YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Gemara Shabbat**

**Shiur #01: The *Melakha* of *Hotza'a***

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**Sources:**

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3.      תוס' שבת דף ב. ד"ה פשט, חי' הרשב"א "ואיכא למידק אמתניתין... כל העושה בו מלאכה יומת", אור זרוע הל' שבת סי' פב [עד "להאריך"].

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**Questions:**

1. Why does tractate *Shabbat* open with the *melakha* of *hotza'a* (carrying from one domain to another), which appears only at the end of the list of 39 forbidden labors in the Mishna on p. 73a?

2. Why does the Mishna have to spell out all four possible cases of *hotza'a* that arise in the case of a poor man (standing outside a house) and the owner of the house (standing inside)?

3. According to several *Rishonim*, *hotza'a* is a deficient *melakha*. What is the deficiency? Is there a significant difference between the position of the *Tosafot* and that of the Rashba?

4. How can we explain the opinion of the *Penei Yehoshua* that, in contrast to all the other *melakhot*, one who moves an object from one domain to another by way of his animal does not transgress what is stated in the verse: "That your ox and your ass may rest" (*Shemot* 23:12)?

### I. Carryings out on Shabbat

 Tractate *Shabbat* opens as follows:

The acts of carrying out on Shabbat are two which are four inside, and two which are four outside. How so? The poor man stands outside and the owner of the house inside: If the poor man stretches his hand inside and places [an article] into the hand of the owner of the house, or if he takes [an article] from it and carries it out, the poor man is liable, and the owner of the house is exempt. If the owner of the house stretches his hand outside and places [an article] in the poor man's hand, or takes [an article] from it and carries it in, the owner of the house is liable, and the poor man is exempt. (2a)

The Mishna explains that there is liability both for carrying an object out from a private domain to a public domain, and for carrying an object in from a public domain to a private domain. The Mishna also explains that these liabilities apply both to the person standing in the public domain (the poor man) and to the person standing in the private domain (the owner of the house).

But the Mishna is difficult for several reasons: First of all, it is surprising that the *melakha* (forbidden labor) of *hotza'a* (carrying) was chosen to open the tractate. After all, *hotza'a* is the last *melakha* mentioned in the list of the 39 *melakhot* that are forbidden on Shabbat (73a). Why then was this *melakha* chosen to open the tractate? This question was raised by *Tosafot* (2a, s.v. *yetzi'ot*).

The details of the four cases in which there is liability for *hotza'a* also raises a question. It stands to reason that the essence of the labor of *hotza'a* is removing an object from one domain to another. If so, what difference should it make whether the object is carried out from a private to a public domain or carried in from a public to a private domain (as the Gemara argues on p. 96b)?

Even more surprising is the distinction between the poor man and the owner of the house. If *hotza'a* is a *melakha*, why should we care about the identity of the person performing the labor or where he is standing? The *Tosafot* (ibid., s.v. *pashat*) formulate this difficulty as follows: "The Ri asks: Why does the Mishna teach two cases, that of the poor man and that of the owner of the house?"

There are several solutions to these questions. In this *shiur* we will focus on one solution raised by several *Rishonim*, first and foremost by the *Tosafot*, in order to answer all of the questions raised above. According to them, the *melakha* of *hotza'a* is different from all the other *melakhot* in that it is a "deficient *melakha*" (*melakha geru'a*). This is how the *Tosafot* (s.v. *yetzi'ot ha-Shabbat*) explain why the tractate opens with the *melakha* of *hotza'a*: "It was more necessary to teach about *hotza'a*, since it is a deficient *melakha*."

This is also the way they explain the need to spell out the liabilities of the poor man and the owner of the house (*s.v. pashat*): "Because [*hotza'a*] is a deficient *melakha*, it was necessary to mention both of them, one for the poor man, and one for the rich man." And in the beginning of tractate *Shevu'ot* (2a, s.v. *ha-Shabbat*) the *Tosafot* use this idea to explain the need for both the case of carrying out and the case of carrying in.

In this way, the *Tosafot* explain additional points as well. For example: Why does the Gemara (96b) need a verse to prove that *hotza'a* is a *melakha*, rather than be satisfied with the fact that it is one of the labors needed for the construction of the *Mishkan* (see *Tosafot*, *Shevu'ot*, s.v. *yetzi'ot ha-Shabbat*). This is also the way they explain the Gemara's search for a source to prohibit the *tolada* (a secondary prohibition derived from the primary *melakha*) of *hotza'a*, e.g., throwing from one domain to another, or carrying in, despite the fact that with respect to the other *melakhot* of Shabbat, it is enough that the *tolada* resembles the *av*, and no additional source is needed.

Despite the widespread use of the designation of *hotza'a* as a deficient *melakha*, the *Tosafot* do not fully explain in what way the *melakha* is deficient, and content themselves with the argument: "What is the difference between carrying an object from a private domain to a public domain and carrying it from one private domain to another?" In order to better understand this argument of the *Tosafot* in particular, and the uniqueness of the *melakha* of *hotza'a* in general, we must define the deficiency of the *melakha* of *hotza'a* in a more precise fashion.

### II. THe novelty of the *Melakha* of *hotza'a*

Before discussing the *Tosafot's* argument, we should note the explanation offered by the Rashba (2a, s.v. *ve-ika lemeidak*):

Because it is a deficient *melakha*, for if one moved a heavy load from one corner [of his house] to another, he is exempt, but if he carried a small portion of it from one domain to another, he is liable, which is not the case regarding all the other *melakhot*, which are prohibited in themselves in whatever domain they are performed.

At first glance there is no significant difference between the Rashba's explanation and that of the *Tosafot,* but upon closer examination it seems that they might disagree about the essence of the *melakha* of *hotza'a*. According to the Rashba, would the prohibition of *hotza'a* include moving an object from one corner of the house to another, *hotza'a* would not be deemed a deficient *melakha.* But the *Tosafot* never imagined imposing liability upon moving an object from one corner to another in the same domain. What bothered the *Tosafot* was that there is no liability for carrying an object from one private domain to another private domain. According to the *Tosafot*, would the prohibition of *hotza'a* include moving an object from one private domain to another, *hotza'a* would not be considered a deficient *melakha.* Attention should be paid to the fact that the Rashba considered the size, or to be more precise, the weight of the load, whereas the *Tosafot* completely ignored this factor.

It seems, therefore, that according to the *Tosafot* a change of domain is critical to the definition of the *melakha* of *hotza'a*, and it would be inconceivable to impose liability for moving an object from one corner of the house to another, however heavy it might be. In contrast, the Rashba sees the very moving of an object as the essence of the *melakha*, and the heavier the object the more significant is that moving. In other words: According to the Rashba *hotza'a* means moving an objective from place to place, and were it not for the Torah's novel limitation, it would have been possible to impose liability whenever an object changes its place, even when it remains in the same domain. In contrast, the *Tosafot* understand that *hotza'a* means removing an object from one domain and resting it in another domain, the "change in address" being an essential aspect of the *melakha.* Were it not for the Torah's novel limitation, the law would have been the same for removing an object from the private domain of one person and resting it in the private domain of another person (see *Minchat Asher*, no.1).

We will later discuss at greater length the law of transporting an object four cubits in the public domain. Here we will briefly relate to this law, in order to better clarify the two understandings that we put forward regarding the *melakha* of *hotza'a*. According to the Rashba, that *hotza'a* is moving an object from one place to another, we can understand that the exemption granted in the case of moving an object from one corner to the other is based on the fact that the entire area marked by the domain's barriers is considered before the law as a single place. On the other hand, in the public domain it suffices to move an object a certain distance in order to become liable. But according to the *Tosafot*'s understanding, we apparently must argue that moving something four cubits in the public domain is forbidden because of a Halakha passed down to Moshe at Sinai, even though it does not involve a change of domain. Alternatively, even in a public domain, the four cubits surrounding a person may be considered his personal space, and removing an object from there is like a change in domain. But as stated, we will discuss this matter at some later point.

### III. At first it was an object and now it is an object

Thus far we have related to *hotza'a* as a deficient *melakha,* for the reasons proposed by the *Tosafot* and the Rashba. They both claim that there is something illogical in the parameters of the *melakha* of *hotza'a*, and therefore an explicit source is needed to prohibit any variation of the *melakha*, because since it involves a novelty, it only applies in that novel situation. An entirely different understanding emerges from the words of the *Or Zaru'a* (II, *Hilkhot Shabbat* 82).

And one who carries out – Below in chapter *Ha-Zorek* a question is raised as to where *hotza'a* is written, and the Gemara does not want to learn it from the Tabernacle, even though it was found in the Tabernacle, because it is an insignificant *melakha*, for what *melakha* was performed when he removed the object from its domain. At first it was an object, and now it is still that same object. So explained Rabbeinu Tam.

According to the *Or Zarua, hotza'a* does not meet the regular criteria for a *melakha* on Shabbat, as he explains: "At first it was an object, and now it is still that same object." His position is based on the assumption that the *melakhot* forbidden on Shabbat are measured in accordance with the creation and improvement that they involve. The obligation to rest on Shabbat, in remembrance of the Creation, dictates refraining from activities of human creativity, e.g., creating food, or creating thread, or creating clothing. But in the case of the *melakha* of *hotza'a*, there is no improvement or creating with respect to the carried object. There is only a change in location, but the object remains as it was.

 In light of this distinction, it stands to reason that *hotza'a* is an exceptional *melakha.* Usually a *melakha* is measured by the result – the object which was fixed or created. The way we came to that result – the *melakha* act – is less important (as long as the *melakha* is performed in the usual manner and not "as if with the back of the hand" [*ki-le'achar yad*]). But if the *melakha* of *hotza'a* has no result, for at first it was an object and now it is still that same object, it is possible that the essence of the *melakha* of *hotza'a* is the act itself. Thus we can understand the difference between *hotza'a* and the rest of the *melakhot*: Regarding the rest of the *melakhot*, there is no need for another verse to prohibit their *toledot*, for once we have learned from the Tabernacle that a certain creative act is prohibited on Shabbat, we prohibit similar creations, even if they are achieved through different actions. But in the case of *hotza'a*, even though we have learned that one is forbidden to perform an act of *hotza'a* from a private domain to a public domain, we cannot expand the prohibition to include a different action, i.e., carrying from a public domain to a private domain, without an explicit source.

We learned in a Mishna in *Beitza* (12a): "Bet Shammai say: One may not carry out an infant or a *lulav* or a Torah scroll into a public domain, but Bet Hillel permit it."

The Gemara there cites the position of Rabba who proposes that Bet Shammai and Bet Hillel disagree on the question whether the laws of *hotza'a* and *eiruv* apply to Yom Tov.

 The Gemara cites a verse from *Yirmeyahu* to support the view that the laws of *hotza'a* do not apply to a Festival, but see there in *Tosafot* (s.v. *dilma*) who write: "There are texts that read the verse in *Yirmeya*: 'Neither carry forth a burden out of your houses on the Shabbat day', only on the Shabbat day but not on the Festival, explicitly excluding it **because *hotza'a* is [a] deficient [*melakha*]."** That is to say, the reason that *hotza'a* is not prohibited on a Festival is that *hotza'a* is a deficient *melakha.* The *Tosafot Rosh* on our passage say this explicitly: "Know that it is a deficient *melakha…* And furthermore, it is stated in the first chapter of [tractate] *Beitza*: [The laws of] *eiruv* and *hotza'a*apply to Shabbat, but [the laws of] *eiruv* and *hotza'a* do not apply to the Festival. And the reason is that it is not considered a *melakha*, and regarding the Festival it is written: 'You shall not do *melakha*.'" We see then that according to the Rosh, since *hotza'a* is a deficient *melakha*, it is not considered a *melakha*, and not included under: "You shall not do *melakha*." His position is well understood according to the explanation of the *Or Zaru'a*, which distinguishes between *hotza'a* and all the other *melakhot* with regard to the very essence of the prohibition. Only a creative action is considered a *melakha* and falls under the prohibition: "You shall not do *melakha*," stated with respect to the Festival. This comes to exclude *hotza'a*, which despite its being forbidden on *Shabbat*, is not considered a *melakha*, since at first it was an object, and now it is still that same object.

The difference between the *melakha* of *hotza'a* and *melakhot* that involve improvement appears also in the passage dealing with asking a non-Jew to perform a *melakha* on Shabbat. The Gemara in *Eiruvin* (67a) deals with a case of circumcision on Shabbat, where the warm water needed to wash the child after the circumcision - spilled:

There was once a child whose warm water was spilled. Rabba said: Let some warm water be brought for him from my house. Abaye said to him: We have not prepared an *eiruv…* Let a non-Jew be instructed to bring it for him. Abaye said: I wished to point out an objection against the Master, but Rav Yosef prevented me… After that he said to him: What objection was it that you wished to raise against the Master? He said to him: It was taught [in a Baraita]: Sprinkling on Shabbat is only rabbinically forbidden. Now, instructing a non-Jew to do work on Shabbat is also rabbinically forbidden. Why then should it not be said: As sprinkling on Shabbat which is a rabbinical prohibition does not supersede Shabbat, so should not an instruction to a non-Jew to do work on Shabbat which is also rabbinically forbidden supersede the Sabbath? He said to him: Do you not distinguish between a rabbinical prohibition that involves an action and one that involves no action, for the master, surely, did not tell the non-Jew: Go and warm it.

We see from this passage that Rabba would permit instructing the non-Jew to bring the water without an *eiruv*, but he would not permit instructing him to heat up the water. The *Rishonim* explained this distinction in several different ways. For our purposes, it is important to note the explanation proposed by Rabbeinu Yona cited in *Chiddushei ha-Ritva*:

In the name of the pious Master, I found that he explains that whenever we do so something by way of a non-Jew that introduces some improvement in the object itself, that is called something that involves an action, whether it is forbidden by Torah law or only by the Rabbis, like heating water, or cooking, or baking, or the like. Regarding this the Sages were stringent about instructing a non-Jew to do it. But something that introduces no improvement [in the object itself], but merely involves moving it from place to place, in such a case they permitted instructing a non-Jew [to do it], even in the case of a Torah *melakha*. This is what they said: For the master, surely, did not tell the non-Jew: Go and warm it, but rather: Go and bring it from my house.

According to Rabbeinu Yona, the difference is between *hotza'a*, which is a *melakha* that does not involve improvement, and cooking, which is a *melakha* that involves improvement. Only *melakhot* that involve improvement fall into the category of *melakhot* that are subject to the prohibition of instructing a non-Jew to do them. This is to the exclusion of the *melakha* of *hotza'a*, which does involve improvement, since at first it was an object, and now it is still that same object.

 The *Penei Yehoshua* says something similar at the beginning of chapter *Bameh beheima* (*Shabbat* 51b). The Mishna there spells out with what things an animal may go out on Shabbat, and with what things not. The rule is that a person is obligated to ensure that his animal rests on Shabbat, as it is written: "That your ox and your ass may rest" (*Shemot* 23:12), and therefore just as a person is forbidden to move things from one domain to another, so he is forbidden to place such things on animal that is going out from one domain to another. The *Tosafot* there (s.v. *bameh beheima*) imply that the prohibition in the Mishna is only of rabbinic origin. The *Penei Yehoshua* comments about this as follows:

And furthermore, carrying out to a public domain, even with respect to a person, is a deficient *melakha*, and would not have been included in the prohibition: "You shall not do any *melakha*," had there not been a special derivation… This implies that this does not apply at all to an animal by Torah law, but only by rabbinic prohibition.

 According to the *Penei Yehoshua*, by Torah law the rule governing the rest of animals applies only to full-fledged *melakhot*, and therefore it does not apply to *hotza'a*, which is a deficient *melakha*. The *Penei Yehoshua's* remarks fit in well with what we have said. The law governing the rest of animals prohibits a person to engage in a creative act by way of his animal, and therefore it does not apply to *hotza'a*, which is a *melakha* that does not involve any improvement, since at first it was an object, and now it is still that same object.

In conclusion, we will bring one more law, mentioned by various *Acharonim*, which is another expression of the fundamental difference between *hotza'a* and other *melakhot*. We learned later in the tractate (102a): "Rabba said: If one throws [an article] and it falls into the mouth of a dog or a furnace, he is liable." That is to say, there is liability for *hotza'a* even if the object was not made to rest on the ground, but rather in the mouth of a dog or in a furnace. An objection may be raised: Surely we learned elsewhere (105b): "All who effect damage are exempt," and it would seem that someone who throws an article into a furnace in order to burn it should be treated as one who effects damage. But according to what we have explained, it may be argued that the exemption of effecting damage applies only to the other *melakhot*, where the liability is for the creative act, and damage is just the opposite. But in the case of *hotza'a*, which does not involve any improvement, one is liable even when he effects damage to the object in question.

(Translated by David Strauss)

Sources for next week's shiur:

*Shiur* 2 – *Akira* (lifting) and *hanacha* (resting) (2b-3a)

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