

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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Shiur #14: The *Melakha* of *Ha'avara*:
Transporting an Item in a Public Domain

The first mishna in *Shabbat* spotlights the *melakha* of *hotza'a* (transporting items from a private domain to a public one) by delineating four test cases of transfer of *tzedaka* monies. Though the mishna introduces this list with the heading, "*yetziot ha-Shabbat*," which literally refers to *hotza'a* – bringing items outside one's private home to the public domain, it is clear from the mishna's ensuing examples that *hakhnasa* – relocating from a *reshut ha-rabim* to a *reshut ha-yachid* – is more or less equivalent to *hotza'a*. Whether *hakhnasa* qualifies as an '*av*' parallel to *hotza'a*, or as a *tolada* (derivative) of *hotza'a*, is a debate among several *amoraim*. Interestingly enough, the mishna makes no mention of *HA'AVARA* - transporting an item four *amot* within a *reshut ha-rabim*. Later in the masekhet (96b) the gemara classifies *ha'avara* as a *halakha le-Moshe mi-Sinai*, as opposed to *hotza'a*, which stems from various *pesukim*. But the gemara does not identify more specifically the relationship between *hotza'a/hakhnasa* and *ha'avara*. This shiur will attempt to assess this relationship.

An interesting *machloket* between Rashi and Tosafot may shed light upon the nature of *ha'avara*. A gemara in *Shabbat* (5b) establishes that *hotza'a* is violated only if the act was performed with original intent to relocate. If, for example, an item was moved in a *reshut ha-yachid* with intent to relocate within that *reshut ha-yachid*, but subsequently the item was transported to *reshut ha-rabim*, no *melakha* has been violated. Tosafot in *Sukka* lodge a similar claim regarding *ha'avara* - it is violated only if the action commenced with intention to transport the item four *amot*. Rashi in *Sukka*, however, disagrees, claiming that unlike *hotza'a*, *ha'avara* does not require this premeditation.

Presumably, Rashi and Tosafot debate the correspondence between *hotza'a* and *ha'avara*. Is *ha'avara* fundamentally different from *hotza'a*, in that the latter act involves the item's RELOCATION, whereas *ha'avara* does not relocate, and is forbidden merely as an act of MOVEMENT? Or, does *ha'avara* RELOCATE as well - moving the item across a width of four *amot*? In his comments to the gemara (96b), the *Ba'al Ha-ma'or* invokes the principle of '*daled amot shel adam ke-shelo*' - the immediate radius of four *amot* surrounding an individual is akin to his '*chatzer*.' As such, transferring an item from that four-*ama* radius to another location is functionally equivalent to relocating it from one '*chatzer*' to another. Tosafot apparently concurred with the *Ba'al Ha-ma'or*: since *ha'avara* is comparable to *hotza'a*, it requires original lifting with intent to effect the transfer. By contrast, Rashi distinguished between *hotza'a* and *ha'avara*. The former act is forbidden as one of relocation, and for this relocation to be fully cognitive it must be originally intended (see Rashi to *Shabbat* 5b). *Ha'avara*, however, entails mere MOVEMENT, and no intent of repositioning is necessary.

Acknowledging this difference between *hotza'a* and *ha'avara*, and noting the viability of a 'non-premeditated' removal, might enable us to understand an even more extreme position staked by a Tosafot in *Eiruvim* (33a), that *ha'avara* does not require removal and placement in *reshut ha-rabim*. Typically, *hotza'a* requires removal from a *reshut ha-yachid* and repositioning in a *reshut ha-rabim*. In fact, the entire purpose of the first *mishna* is to provide scenarios to highlight these dual requirements. Tosafot claim that if an item were removed from a *reshut ha-yachid*, transferred four *amot* in a *reshut ha-rabim* and replaced in a different *reshut ha-yachid*, *ha'avara* would be violated. The Rashba rejects this approach, claiming that *ha'avara* is violated only if removal from, and replacement in, *reshut ha-rabim* occurs. Clearly, Tosafot in *Eiruvim* follow the logic underpinning Rashi's view in *Sukka* and apply it more radically. If *ha'avara* is dissimilar to *hotza'a* and entails not REPOSITIONING, but rather sheer MOVEMENT, it should perhaps make no difference from where the item was removed or where it was replaced, as long as it was moved a distance of four *amot* in a *reshut ha-rabim*. Rashi in *Sukka* did not suggest this concept; he merely claimed that premeditated intent was not mandatory. Tosafot in *Eiruvim* claim that neither removal from a *reshut ha-rabim* nor replacement in a *reshut ha-rabim* is necessary.

Perhaps the most famous distinction between *ha'avara* and *hotza'a* was developed by Rav Chayim of Brisk (in the recorded *chiddushim* known as the "stencils"). The gemara in *Ketuvot* (31a) discusses the rule of *kim lei be-de-rabba minei* – when a crime which yields capital punishment is committed, accompanying financial penalties are waived. This waiving applies only if the monetary penalties stem from actions which occurred simultaneous to crimes warranting capital punishments. Yet, the gemara claims that if a person fires an arrow four *amot* in a *reshut ha-rabim* on Shabbat and the arrow tears an article of clothing in its trajectory, the monetary payments are waived. Even though the tearing of the garment did not technically occur simultaneous to the shooting of the arrow, nevertheless, the entire process is considered one continuous event, the two events (movement of four *amot* and tearing the garment) are considered simultaneous. A parallel gemara in *Bava Kama* (70b), however, discusses a situation whereby a thief consummates his act of theft by hurling the stolen item from a *reshut ha-rabim* into a *reshut ha-yachid* on Shabbat. The gemara does not apply *kim lei* in this instance, since the Shabbat violation occurs only when the item lands in *reshut ha-rabim*, while the theft and the monetary penalty has concluded when the stolen item reaches the airspace of the thief's courtyard. Since the monetary penalty precedes the capital one, it is not waived. Tosafot in *Bava Kama* question why the gemara does not apply the same principle of *Ketuvot*: since both the monetary and criminal penalties emerge from the same integrated process, they should be considered simultaneous and *kim lei* should be applied.

Rav Chayim distinguished between the gemara in *Ketuvot*, which discusses the Shabbat violation of *ha'avara*, and the gemara in *Bava Kama*, which addressed the violation of *hotza'a*. In the latter situation, the *issur* is one of relocation. The critical stages are the removal and replacement of the item, while the movement from one zone to another is merely incidental: until the item has been moved to the next zone, it cannot be repositioned in another area. However, the 'endpoints' of this act are the critical stages of the violation. Accompanying monetary penalties which accrue DURING the act of movement are not integrated with the critical endpoints of removal and replacement of item. Since they are not integrated, they are not considered *halakhically* simultaneous, and the principle of *kim lei* does not apply. However, in the scenario of *Ketuvot*, it is the *melakha* of *ha'avara* which is being considered. As developed earlier surrounding the

views expressed by Rashi in Sukka and Tosafot in *Eiruvim*, this violation is based upon not relocation, but rather sheer movement. The essence of this Shabbat violation is not its endpoints, but the intervening movement. Any accompanying monetary penalty which occurs during the process of that movement is thus fully integrated in the Shabbat violation and considered simultaneous. Garments torn while the arrow MOVES through the four-*ama* distance are an integral aspect of the Shabbat violation and are therefore subject to the exemption of *kim lei*. Rav Chayim's distinction, applied to *kim lei*, is in concert with the opinions of Rashi and Tosafot, both of whom viewed *ha'avara* as a distinct *melakha*, structurally dissimilar to *hotza'a*.