



Parshas Behar/Bechukosai 5767

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Davar She'eino Miskavein

What is the definition of a davar she'eino miskavein?

A *davar sheino miskavein* is a deed that arises as a result of another action. As mentioned in last shiur, dragging a bench in a field and the bench plows a groove in the field - a *melacha* of plowing - *choresh*. One needs the bench and unintentionally it plows the field. The direct action is dragging the bench and the indirect action, a result of the action, is the furrow.

Davar she'eino miskavein means something not intended.

This sounds like g'rama more than anything else?

There is a major difference between the two. A *davar she'eino miskavein* is a direct result of one's action usually taking place at the same time as the primary deed, or immediately after, while *g'rama* takes place later.

We will see the difference with the following example. Washing hands over a lawn is a *davar she'eino miskavein*. One's primary deed is washing hands and the secondary deed is the lawn being watered. Watering the lawn is not intended (*eino miskavein*) and is a by-product of one's primary deed.

Example of *g'rama* are placing water on a carpet in wake of fire and the water extinguishes the fire when the fire eventually reaches the water, or placing plastic bags filled with water in wake of a fire and the fire consumes the bags, causing the water to extinguish the fire. In both cases

one is not acting directly, unlike the *davar she'eino miskavein*, which is a direct action.

What is the halacha with regards to davar she'eino miskavein?

We must divide *davar she'eino miskavein* into two major parts, *p'sik reisha* and not a *p'sik reisha*. *P'sik reisha* itself is divided into two parts, *nicha lei* and *lo nicha lei*.

P'sik reisha means "it will definitely happen". In the case of dragging the bench across a field and the bench is heavy enough and the ground soft enough, it will make a furrow - this is a *p'sik reisha*.

Nicha lei means that one is happy with the outcome.

Lo nicha lei means that one is unhappy with the outcome.

Another famous term is known as **lo ichpas lei**, which means one is indifferent to the outcome. In most cases, *lo ichpas lei* is equivalent to *lo nicha lei* as we will see.

Is the halacha different in each case?

A *p'sik reisha d'nicha lei* is *ossur mid'oraisso* - biblically prohibited. Practically speaking, if one is happy with the fact that while washing hands over the lawn the garden is being watered, it is *ossur mid'oraisso*.

What is the logic behind p'sik reisha d'nicha lei?

Rav Elchonon Wasserman זצ"ל explains this as follows: A *p'sik reisha d'lo nicha lei* is not *ossur mid'oraisso* (only *d'rabanana*), because one considers the outcome of the secondary deed irrelevant as

it is not as if the person is performing it, but just a consequence of the main act. If however one derives comfort and is pleased with the outcome, it is considered as if one intends for that outcome, rendering the secondary deed a *davar she'miskavein* – one intends it to happen. It is comparable to doing two deeds at once, turning on a light with one hand and separating (*borer*) with the other, in which case one is *chayav* for both.

But I prefer not to water the garden because it is Shabbos?

This is not a valid argument because you really want to irrigate the garden and it is only because of Shabbos that you do not wish it to happen. When one forgets to turn off the light in the refrigerator before Shabbos, one may not open the door saying that one does not wish the light to go on, because normally one is pleased with the outcome and it is only due to the *issur* that one wishes the light not to go on. [It is important to note that Rav Shlomo Zalman Auerbach reiterates many times that he does not think that the light turned on in the refrigerator is a *p'sik reisha* rather a direct action, because it is connected to operate in that manner.]¹

What is the halacha with p'sik reisha d'lo nicha lei?

There is a famous *machlokes*, where the *Aruch* (cited in *Tosefos Kesubos* 6a) holds that it is permitted and most other *Rishonim* argue and hold that it is *ossur mid'rabanan*. *Halacha* is in accordance with most *Rishonim* who hold that it is *ossur*.² The same holds for *p'sik reisha d'lo ichpas lei*, when one is not concerned with the outcome.

Consequently, washing hands over someone else's garden³ or in a forest is not a *d'oraisso*. It is nevertheless *ossur mid'rabanan*.

Is there a practical difference between lo nicha lei and lo ichpas lei?

Dragging a heavy bench that creates a furrow over a lawn or path is *lo nicha lei* because one does not want to ruin the lawn or path. Dragging it in a forest or through an empty lot is *lo ichpas lei* because one does not care whether it creates a furrow or not.

Vort on the Parsha

Hashem promised that "you shall eat your bread to satisfaction" and *Rashi* explains that one will eat a small amount and one will feel satiated. But can Hashem not give more food, why the miracle of eating a little? Rav Sternbuch explains that it is *b'racha* not to have to divulge in food because it distracts from *avodas Hashem*. The least one has to invest in earthly matters, the better.

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¹ Opening the refrigerator door when the light was not turned off before Shabbos is not a simple issue and a rav must be asked.

² *M"b simon* 320:53 and *Bi'ur Halacha yesh* and *Bi'ur Halacha d'lo*. There are cases where the *poskim* combine the *Oruch* with other factors, but of course a rav must be asked, see *Bi'ur Halacha tov*.

³ If one likes one's neighbor it is probably *nicha lei*, only when one dislikes the neighbor would we say it's *lo ichpas lei*.

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Note: The purpose of this series is intended solely for the clarification of the topics discussed and not to render halachic decisions. It is intended to heighten everyone's awareness of important practical questions which do arise on this topic. One must consult with a proper halachic authority in order to receive p'sak.