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**TALMUDIC METHODOLOGY**

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**TZIDEI RESHUT HA-RABIM: THE BOUNDARY BETWEEN PUBLIC AND  
PRIVATE PROPERTY**

The gemara in Eiruvim (94a) discusses the twin prohibitions of hotza'a and hakhnasa. On Shabbat one cannot relocate an item from a reshut ha-yachid (private property) to reshut ha-rabim (public domain), nor can one carry an item from the reshut ha-rabim to reshut ha-yachid. The former is termed hotza'a; the latter, hakhnasa. The gemara (in its interpretation of the mishna) presents a machloket regarding the "tzidei reshut ha-rabim" - the periphery of the reshut ha-rabim. This refers to the space which adjoins the reshut ha-yachid but is "legally" part of the reshut ha-rabim. In a strictly official sense, this area is part of the reshut ha-rabim since no one owns it. However, as it abuts the reshut ha-yachid, people do not normally frequent this stretch; they avoid traveling there for fear of damaging their animals or wagons through contact with the walls of the reshut ha-yachid. In fact, according to some commentators, the owners of the adjacent reshut ha-yachid actually placed stones and other obstacles to discourage passersby and thereby protect their walls. How do we regard this anomalous tract of land - as reshut ha-rabim or as reshut ha-yachid?

The gemara in Eiruvim cites a machloket regarding this space. Rabbi Eliezer appears to define tzidei reshut ha-rabim as a reshut ha-rabim proper. After all, from a strictly legal point of view it is part of reshut ha-rabim. One who transfers from this area into reshut ha-yachid or vice versa on Shabbat violates hakhnasa or hotza'a respectively. The Chakhamim reject this notion and deny tzidei reshut ha-rabim's status as a complete reshut ha-rabim. Since this area is not heavily traveled, they maintain, it cannot be altogether defined as reshut ha-rabim. It is instead considered a "carmelit" which might be termed a "miniature reshut ha-rabim." In any case, Chakhamim do reject R. Eliezer's designation of this area as reshut ha-rabim.

A related gemara in Ketubot (31b) comments on this machloket. Essentially, the gemara is searching for a scenario in which one who hauls an item from reshut ha-yachid into tzidei reshut ha-rabim will acquire possession through the act of kinyan (legal acquisition) known as meshikha (lit., pulling). Generally, meshikha entails towing the item into an actual reshut ha-yachid. Presumably, then, according to R. Eliezer, since tzidei reshut ha-rabim is considered reshut ha-rabim, meshikha should not operate. This indeed is the gemara's initial stance. The gemara, however, ultimately reverses itself and admits that even according to R. Eliezer, meshikha might operate in tzidei reshut ha-rabim - despite its status as reshut ha-rabim. The gemara exclaims, "R. Eliezer only

regarded tzidei reshut ha-rabim as reshut ha-rabim in the case of Shabbat, because sometimes the public wanders into these areas [as is their legal right]; in the case of kinyan however, one may be koneh [like a reshut ha-yachid]. The gemara effectively separates the world of Shabbat from the world of kinyan. In the former, tzidei reshut ha-rabim is considered a reshut ha-rabim; in the latter, a reshut ha-yachid. How might we explain this dichotomy?

Initially, one might suggest the following approach. Quite often one halakhic factor will be relevant to many different halakhic domains. This does not mandate that it be consistently defined in each realm. For example, a knot featured in four halakhic areas: the issur of "kosher" (tying) on Shabbat, the manufacture of tzitzit, the formation of tefillin and the binding of the four species on Sukkot. The same yardsticks do not necessarily apply to each field. For example, a single knot might be considered a full-fledged knot regarding Shabbat but still be insufficient for tefillin. Essentially, different departments of halakha are governed by disparate principles which account for discrepancies in the application of seemingly identical factors. One might suggest a similar strategy regarding tzidei reshut ha-rabim. In the area of Shabbat restrictions, according to R. Eliezer, the formal status of this periphery is crucial. Since in a strictly legal sense it is physically part of the reshut ha-rabim, it is considered an appendage of it. Regarding kinyan, however, since people do not frequent this area it is legally defined as reshut ha-yachid. This one piece of land is thus defined differently in the domain of Shabbat and the domain of kinyan.

In fact, one might examine the status of tzidei reshut ha-rabim in other arenas. How is this zone defined in the realm of torts (nezek)? Many types of damages call for compensation only if they occur in reshut ha-yachid (e.g., shein - damages performed by an animal while deriving pleasure such as eating, and regel - damages which occur as a result of routine). What happens if the beast eats food lying in the tzidei reshut ha-rabim? Is it considered as if the damages were performed in reshut ha-yachid or in reshut ha-rabim? The gemara in Bava Kama (21a) addresses this issue and concludes that in the case of an animal which ate food lying in "tzidei ha-rechava" (the side of the road - presumably the equivalent of tzidei reshut ha-rabim), the owner is responsible. The gemara does not suggest that R. Eliezer would disagree with this halakha. Evidently, he does accept a split definition. With regard to Shabbat, tzidei reshut ha-rabim is reshut ha-rabim while with regard to torts, it is reshut ha-yachid. One could postulate that the distinction in Ketubot between Shabbat and kinyan reflects a similar split.

Though this approach is logical, the language of the gemara in Ketubot remains enigmatic. The gemara does not tell us "With regard to Shabbat it is reshut ha-rabim while with regard to kinyan IT IS RESHUT HAYACHID". Instead, the gemara declares "with regard to Shabbat it is reshut ha-yachid while with regard to kinyan MESHICHA OPERATES." Could it be that the gemara does not mean to alter the status of this zone regarding kinyan? Could it be that EVEN THOUGH tzidei reshut ha-rabim is consistently defined as reshut ha-rabim, a kinyan meshikha nevertheless operates?

This second approach probes the heart of kinyan meshikha. In order to explore whether it can operate in a place legally defined as reshut ha-rabim, we have to understand why meshikha generally fails in reshut ha-rabim. Of course, in order to grasp this issue we must, in turn, inspect the nature of meshikha in general. How does meshikha effect the transfer of an item? One interpretation claims that it simply drags the item into the physical reshut of the purchaser, graphically symbolizing the transfer of ownership. In this respect the operative factor of meshikha is the physical relocation into the reshut of the taker. Alternatively, one might view the meshikha as symbolizing transfer because it displays the new owner's CONTROL over the item. By drawing the item in the direction of his choice, he has effectively established dominion over the item and thus exhibited his newly-achieved ownership. In short, meshikha might operate either as an act of physical transfer between sites or as a demonstration of control.

If meshikha operates as a physical transfer one understands clearly why it is ineffective in reshut ha-rabim. Only by transferring the item into his reshut (his own house or courtyard) can the purchaser demonstrate his ownership. If, however, meshikha is an exertion of control one might seriously question why it is invalid in reshut ha-rabim. The Rashba in Bava Batra (76a) addresses this issue. Reshut ha-rabim, an area in which there is constant hustle and bustle, is simply not conducive for acts of control. With so much pushing and shoving, one is not able to lead an animal in any particular direction. Even if at a specific moment one does manage to steer his animal, he is not considered as truly having asserted his mastery. At any moment a taxi can come whizzing by and either brush them aside, or worse, separate him from his animal. If meshikha seeks to present a demonstration of control, it fails in reshut ha-rabim because no one person can hope to control the overall flow of traffic.

There is, however, one difference between these two views of meshikha and the two respective reasons that it fails in reshut ha-rabim. If meshikha is based on physical transfer it fails as long as the item has not been actually transferred into an area legally considered reshut ha-yachid (of the buyer). Here, the legal definition of the areas is critical. If, however, meshikha's effectiveness works as a demonstration of control (a control which is impeded in reshut ha-rabim), it might operate in areas of reshut ha-rabim where control is viable. What undermines meshikha in reshut ha-rabim is not the formal definition of the area but the practical inability to exert control. An area where this control is feasible, even if formally defined as reshut ha-rabim, might still accommodate meshikha. Of course, an example of this might be tzidei reshut ha-rabim. According to R. Eliezer, indeed, this area is universally defined as reshut ha-rabim. However, this formal definition only influences Shabbat halakhot. The outcome of meshikha rests, not upon the formal status, but the practical question: Can control be exerted without interruption? To this the gemara responds that since few people frequent this area, meshikha as an act of control is feasible. The gemara's language now reads perfectly: "Even though R. Eliezer defines tzidei reshut ha-rabim as reshut ha-rabim, a kinyan is STILL POSSIBLE." This, DESPITE ITS UNIVERSAL DEFINITION AS RESHUT HARABIM. The laws of kinyan are not influenced by legal definitions but by practical questions.

## METHODOLOGICAL POINTS:

1. Different halakhic domains often involve parallel halakhic factors. Sometimes they define these in similar fashion, sometimes in dissimilar. Our question here is whether hilkhot Shabbat defines tzidei reshut ha-rabim differently from hilkhot kinyan.
2. Even if a definition is universal, one should still question whether that definition is relevant in every halakhic arena. For example, we examined what influences the viability of meshikha - is it the formal definition or the practical question of exerting control?
3. Pay close attention to the syntax of a gemara which distinguishes between two domains.
4. As we have noticed in the past a easy way to analyze a halakha is be checking its exception. In our quest to understand kinyan meshikha, it is helpful to study the case in which it fails. Why does it fail in reshut ha-rabim?
5. To take this a step further: Understanding the principle of "meshikha does not operate in reshut ha-rabim" entails studying its failure; is there a case where meshikha DOES operate in a legally defined reshut ha-rabim (possibly, tzidei reshut ha-rabim)?

In short, test every rule by its failure. Rules can refer either to the usual operation of a halakha or, in turn, its failure. For example, we have previously discussed the principle that "ein adam makneh davar shelo ba le'olam" - one cannot transfer an item which does not yet exist. Understanding this rule (which itself is a failure of kinyan to operate) is facilitated by locating a failure to this rule - namely an instance in which a person can transfer possession of something which has not yet emerged.

## AFTERWORD:

Rashi in Ketubot compares tzidei reshut ha-rabim to a simta (an alley-way). What does this suggestion imply? For further elaboration see Ketubot 84b and 86b. See especially Tosafot (s.v. Ve-tzidei, the Ritva, and the Shitta Mekubetzet.

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