

One of my old ambitions was to put out an English version of Rabbeinu Chayim HaLevi al HoRambam that made the beauty of Brisker lomdus accessible to those with no yeshiva background – the ArtScroll Rav Chayyim. That’s unlikely to happen at this stage (and perhaps ArtScroll has already found an author), but I thank Ethan Hauser for sending me back to Rav Chayyim this week, and here’s a very rough, and much less accessible, version of what might have been:)

1. Rambam in Laws of Chametz and Matzah 1:3

One does not get lashes for violating *lo yeirae* and *lo yimatzei*¹ unless one acquired chametz on Pesach or else caused something to become chametz, so that one does an action in order to violate, but if one had chametz prior to Pesach, and was not *mevaer*² it, but rather left it under one’s authority, even though he violated the two DO NOTs mentioned above, he is not liable to lashes under Biblical law, because he did not do an action in order to violate (*lo asah bo maaseh*).

- A. How can Rambam claim that one gets lashes for violating *lo yeirae* and *lo yimatzei* under any circumstances?! The Talmud on Pesachim 95a says explicitly that these DO NOTs are considered to be *nitak* to the DO (*laaseh*) of *tashbisu*, and the rule is that any DO NOT that is *nitak* to a DO is not subject to lashes!?
 - a. Other versions of Pesachim 95a make no mention of the issue of *nitak laaseh*, and rather declare these DO NOT’s to be DO NOT’s not involving actions, perfectly in accordance with Rambam. However, this only transfers the question from Rambam to the Talmud – why does the Talmud in these versions not consider them *nitak laaseh*? And if one wishes to suggest that the Talmud in these versions picks on of two possible reasons, that just transfers the question back to Rambam!
 - b. There are at least three formulations of the rule that one does not get lashes for a DO NOT *she’ein bo maaseh*: that it applies to
 - 1. any DO NOT that can ever be violated without action;
 - 2. only to DO NOT’s that can never be violated without action
 - 3. to any DO NOT when it is violated without an action.Rambam here seems to adopt position 3.
- B. There are in theory at least two ways to approach the question of how *lo yeirae/yimatzei* cannot be considered *nitak laaseh*.
 - a. One might understand *nitak* as implying “undoable”, and then define these DO NOTs in such a way that they cannot be undone.
 - 1. The classic *nitak laaseh* is the prohibition against leaving sacrifices that may be eaten for specific time periods uneaten at the end of those periods – *lo*

¹ . “Lo yeirae” and “lo yimatzei” are a mostly combined pair of prohibitions against maintaining certain kinds of relationships with chametz on Pesach.

² This term is defined below.

totiru mimenu ad boker. This is *nitak* to the DO of burning the leftover meat.

This suggests that the prohibition is defined by the end condition, namely that the meat is unconsumed, rather than by the state, i.e. that the meat existed after the time that it should have been consumed.

Perhaps the DO NOTs of chametz are defined differently, not by the end condition of chametz existing that should have been destroyed, but rather by the person possessing chametz during a time in which he should not have. In this case the subsequent elimination of the chametz (*tashbisu*) prevents further transgression, but cannot undo the past.

All agree that *tashbisu* cannot be fulfilled after Pesach, which suggests that the formulation above is correct, i.e. that the prohibition is not defined by the end state, as if that were so, why should there not be a permanent DO of eliminating it? But this is far from an absolute proof.

2. The DO of *tashbisu* is defined in a way that prevents it from undoing the DO NOTs.

Rav Chayyim adopts method 2. He begins by connecting our problem to another problem raised regarding *tashbisu*.

2. Tur OC 445 writes:

To derive benefit from the ashes of Chametz (that a Jew possessed in violation of *lo yeirah/yimatzei*, and subsequently burned in fulfillment of *tashbisu*) – that depends on the dispute between Rabbi Yehudah and the Rabbis:

According to Rabbi Yehudah's position that *biur chametz* (which we will treat as the fulfillment of *tashbisu*, at least with regard to chametz that has already violated the DO NOTs) requires burning, the ashes are permitted, as we generally hold that "All things (from which one is forbidden to derive benefit) that must be burnt – their ashes are permitted",

Whereas according to the Rabbis' position that *tashbisu* can be fulfilled by a variety of means (such as scattering it to the winds), even if one burnt the chametz, the ashes are forbidden, as "All things (from which one is forbidden to derive benefit) that must be buried – their ashes are forbidden".

- A. Rabbi Akiva Eiger attacks Tur as follows:

- a. Tosafot write that the reason for the rule above regarding those that must be burnt/buried is that there is a mitzvah to burn those that must be burnt, so that once they are burnt they are considered *naaseit mitzvatan* (literally "their mitzvah has been done), whereas there is no mitzvah to bury those that must be buried, rather one must do so to remove the spiritual obstacle they pose (as people will likely end up deriving benefit from them so long as they remain accessible).
- b. But Rabbi Yehudah and the Rabbis agree that *tashbisu* is a mitzvah to dispose of the chametz, not merely a precaution; they only disagree about which methods of disposal are valid. Therefore, even the rabbis should believe that *chametz* that has been burnt in

- fulfillment of *tashbisu* – even if *tashbisu* can be fulfilled by means other than burning – is *naaseit mitzvato*, and should be permitted.
- B. Rav Chayyim suggests, in response and opposition to Rabbi Eiger, that
- a. the dispute between Rabbi Yehudah and the Rabbis is not only about the appropriate modality of *tashbisu*, but rather is a fundamental dispute about the nature of the prohibition.
According to Rabbi Yehudah, the mitzvah inheres in the chametz-object, that one must burn it,
whereas according to the Rabbis the mitzvah is to ensure that the person no longer has *chametz*
 - b. the rule that ashes are *naaseit mitzvatan* applies only when the relevant *mitzvah* inheres in the object
 - c. Therefore Tur is correct in saying that the Rabbis would not permit the ashes of burnt *chametz*
 1. Rav Chayyim offers no justification for his claim that the dispute between Rabbi Yehudah and the Rabbis is fundamental. I suggest that his intuitive ground is that according to the Rabbis, it seems evident that fulfilling *tashbisu* does not prevent one in theory from violating *lo yeirah/yimatzei* with regard to the very same object of chametz – if one threw it to the winds, and then ate a surviving crumb one found days later, why would that not be prohibited? All the more so if someone else ate it.
 2. This incidentally gives one a boundary condition of “burning” according to Rabbi Yehudah, more sharply a way of distinguishing it
The chametz must be burnt to the point at which, if it had been burnt before Pesach, a Jew would have been permitted to possess it on Pesach.
- C. Rav Chayyim now resolves the difficulty with Rambam as follows:
- a. A DO NOT can be considered *nitak laaseh* only if the DO has a positive purpose, rather than being simply a positive formulation of a negative purpose.
 - b. According to the Rabbis, *tashbisu* is simply a positive formulation of the negative purpose, i.e. that a person not possess *chametz* in violation of *lo yeirah/yimatzei*.
 - c. Therefore, according to the Rabbis *lo yeirah/yimatzei* are not *nitak* to the *aseh* of *tashbisu*.
 - d. The Talmudic discussion on Pesachim 95 functions within the position of Rabbi Yehudah, and therefore concludes that *lo yeirah/yimatzei* are *nitak* to the *aseh* of *tashbisu*. But Rambam rules in accordance with the Rabbis, and therefore justifiably rejects that statement.
 1. Rav Chayyim asserts that there is independent internal evidence that Pesachim 95 functions within the position of Rabbi Yehudah.