of significance for clarifying the difference between danger to an individual and danger to the community, and therefore, we will devote the current *shiur* to it.

**A Tannaitic Dispute: Inverting a Dish Over a Scorpion**

 We learn in a *mishna*:

A dish may be inverted… over a scorpion, so it will not bite.

Rabbi Yehuda said: An incident came before Rabban Yochanan ben Zakkai in Arav, and he said: I am concerned for him [that he may be liable to] a sin-offering. (*Shabbat* 16:7)

Inverting a dish over a scorpion involves the forbidden labor of hunting (or trapping), yet the anonymous first *Tanna* of the *mishna* permits it. Rabbi Yehuda, on the other hand, cites a tradition according to which such an action indeed raises concern about the violation of a Torah prohibition.

The Gemara (121b) explains that the allowance granted by the anonymous first *Tanna* can be interpreted in two ways. One might argue that a free scorpion constitutes a danger to life, and therefore, even though hunting is prohibited by Torah law, it is permitted in a situation of *pikuach nefesh.* It is unthinkable that Rabbi Yehuda would disagree with the allowance to desecrate Shabbat for the sake of *pikuach nefesh*, thus we must say that according to him, a scorpion does not fall into the category of a life-threatening danger – apparently because there are many scorpions in the world, and most of them do not bite humans. That is to say, the *Tannaim* disagree on the question of whether a free scorpion is considered sufficiently dangerous to invoke the laws of *pikuach nefesh.*

Alternatively, it can be argued that even according to the anonymous first *Tanna*, this is not a situation of true *pikuach nefesh*. Rather, he holds that inverting a dish over a scorpion is in fact not forbidden by Torah law, for two reasons. First, since the person who inverts the dish does not need the scorpion, and has no intention of using it, inverting the dish is considered a *melakha she-eina tzerikha le-gufah* – a labor performed for a purpose other than the goal of that act in the building of the *Mishkan*, which Torah law permits according to Rabbi Shimon. Second, the forbidden labor of "hunting" is forbidden by Torah law only with respect to animals that people ordinarily hunt, and a scorpion does not fall into that category. Admittedly, the "hunting" of a scorpion is still prohibited by Rabbinic law, but here we can go back to the issue of a fiery piece of metal according to most of the *Rishonim*, and say that even if there is no actual *pikuach nefesh* here, a free scorpion is certainly a potential harm to the public, and in order to remove such hazards, one is permitted to perform an action whose prohibition is only Rabbinic.

Of course, according to this approach, Rabbi Yehuda's position is quite understandable; it is consistent with his own view concerning the category of *melakha she-eina tzerikha le-gufah*. According to him (*Shabbat* 105b and elsewhere), such actions are still prohibited by Torah law, thus there is no room to issue an allowance if the situation does not involve *pikuach nefesh*.

**Killing Harmful Animals in a Situation of *Pikuach Nefesh***

In its discussion following the dispute in the Mishna, the Gemara brings the following statement:

Rabbi Yehoshua ben Levi said: All harmful animals may be killed on Shabbat. (*Shabbat* 121b)

The Gemara raises an objection to Rabbi Yehoshua, and the *Rishonim* disagree as to how to understand the objection, the resolution, and the Gemara's conclusion. This is not the place to spell out all the different positions,[[1]](#footnote-1) but we will consider those that are relevant to our topic.

All the *Rishonim* agree about a venomous animal that is liable to cause death,[[2]](#footnote-2) that one is permitted to capture or kill it. While the Gemara seems to indicate that this allowance is limited to a case where the animal is "chasing after him" (that is to say, when the animal is directly attacking the person), the *Rishonim* agree that when it comes to a dangerous and deadly animal, one is permitted to capture or kill it. This is how the Rambam summarizes the matter:

Among the harmful animals, there are species that will certainly kill a person if they bite him, e.g., certain species of snakes and a stray dog. One may kill such animals on Shabbat from the outset (*lekhatchila*), when he apprehends them, and there is no dispute about this. (Rambam, Commentary on the Mishna, *Shabbat* 16:7)

This is also the understanding of the Ramban:

It turns out that all animals that cause injury may be killed [on Shabbat] in their usual manner, when they are chasing after him, and because of *pikuach nefesh.* One who is zealous about it is praiseworthy, and one need not do it in an unusual manner… The five that are mentioned in the *baraita* may be killed in their usual manner even if they are not chasing after him. (*Chiddushei ha-Ramban*, *Shabbat* 121b, s.v. *nimtza*).

So too the *Shulchan Arukh* rules:

Any animal or reptile whose bite is definitely deadly may be killed on Shabbat even if they are not chasing anyone. (*Shulchan Arukh* OC 316:10)

This ruling is an example of future *pikuach nefesh*, but it is not necessary to tie it to the concept of communal *pikuach nefesh*; it is possible that the danger level is perceived as particularly high, and therefore the allowance is granted even though it is only a future danger.

Indeed, halakhic authorities relate to the killing of venomous animals as instances of *pikuach nefesh*, and therefore the *Sha'ar ha-Tziyun* writes (ad loc., *s.k.* 72) that in a place where many people are found, the allowance is not only to kill such animals in a random encounter but also to seek them out. In accordance with this approach, the *Shemirat Shabbat ke-Hilkhata* writes (chapter 28, note 8; see there in the body of the text for details of the laws and examples) that such animals may be killed even when they are young, out of concern that they will cause injury when they reach full maturity.

**The Rambam’s Position: Harm to the Public and *Pikuach Nefesh***

Later in the passage in *Shabbat*, the Gemara states explicitly that there are situations in which it is permissible to kill animals that may cause injury, even if there is no real concern of *pikuach nefesh*. As mentioned, the *Rishonim* disagree about the details, but for our purposes, one central question is significant – a question concerning the proper understanding of the Rambam’s position.

Most *Rishonim* follow the opinion of Rabbi Shimon, who maintains that a *melakha she-eina tzerikha le-gufah* is not prohibited by Torah law. As may be recalled from a previous *shiur* ([#22](https://etzion.org.il/en/halakha/studies-halakha/ember-of-metal-1)) in this series, the *Shulchan Arukh* ruled, in accordance with the majority of *Rishonim*, that one is permitted to extinguish a fiery item, whether of metal (a Rabbinic prohibition) or of wood (a Torah prohibition), for this reason: because even extinguishing a burning piece of wood is a *melakha she-eina tzerikha le-gufah.* Here, too, the allowance to capture or kill animals that may cause *injury* – even those that do not endanger human *life* – is based on the notion that Rabbinic prohibitions are permitted in order to prevent pain and injury. The *Beit Yosef* summarizes the issue as follows:

However, according to one who maintains like Rabbi Shimon, it is possible that even in the absence of possible *pikuach nefesh*, it is permitted because of pain… And the reason is that he maintains like Rabbi Shimon, who said that one who performs a *melakha she-eina tzerikha le-gufah* is exempt [from punishment], and in a case of pain, one is exempt and it is permitted from the outset [*lekhatchila*], just like puncturing an abscess or extinguishing a burning metal ember so that it not cause injury. (*Beit Yosef* OC 316:10)

The Rambam, however, rules in accordance with the opinion of Rabbi Yehuda that *melakha she-eina tzerikha le-gufah* is prohibited by Torah law (*Mishneh Torah, Hilkhot Shabbat* 1:7) – thus it would appear that according to him, none of these allowances should apply. Nevertheless, the Rambam codifies (*Hilkhot Shabbat* 11:4) some of the allowances arising from that passage, and permits killing animals in certain situations even when there is no immediate danger to life.

Moreover, the Rambam rules in general that one is permitted to catch a snake on Shabbat so it will not bite, presumably even in a situation where there is no danger to life:

Crawling beasts that are dangerous – e.g., snakes, scorpions, and the like – may be caught on Shabbat. [This leniency is granted] even when they are not deadly, but merely bite, provided one's intent is to prevent [someone from] being bitten. What should one do? Place a utensil over them, cover them with something, or tie them so they cannot cause injury. (*Hilkhot Shabbat* 10:25)

The source of this ruling is another passage in tractate *Shabbat* (107a), where Shmuel establishes this *halakha* together with two other laws; regarding all three, he rules that they are "exempt *and* permitted," rather than the more common "exempt [by Torah law] but prohibited [by Rabbinic law]." There too, however, according to most *Rishonim*, the allowance is based on the opinion of Rabbi Shimon regarding *melakha she-eina tzerikha le-gufah* – that is to say, those actions are permitted in a situation of potential pain and injury (but not death) precisely because they do not involve a Torah prohibition. Thus, we must ask how the Rambam could have ruled leniently about Torah prohibitions in such situations, which do not involve actual *pikuach nefesh.*

The *Rishonim* had difficulty with this not only in the context of the Rambam's ruling, but with regard to the very position of Shmuel: In the passage dealing with a hot ember in the public domain, Shmuel rules in accordance with the opinion of Rabbi Yehuda, and therefore permits only the extinguishing of an ember of metal, but not that of a burning piece of wood; regarding catching a snake, however, he rules that it is completely permitted, apparently in accordance with the opinion of Rabbi Shimon. Some *Rishonim* reconcile the difficulty by arguing that in fact, Shmuel issued his ruling regarding catching a snake only according to the opinion of Rabbi Shimon, "but he does not agree with it" (*Tosafot Shabbat* 3a, s.v. *ha-tzad nachash*). Other *Rishonim* (e.g., the *Maggid Mishneh* in *Hilkhot Shabbat* 10:17, which will be examined at length below) maintain that catching a snake is actually less severe than a *melakha she-eina tzerikha le-gufah*: as Shmuel states in the Gemara says: "If he is engaged therewith [*mit’asek*] so that it will not bite him," and even Rabbi Yehuda agrees that there is no Torah prohibition in a case of *mit’asek*.[[3]](#footnote-3)

Another way of reconciling the words of Shmuel, which also relates to the Rambam's ruling, brings us back to the position of the *Halakhot Gedolot* and Rabbeinu Chananel regarding "harm to the public" being considered like an instance of *pikuach nefesh*. The Rashba cites their position and explains:

It may be asked: How did Shmuel permit catching a snake, which involves a Torah prohibition, because of injury? It may be suggested that if its way is to cause injury, and [members of] the public are liable to be injured by it, Shmuel considers it like a danger to life, because the community cannot take precautions against it, and perhaps if this person takes precautions against it, another person will not. This is not the case with a burning piece of wood, because it does not go out and cause injury, and everyone can take precautions against it. (*Chiddushei ha-Rashba*, *Shabbat* 42a, s.v. *aval Rabbeinu Hai*)

That is to say, according to the *Halakhot Gedolot* and Rabbeinu Chananel, the degree of harm to the public must be examined on a case-by-case basis: a burning piece of wood is less dangerous, and therefore according to Shmuel it may not be extinguished, whereas both a fiery piece of metal and a snake fall into the category of serious danger to the public and *pikuach nefesh*; therefore, he permits violating even a Torah prohibition in order to remove these dangers.

This explanation of the Rashba may also reconcile the Rambam's rulings. If we indeed interpret them in this manner, it turns out that the Rambam shares the fundamental viewpoint of the *Halakhot Gedolot* and Rabbeinu Chananel regarding harm to the public. This is a significant point, for the *Maggid Mishneh* was in fact hesitant about it:

“Shmuel said: Everything [taught as] “exempt” on Shabbat, it is exempt but forbidden, except for these three, which are exempt and permitted… [And the third:] One who catches a snake on Shabbat – if he is engaged therewith so that it will not bite him, he is exempt.”

I saw somebody who raised an objection against our teacher [Rambam] who ruled in these two cases that it is permitted… Now, since our master ruled in the first chapter like Rabbi Yehuda regarding a *melakha she-eina tzerikha le-gufah*, that one is liable for it, why is one not liable in these cases?

It seems to me in answer to this question that our master maintains… [that in the case of] catching a snake, he does not catch it in his usual manner but rather indirectly [*mit’asek*].

Alternatively, since the public is harmed by it, it is considered like a danger to life. So wrote some of the commentators. The view of Rabbeinu Hai and the *Halakhot Gedolot* is like that of our teacher in the allowance of these two things. (*Maggid Mishneh*, *Hilkhot Shabbat* 10:17)

According to the *Maggid Mishneh*’sfirst answer, catching a snake involves only a Rabbinic prohibition, even according to those who rule that a *melakha she-eina tzerikha le-gufah* is prohibited by Torah law, because it is a case of *mit’asek* (as stated above); therefore, the action is permitted even if there is no *pikuach nefesh*.

According to the second answer, catching a snake does involve a Torah prohibition, but it is permitted because harm to the public is considered like a danger to life – in accordance with the view of the *Halakhot Gedolot* and Rabbeinu Chananel. As stated, if we accept the second explanation, we have found a “friend" for the *Halakhot Gedolot* and Rabbeinu Chananel in an explicit ruling of the Rambam.

Admittedly, it is difficult to rely on this in practice, because although the *Maggid Mishneh* does not decide between the answers, he goes on to quote from *Sefer ha-Batim*,[[4]](#footnote-4)which sides with the first answer and clarifies that catching a snake is not prohibited by Torah law even according to the Rambam, which is why it is permitted even in a case of only pain and injury.

Accordingly, the *Mishna Berura* writes:

Even the Rambam, who generally imposes liability for a *melakha she-eina tzerikha le-gufah*, agrees in this case [=catching a snake]. Some write that the reason is that he maintains that this is not considered a forbidden labor at all, and it is like *mit’asek*, since he has no interest at all in catching [the snake]; on the contrary, his desire is to drive it away from him. (*Mishna Berura* 316:27)

Thus, the accepted explanation of the Rambam's position relates to the level of prohibition that catching a snake involves, not the definition of communal *pikuach nefesh*.[[5]](#footnote-5)

**The *Machatzit Ha-shekel* and the Difference Between Injury and Danger**

The *Sha'ar ha-Tziyun* on the aforementioned words of the *Mishna Berura* (s.k. 38) notes that his acceptance of the first answer of the *Maggid Mishneh* rather than the second answer is based on the words of the *Magen Avraham* and the *Machatzit ha-Shekel*.[[6]](#footnote-6)

The *Machatzit ha-Shekel* does, in fact, discuss at length the relationship between the two answers, and we can learn an important principle from his words regarding the concept of "harm to the public":

Therefore, in my humble opinion, the *Magen Avraham* means that the *Maggid Mishneh* offered two explanations for the position of the Rambam – that even though he maintains that one is liable for a *melakha she-eina tzrikha le-gufah*, nevertheless, he rules here… And the *Magen Avraham* recordsone explanation of the *Maggid Mishneh*,that he is a *mit’asek*, and he comes to explain why he did not also record the second explanation of the *Maggid Mishneh.* For this reason, he wrote: Even when they are not deadly, it is permitted. And so the Rambam wrote explicitly.

If so, according to the first explanation, that it is a case of *mit’asek*, we well understand that it is permissible, even if they are not deadly. But according to the second explanation, that it is considered like a danger to life – if we say that he means it is really a danger to life, that it is impossible that it won’t kill somebody – according to this, if it will certainly not kill anybody, it should be forbidden. But surely the Rambam writes that it is permitted even if they are not deadly. And if he means that even if it will definitely not kill anybody, nevertheless, since the community suffers injury, [the Sages] were lenient as if it were a danger to life, and this is the implication of the wording of the *Maggid Mishneh*, and about this the *Magen Avraham* wrote that if so, it is difficult why in fact it is permitted… Surely we do not permit a Torah prohibition because of harm to the public. Therefore, we are forced to say that the Rambam permits catching a snake because it is *mit’asek*, in accordance with the first reason of the *Maggid Mishneh*. (*Machatzit ha-Shekel* 316, no. 12)[[7]](#footnote-7)

The *Machatzit ha-Shekel's* comment is very important to our discussion. He emphasizes that the expansion of the concept of "harm to the public" to be considered a matter of *pikuach nefesh* requires that there is in fact some concern about loss of human life. If it is clear beyond all doubt that nobody will die, then even if many will be injured, harmed or maimed, it is forbidden!

There is for caution about this in practice, for if we are dealing with the community, that surely includes children, the elderly, and the sick, for whom even a wound or injury could in certain scenarios develop into a life-threatening situation. The concern is remote, but these are “remnants of the laws of the monarchy” that significantly expand the boundaries of communal *pikuach nefesh*.

In the last *shiur*, I mentioned the fundamental article by Rabbi Israel Rosen and the late Rabbi Uri Dasberg regarding police activity on Shabbat.[[8]](#footnote-8) In this article, the authors reviewed “several halakhic sources which express a lenient attitude towards *pikuach nefesh* or communal harm when it comes to the public, with respect to their endangerment and their wellbeing.” At the beginning of their review, they cite the view of the *Halakhot Gedolot* and Rabbeinu Chananel regarding the issue of a metal ember. Their next example is the words of the *Maggid Mishneh* in his explanation of the Rambam’s ruling about catching a snake, while emphasizing that “this *halakha* is fundamentally similar to that of a fiery piece of metal and the discussion in the commentators is connected to the extent of injury or danger of the snake.” Indeed, the issues are connected, as already explained.[[9]](#footnote-9)

**Conclusion: Piety and *Pikuach Nefesh***

In the course of the Gemara’s discussion of the permissibility of killing dangerous animals on Shabbat, we find another important statement, which was already mentioned in the *shiur* early in this series regarding the polemic about *pikuach nefesh*:

A *Tanna* taught before Rabba the son of Rav Huna: If one kills snakes or scorpions on Shabbat, the spirit of the pious is displeased with him. He said to him: As to those pious men, the spirit of the Sages is displeased with *them*. (*Shabbat* 121b)

The phenomenon of “pious men” who were stringent upon themselves in matters related to *pikuach nefesh* is also found in other passages, such as the passage in *Berakhot* (32b-33a) regarding interrupting one’s prayer in a situation of *pikuach nefesh* and the passage in *Nidda* (38a) regarding trying to avoid giving birth on Shabbat because it would require desecration of Shabbat. The halakhic authorities over the generations (see, for example, *Taz*, OC 66, no. 1, and *Tzelach* on the passage in *Berakhot*) wrestled with the issue of whether there are indeed situations in which a pious individual is permitted to be stringent upon himself regarding *pikuach nefesh*.

However, all of this applies to an individual. With regard to the community, the situation is completely different: alongside the general prohibition against practicing "piety" and refraining from actions required for the sake of *pikuach nefesh*, which we clarified in that *shiur*, when it comes to communal *pikuach nefesh*, Rava bar Rav Huna's conclusion is all the more sharp and clear: Those who are overly pious and stringent in matters that are liable to become life-threatening and a danger to the community, "the spirit of the Sages is displeased with them."

(Translated by David Strauss)

1. The various opinions appear in the *Rishonim*, including Rashi and *Tosafot*, as well as the Ramban and his disciples. A summary of the different positions can be found in *Beit Yosef* OC 316:10. It may be noted that the Ramban (ad loc. in his novellae, and in *Milchamot Hashem* on the Rif, 45b) expanded on the practical halakhic decisions that were reached concerning the disputes between Rabbi Yehuda and Rabbi Shimon about *melakha she-eina tzerikha le- gufah* and *davar she-eino mitkaven.* Of course, this discussion goes beyond the scope of our topic. [↑](#footnote-ref-1)
2. The Baraita in the Gemara lists five such animals, among them a snake, a scorpion and an animal infected with rabies. But the *Beit Yosef* (ibid.) writes that the words of the Rambam imply that "these five are not exclusive." So too writes the Vilna Gaon (in his commentary to *Shulchan Arukh* OC 316:10, and cited in *Sha'ar ha-Tziyun* ad loc., no. 71), who adds: "These five are not exclusive, but everything is in accordance with the time and the place. [↑](#footnote-ref-2)
3. For a precise formulation of this argument, see *Responsa Avnei Nezer*, OC 189. He discusses there whether the allowance is based on *shinui* (performing the labor in an unusual manner), *mit’asek*, or a view that the action does not involve hunting at all. See also *Responsa Cheishev ha-Efod* (of Rabbi Chanoch Dov Padwa, who was affiliated with the Eida Charedit and died in 5760), part II, no. 16. [↑](#footnote-ref-3)
4. *Sefer ha-Batim* was written by Rabbi David ben Shmuel ha-Kokhavi, one of the sages of Provence in the first half of the fourteenth century, who followed the Rambam on many issues of Halakha and Jewish thought. This understanding of the Rambam is also brought by Rabbi Menachem ha-Meiri, in his *Beit ha-Bechira* (*Shabbat* 42a, s.v. *gachelet*). [↑](#footnote-ref-4)
5. *Responsa Keneh Bosem* (by Rabbi Meir Brandsdorfer, another contemporary authority affiliated with the Eida Chareidet, who died in 5769), part I, no. 21, includes the *Maggid Mishneh*'s explanation of the Rambam among additional reasons to be lenient with respect to a woman pumping breastmilk on Shabbat to relieve pain, even according to the Rambam who is stringent about *melakha she-eina tzerikha le-gufah*. Admittedly, the *Maggid Mishneh*'sexplanation is mentioned there merely as a supporting argument. Rabbi Brandsdorfer also emphasizes that in certain cases, inaction could lead to real danger, and not just pain; this argument as well underlies the allowance. [↑](#footnote-ref-5)
6. Rabbi Shmuel Ha-Levi Kelin was of the leading Ashkenazi Torah authorities at the end of the eighteenth century. His *Machatzit ha-Shekel* on the *Shulchan Arukh* is a commentary and expansion on the rulings of the *Magen Avraham.* [↑](#footnote-ref-6)
7. *Responsa Cheshev ha-Efod* (ibid.) also deals at length with the words of the *Machatzit ha-Shekel.* [↑](#footnote-ref-7)
8. "*Ha-Shabbat ba-Mishtara*," published in *Techumin*, vol. 2. The introduction is available [here](https://www.zomet.org.il/?CategoryID=277&ArticleID=380&Page=1) on the Makhon Tzomet website, and the article itself is available [here](https://www.zomet.org.il/_Uploads/dbsAttachedFiles/t-02-05dasberg.pdf). [↑](#footnote-ref-8)
9. Rabbi Raphael Katzenelenbogen also brings these two examples in his article, "*Sug ha-Shilton ha-Ratzui ve-Derekh Hanhagato*," published in *Torah she-Be’al Peh*, vol. 31, 5750 (see there pp. 91-92). [↑](#footnote-ref-9)