

# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

## STOP THINKING ABOUT THIS DVAR TORAH!

Rabbi Aryeh Klapper, Dean

A beraita on Berakhot 31a states:

**אין עומדין להתפלל**

**לא מתוך דין, ולא מתוך דבר הלכה, אלא מתוך הלכה פסוקה.**

*One must not rise to pray*

*neither out of din, nor out of dvar halakhah, but rather out of halakhah pesukah.*

The problem is that *din*, *dvar halakhah*, and *halakhah pesukah* are virtual synonyms. So we must be dealing with idioms.

There are three possible ways to go about understanding these idioms.

- one can try to find subtle semantic differences
- one can have a reliable tradition
- one can try to reconstruct the meanings from context

Let's try them in order.

Teasing meaning out of subtle semantic differences works only if those differences are stable, so that we can confidently know which phrase means "the kind of Torah you should learn just before davening", and which "the kind of Torah you should not learn just before davening". That is not possible here.

For example:

Chiddushei HaRa'ah to Berakhot has the text

**אין עומדין להתפלל מתוך דין הלכה אלא מתוך דין הלכה פסוקה**

*One must not rise to pray out of din halakhah, but rather out of din halakhah pesukah.*

and RIF to Berakhot has

**אין עומדין להתפלל מתוך דין והלכה אלא מתוך דבר הלכה פסוקה**

*One must not rise to pray out of din vahalakhah, but rather out of dvar halakhah pesukah*

and Yerushalmi Berakhot has

**אלא מתוך דבר של תורה**

*rather out of davar shel Torah.*

Since the text exists in so many different versions, it seems unlikely that the subtle differences in any specific text can be helpful.

Do we have a solid and univocal tradition of interpretation?

Rashi to Berakhot translates *halakhah pesukah* as follows:

**שאינה צריכה עיון,**

**שלא יהא מהרהר בה בתפלתו**

*that it does not require investigation,*

*so that he not be thinking about it while he prays*

However, many geonim and Sefardic rishonim seem to translate the phrase as "decided", or "no longer subject to dispute". Later rishonim tend to offer composite definitions, including both simplicity and unanimity. Here for example is Rabbi Yehonatan of Lunil in his Commentary on RIF:

**מתוך דין הלכה –**

**כלומר:**

**שרוצה להוציא דין אחד חדש מתוך עומק ההלכה ולהבין דבר מתוך**

**דבר,**

**ולכך אין לבו בטוח שלא יהרהר בתפלתו**

**אלא מתוך הלכה פסוקה –**

**שאין בה מחלוקת**

**"Out of din halakhah" –**

*Meaning:*

*That he tries to extract a new law out of the depth of existing halakhah and to understand one thing out of another*

**"Rather out of halakhah pesukah" –**

*which is not subject to dispute.*

The diversity of interpretations suggests that we are dealing with the results of attempts to use the third method rather than with a live tradition, or at least that we cannot know which stream of interpretation reports a live tradition.

We are left with context.

On Bava Kamma 102a, the Talmud suggests that we rule like a particular anonymous statement in the Mishnah, even though a different Mishnah presents the same issue as a dispute among Tannaim,

**משום דקתני לה גבי הלכתא פסיקתא**

*because it was taught next to hilkhata pesikta.*

Rashi here explains that our law was taught as part of the same literary unit as a unanimously accepted law, and therefore can be presumed to also have become the law. Tosafot, however, point out that the Bava Metzia 77b presents the other law in the unit as a minority position! Tosafot therefore translate *hilkhata pesikta* as "written in a form that suggests legal decisionmaking". If Tosafot is correct, perhaps *hilkhata pesikta* is an Aramaic idiom with no necessary relationship to the Hebrew *halakhah pesukah*.

The phrase Halakhah Pesukah appears in the Bavli only on Berakhot 31a. Three examples are provided:

והיכי דמי הלכה פסוקה?

*What cases fit into the category of halakhah pesukah?*

אמר אביי:

כי הא דרבי זירא, דאמר רבי זירא:

בנות ישראל החמירו על עצמן,

שאפילו רואות טיפת דם כחרדל - יושבות עליה שבעה נקיים.

*Said Abayay:*

*Like that of R. Zeyra, for R. Zeyra said:*

*The Daughters of Israel accepted a stringency upon themselves that even if they see a drop of blood the size of a mustardseed – they sit seven clean days.*

רבא אמר:

כי הא דרב הושעיא, דאמר רב הושעיא:

מערים אדם על תבואתו ומכניסה במוץ שלה,

כדי שתהא בהמתו אוכלת ופטורה מן המעשר.

ואיבעית אימא:

כי הא דרב הונא, דאמר רב הונא אמר רבי זעירא:

המקיז דם בבהמת קדשים - אסור בהנאה, ומועלין בו.

Rava said:

*Like that of R. Hoshaya, for R. Hoshaya said:*

*A person may use subterfuge with his grain and bring it into his house while still in its chaff*

*so that his animal can eat it while he is exempt from tithing it.*

*Alternatively:*

*Like that of R. Huna, for R. Huna said in the name of R. Z'eyra:*

*One who bloodlets an animal belonging to the Temple –*

*it is forbidden to derive benefit from the blood, and one who uses it commits sacrilege.*

The points of contact that exist among these halakhot seem purely random. They are perfectly ordinary in their formulation, and certainly not unusually easy to understand intellectually. This makes Rashi's explanation very difficult – why should these halakhot be less distracting in a subsequent prayer than any other?

So it would be nice to discover that these halakhot represent an obvious consensus. But on Niddah 66a, Rav Pappa challenges a statement of Rava on the basis of the statement by R. Zeyra cited above as an example of *halakhah pesukah*. Rav responds:

אמינא לך איסורא, ואת אמרת מנהגא?!

היכא דאחמור – אחמור; היכא דלא אחמור – לא אחמור.

*I speak to you of legal prohibition, and you speak of custom?!*

*Where there is stringency - there is stringency; where there is no stringency – there is no stringency*

The simplest meaning of the last line is that R. Zeyra's halakhah was only adopted in some places! So how is it a *halakhah pesukah*?

There are two possible answers. The first is that Rava was limiting not the geographic scope of R. Zeyra, but rather the cases it applied to. The second is that R. Zeyra's rule became a halakhah pesukah only later. Each of these is plausible, but not probable.

On the other hand, another Talmudic passage – peculiar in its own right – reinforces the idea that R. Zeyra's halakhah is special. On Megillah 28b, we read:

ריש לקיש הוה אזיל באורחא. מטא עורקמא דמיא,

אתא ההוא גברא ארכביה אכתפיה, וקא מעבר ליה.

אמר ליה: קרית?

אמר ליה: קרינא.

תנית?

תנינא ארבעה סידרי משנה.

אמר ליה: פסלת לך ארבעה טורי, וטענת בר לקיש אכתפך?! שדי בר

לקיש במיא?!

אמר ליה:

ניחא לי דאשמעינן למר.

אי הכי, גמור מיני הא מלתא דאמר רבי זירא:

בנות ישראל הן החמירו על עצמן,

שאפילו רואות טיפת דם כחרדל יושבות עליו שבעה נקיים.

*Resh Lakish was travelling on foot. He came to a pool of water.*

*A man came and put Resh Lakish on his shoulders, and began carrying him across.*

*Resh Lakish said to him: "Have you read Scripture?"*

*The man replied: "I have read Scripture."*

*"Have you studied Mishnah?"*

*"I have studied four orders of the Mishnah."*

*Resh Lakish said to him: "You carved yourself four mountains, and you carry the son of Lakisha on your shoulders?! Throw the son of Lakisha in the water!?"*

*He replied: "I prefer to hear Torah from you.*

*Resh Lakish then said: If so, learn from me this statement of Rabbi Zeyra:*

*The Daughters of Israel accepted a stringency upon themselves*

*that even if they see a drop of blood the size of a mustardseed – they sit seven clean days.*

However, the sugya gives us no clue as to why Resh Lakish made the statement of R. Zeyra his signature teaching.

If the intent of learning *halakhah pesukah* was to present something so uncomplicated and consensus that it would not distract one from subsequent prayer, I hope this *dvar Torah* has now made the term itself too interesting to easily permit this. (All this aside from the substance of the examples – I'm currently ten thousand words into writing a responsum about one aspect of one example.) Unless you're about to daven, I hope the difficulties I've raised will linger in your mind.