YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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GEMARA Shabbat

Shiur #05 – An object in Airspace is considered at Rest

(4a-4b)

Rav Ezra Bick

Sources:

1. גמרא ד. "פשט עני" עד ד: "הא עקירה בעי."
2. תס' ד"ה אבל וד"ה דאמרינן; תוס' ישנים בגליון, ד"ה ודילמא.
3. חי' הרשב"א ד: ד"ה אבל
4. תוס' הרא"ש ד: ד"ה מאי.

The subject of our *shiur* today is the position of Rabbi Akiva that "an object in airspace is considered at rest" (*keluta ke-mi she-huncha damya*). From the very outset, however, we encounter a difficulty regarding the definition of the subject, because according to the simple reading of the Gemara the primary subject is different – the Gemara's requirement that in order to impose liability for the *melakha* of *hotza'a* (moving an object from one domain to another), an object must be brought to rest (*hanacha*) on an area that is four by four *tefachim (*handbreadths), and the Gemara's argument that Rabbi Akiva disagrees and says that this is not necessary. In order to prove that Rabbi Akiva does not require a place of four by four *tefachim*, the Gemara cites the view of Rabbi Akiva that an object in airspace is considered at rest, the implication being that the two positions, that an object in airspace is considered at rest, and that a place of four by four *tefachim* is not required, are equivalent. This comparison will serve as the foundation of our clarification of the idea that an object in airspace is considered at rest.

(In the continuation, the Gemara will propose other foundations for not requiring a place of four by four, but today we will deal only with the connection between this law and the other position of Rabbi Akiva.)

The question may be raised: If an object in airspace is considered at rest, where is the object resting? The case of Rabbi Akiva involves one who throws an object from one private domain to another where there is a public domain separating between them. Rabbi Akiva imposes liability because in the middle of the object's flight, when it passes through the public domain, it is considered as if it were resting in that public domain, and thus there is *hotza'a* from a private domain to a public domain. But where precisely does the object rest in the public domain? The *Tosafot* (top of 4b, s.v. *de-amrinan*) write that if the object passes through the public domain above ten *tefachim*, and we say that an object in airspace is considered at rest, this would be considered *hotza'a* from a private domain to **a *makom ptur* (an exempt domain),** because above ten *tefachim* in a public domain is not considered part of the public domain, but rather an exempt domain. It is clear from this that the *Tosafot* understand that when we say that an object in airspace is considered at rest, it means that it is considered as resting in the place where it is found in the air. You might ask: What is the novelty here? The answer is that I might have said that an object in motion is not considered to be located in a specific place at every given moment, or to be more precise, it is not considered to be resting there, but only passing through. Rabbi Akiva maintains that even an object that is **in airspace** – something that is merely passing through a domain – is considered as **resting** in that domain. The primary novelty here is stopping the motion. An object that is in motion is located (and it rests) at any moment in the place where it is found.[[1]](#footnote-1) According to this, we can easily understand the Gemara's conclusion that Rabbi Akiva maintains that a place of four by four *tefachim* is not required. In every case where we say that an object in airspace is considered at rest, the object is considered as resting in some point in the air. But the air is not a place of four by four *tefachim*, and so we are forced to conclude that Rabbi Akiva maintains that in addition to the fact that an object in airspace is considered at rest, there is **also** no need for a place of four by four *tefachim*. There is no substantive connection between the two positions, but in order to impose liability on someone who throws an object from one private domain to another through a public domain, we must make two independent assumptions: 1) that an object in airspace is considered at rest in the air; 2) the air can serve as a place of rest; that is to say, we do not require a place of four by four *tefachim*.

This understanding of the *Tosafot* explains the obscure words of the *Tosafot*, s.v. *aval* (4b). The *Tosafot* write: "When the object is in the hand of the poor person or of the homeowner the law regarding an object in airspace does not apply, for when the homeowner puts the object into the hand of the poor person, and the latter takes it out, he is not liable." The wording of the *Tosafot* implies that with respect to any object resting in a person's hand we do not invoke the rule that an object in airspace is considered at rest (and therefore they write "the hand of the poor person **or** **of the homeowner**"). This can be explained according to what we wrote above as follows: An object found in a person's hand (and not in the air) is not considered as resting in the air, but rather in the hand itself. Therefore if the poor person moves something in his hand from a private domain to the public domain, he is not liable, because at the beginning the object was resting **in his hand** (and not in a private domain), and at the end the object was still resting in his hand. The entire novelty of the rule that an object in airspace is considered at rest lies in the stoppage of its motion; but the location is the place where it is found. Therefore the location of something found in a person's hand is that hand, and the object found there is not seen as resting in the airspace of the place where the hand is found.

(This understanding of the *Tosafot* is subject to a disagreement among the *Acharonim*. Rabbi Akiva Eiger in *Gilyon ha-Shas* on the *Tosafot* notes the *Tosafot* on p. 92a. What he means to say is that there the *Tosafot* explain the principle that "one's hand follows one's feet," that we saw two weeks ago in the *shiur* on the Gemara on p. 3a. According to this, the words of the *Tosafot* are limited to a hand that is found **somewhere else** than the feet, though the wording of the *Tosafot* does not imply this. But in the *Tosafot ha-Rosh* (4b, s.v. *batar*), this is stated explicitly. The position that the law regarding an object in airspace applies only to an object in the air, and not to something in a person's hand or on some other raised place of rest, irrespective of the location of the feet, is that of the Rashba in *Eiruvin* 33b.)

It would appear that Rashi understood the matter differently. Rashi ( 4b s.v. *u-be-tokh*) explains that we do not say that an object in airspace is considered at rest in a public domain above ten *tefachim*, because "above ten *tefachim* it is not the air of the public domain, but rather the air of an exempt domain, **so that it is not even in the airspace."** The phrase, "so that it is not even in the airspace," implies that we are missing a condition for applying the rule that an object in airspace is considered at rest. According to the *Tosafot* there is no need to say this. If the object is found in the air above ten *tefachim*, it is possible to say that the object is considered at rest, and therefore the object is seen as resting in that point in the air. That point in the air is an exempt domain, and thus the person throwing the object is not liable. But from Rashi, who explains that we do not say in such a case that an object in airspace is considered at rest, since the object is not in the airspace of the public domain, the implication is that were we to say that an object in airspace is considered at rest, the person throwing the object would in fact be liable. This is possible only if the rule that an object in airspace is considered at rest means that the object is considered as resting **below** on the ground, under the place where it is found in the air. Therefore, in order to exempt the person throwing the object above ten *tefachim*, we must cancel the application of the rule that an object in airspace is considered at rest, and this Rashi does with the phrase, "so that it is not even in the airspace."

The explanation of the position of Rashi is that *hanacha*, "resting," establishes the location of an object as a property of the object, as we explained earlier on p. 3a. The *Tosafot* is interested in resting as opposed to motion, but Rashi, in accordance with his position as explained above, is interested in a defining characteristic regarding the identity of the object, i.e., its location. Rabbi Akiva's novel idea is that location is a two-dimensional, rather than a three-dimensional concept. It is determined by a **map.** The location of an object found in three-dimensional space is its location on a map of that place, i.e., the point on the ground below it. According to this, the law that Rashi explained regarding above ten *tefachim* in the public domain is that since the object is not found in the public domain (in the three-dimensional sense, because the public domain only reaches ten *tefachim* from the ground), its location does not relate to the ground below it. It is not the earth's gravitational pull that determines an object's location on the ground, but rather the mapping of a three-dimensional area on a two-dimensional surface. But if the public domain, the three-dimensional area, ends at ten *tefachim*, an object found above ten *tefachim* is not located on a point on the surface of the public domain.

According to this, the novelty of the law that an object in airspace is considered at rest is not the stoppage of motion, but rather relating the location to a point on the ground. According to this, the connection between Rabbi Akiva's position that an object in airspace is considered at rest and his proposed position that a place of four by four *tefachim* is not required, is the opposite of what is implied by the *Tosafot*. According to Rashi, the reason that Rabbi Akiva maintains that an area of four by four *tefachim* is not required is that there **always is** a place of four by four *tefachim*. In principle, a place of four by four *tefachim* is necessary (and this also stands to reason; since, according to Rashi, the place where an object rests determines its spatial identity, it must rest in a significant place). However, in practice, this condition is always met, because even in the case of something passing through the air, its location is below on the ground, and there, of course, there is always four by four *tefachim*.

Since the Gemara wants to explain the Mishna's ruling regarding an object found in the poor person's hand according to this position of Rabbi Akiva, we must say that Rashi disagrees with the *Tosafot*, s.v. *aval*, and that he maintains that even with regard to something that is resting in a person's hand we say that an object in airspace is considered at rest. Therefore, regarding an object found in a person's hand, its location is on the ground below, where there is four by four, and therefore a person who takes an object out of another person's hand and takes it out to the public domain is liable. This position of Rashi and his disagreement with the *Tosafot* is also reasonable, because the law that an object in airspace is considered at rest determines the object's geographical location, and it is reasonable therefore not to distinguish between an object found in the air and an object found in a person's hand. We are interested not in the physical support, but rather in the spatial identity. Any object in the airspace of a particular place is located at the point on the ground below it (what is called in navigational terminology – its waypoint, or coordinates).

To summarize: According to the *Tosafot*, Rabbi Akiva maintains two positions: An object in airspace is considered at rest, and also that a place of four by four *tefachim* is not required. The second position is proven by the case of the first, but is not dependent on it, and therefore even where the law of an object in airspace does not apply (an object resting in a person's hand) we still say that a place of four by four *tefachim* is not required. All this follows from the understanding that the law of an object in airspace locates the object in the air, in the place where it is found in motion. According to Rashi, Rabbi Akiva maintains only one position, the law that an object in airspace is considered at rest, and this means that the object is located below on the ground. Therefore, even though in principle a place of four by four *tefachim* is necessary, there is always a place of four by four, because the four by four relates to the object's geographical location on the ground, and not to the place where it is being supported.

The *Acharonim* (see *Avnei Nezer*, *Orach Chayyim* 240) adduced proof for this understanding of Rashi from what he says in *Gittin* 79a. There Rashi writes (s.v. *keluta*, and s.v. *ke-mi*): "An object **in airspace** is considered at rest **on the ground."** And so too we find in Rabbeinu Chananel's commentary to our passage: "An object in airspace is considered at rest on the ground."

(See also Rambam, commentary to the Mishna *Para* 10:5, who writes that Rabbi Akiva maintains that an object in airspace is considered at rest, and therefore it is possible to render an oven impure, if one passed a jug of water mixed with the ashes of a red heifer **over** the oven, for it is as if it were **inside** the oven.)

### For stringency, and not for leniency

The *Tosafot* (s.v. *de-amrinan*) write in their second answer that according to Rabbi Akiva, if someone threw an object from one private domain to another through *a makom ptur*, he is certainly exempt. Since an object in airspace is considered at rest, the object is viewed as having rested in the middle of its flight in *a makom ptur*, and afterwards having been lifted up from there and then put back down in a private domain. It turns out then that we are dealing here with **two** actions, the first taking something out from a private domain to *a makom ptur*, and the second bringing something in from *a makom ptur* to a private domain. And for both actions he is exempt. That is to say, just as in the case of one who throws an object from one private domain to another through a public domain, Rabbi Akiva divides the object's flight into two, with resting in the public domain in the middle, and thus liability is created (in fact, two liabilities, as is clarified later in the Gemara, one involving taking something out from a private domain to the public domain, and one involving bringing something in from the public domain to a private domain); so too in the case where the object passes through *a makom ptur*, the law regarding airspace divides the action into two in order to create a twofold allowance. A marginal note regarding this argument records a stricture of the *Tosafot Yeshanim*: "For we only apply the rule regarding airspace for stringency, for if they said it also for leniency, then how can we find a case of throwing an object four cubits in the public domain?"

The *Tosafot Yeshanim* adduce proof from the case of throwing an object four cubits in the public domain. If we apply the law regarding airspace, then every act of transferring an object can be divided into a series of movements, each one less than four cubits, and therefore a person can never become liable. This question was raised by several *Rishonim* – e.g., by the Rashba on our passage – and several answers were suggested. The *Tosafot Yeshanim* suggest that the law regarding airspace applies only for stringency, to create a liability, but not for leniency, to exempt from liability, but the question, of course, is why should that be? What is the difference between stringency and leniency?

It may be suggested that the law regarding an object in airspace defines the object as being at rest (*munach*), but does not remove from it the status of being lifted up (*akur*), since it is still in motion. *Akira* and *hanacha* are not mutually exclusive concepts, for *hanacha* (according to Rabbi Akiva, who recognizes the law regarding airspace) relates only to the object's location, that an object in motion has a temporary location at every point along the way, whereas *akira* relates to the object's movement. Therefore, in order to incur liability, it suffices that the object be considered as resting in the public domain while it is passing through it. However, in order to exempt a person one must negate and cancel the previous act of *akira.* True *hanacha* – resting from motion – would cancel the first *akira*. But *hanacha* in airspace, since the object is still in fact in a state of motion, does not cancel the *akira*, because in actuality the object is still lifted up and this continues as long as the object is in motion. It turns out that the object rests in the place through which it passes for the purpose of giving it the status of *munach*, and it is therefore possible to impose liability, but the original *akira* is not cancelled, and therefore it is still possible to impose liability if the object later rests in a place suited for liability.

This answers the Rashba's question on this position. The Rashba (4b, s.v. *aval*) raises the question how according to Rabbi Akiva is there liability for transporting an object four cubits in the public domain, and he brings three answers. The first is that the law regarding airspace applies only for stringency, but nor for leniency. Against this he raises an objection from the Gemara in *Gittin* 79a which teaches that we invoke the law regarding airspace even with regard to a *get* (a bill of divorce): If a man throws a *get* into his wife's courtyard, she is divorced from the moment that the *get* enters the courtyard's airspace, even before it lands on the ground. But surely there it is neither a matter of stringency, nor one of leniency. The Rashba's question is based on the assumption that the reason for the distinction between stringency and leniency is that the whole law regarding airspace is a stringency rather than an absolute law. Regarding a *get*, confirming the receipt of a *get* is both a stringency and a leniency, and therefore it would be inappropriate to rule that the woman is divorced in absolute manner if the whole law is merely a stringency. But according to our explanation all is well. What is called here a "stringency" is that the object is at rest; what is called here a "leniency" is that object is still regarded as lifted up. In the case of a *get*, there is no need to cancel the *akira*, but only that the *get* should rest in the woman's courtyard. If so, she is divorced both for stringency and for leniency, and the Rashba's difficulty is removed.

### *Hanacha* is not necessary, *Akira* is necessary

 The Gemara rejects the suggestion that Rabbi Akiva is of the opinion that a place of four by four *tefachim* is not necessary, with the argument that it is possible that he merely maintains that ***hanacha***does not require a place of four by four *tefachim*, but ***akira***does require a place of four by four *tefachim*. We will try to explain the distinction.

 The question, of course, divides into two, according to Rashi and according to the *Tosafot*. We explained that according to Rashi, Rabbi Akiva does not require a place of four by four, because there always is a place of four by four, since the object in the air is seen as resting below on the ground. According to the *Tosafot*, Rabbi Akiva maintains that in addition to the law that an object in airspace is considered at rest, there is also a second law that we do not require a place of four by four. Now the Gemara says that logically one can argue that all this is true with respect to *hanacha*, but not with respect to *akira*.

 According to the *Tosafot*, the question is not a serious one. Rabbi Akiva's position that we do not need a place of four by four, according to the *Tosafot*, is an independent position and not logically connected to his position regarding airspace. The *Tosafot* (s.v. *ve-dilma*) raise the possibility that the distinction between *hanacha* and *akira* stems from a Scriptural decree, that in the *Mishkan* all acts of *akira* were from a place four by four, but not necessarily all acts of *hanacha*; or alternatively from a precise reading of the verse: "Let no man go out of his place" (*Shemot* 16:29), which relates only to the place of *akira*. Of course, this is not a logical argument, but on the other hand there is no logical reason preventing us from requiring *akira* from a place that is four by four, but not requiring *hanacha* in such a place (later we will suggest a rationale). But according to Rashi, this is difficult. For the basic law is that an object in airspace is considered at rest, and if the object is considered as resting on the ground regarding *hanacha*, and therefore a place of four by four is not required, why should it not be considered as resting on the ground for the purpose of *akira* from that place?

 It may be suggested that the law that an object in airspace is considered at rest identifies the object as belonging to that place, that point on the ground. At the same time, however, it is also true that the object has the status of being lifted up from the ground. That is to say, there are two possible perspectives regarding an object in motion. If we focus on the **instant,** the object is found in a particular place, and that place according to Rabbi Akiva is a point on the ground. But if we focus on the **process,** on the period of time, the object is found in motion, and not in a particular place. Every second, the object's static position is cancelled in favor of the next point. The identity of the object then includes both its belonging to a particular point, and also its state of movement and changing its place, everything in accordance with the perspective of the observer. However, these two perspectives contradict each other. Therefore, regarding *hanacha*, it suffices that there is a status of *munach* in a particular place (which is four by four) in order to impose liability, because it has now a new status and identity, and this is what imposes liability in the *melakha* of *hotza'a*, as we explained regarding Rashi's position on p. 3a. But as for *akira*, it is necessary to cancel the old status. Since the object, even before the *akira*, had the status of being lifted up, because in reality it is in motion from its old place, this *akira* has no significance. The Gemara's question assumes that in order to lift an object up, the object cannot have a prior status of being lifted up (and according to the Gemara's conclusion that we do not distinguish between *hanacha* and *akira*, it suffices that the *akira* cancel a previous status of *munach*).

 The *Tosafot* can be explained in similar fashion. Also according to the *Tosafot* the law regarding airspace is based on seeing the object in the instant. Then it is found in this place (in the air). But together with this perspective, there is also a more comprehensive perspective, according to which the object is not at all found in this domain, but rather moving through it. Therefore, regarding *hanacha*, it suffices that there is a perspective that sees the object as reaching a particular point. But regarding *akira*, it is necessary **to start**the object's movement from a particular place. For this the perspective that sees the object as already detached from its place suffices to weaken the significance of the *akira* performed at this time.

 According to this, we can also explain the position above that we apply the law that an object in airspace is considered at rest for stringency, but not for leniency. We explained earlier that the resting of on object in airspace does not cancel the previous *akira*. According to what we are saying now, it may be argued that this is the reason that the previous *akira* is not cancelled, because the law regarding airspace merely provides a proper perspective regarding *hanacha*, but it does not negate the opposite perspective, that the object is still lifted up, and thus the previous *akira* is not cancelled.

Sources for the next shiur:

א. גמרא ה ע"א "אלא אמר רבא ידו של אדם.... תיקו".

ב. **ידו של אדם חשובה לו כד' על ד'**: תוס' ד ע"ב ד"ה אלא (על פי הגמרא בעירובין צ"ט ע"א), רמב"ן ה ע"א ד"ה ידו, רשב"א שם ד"ה ידו.

ג. **שני כוחות**: ר"ח, תוס' ד"ה כשני, רמב"ן ד"ה כתוב, רשב"א ד"ה ה"ג.

(Translated by David Strauss)

1. Those with a classical education will identify here echoes of Zeno's arrow paradox. [↑](#footnote-ref-1)