YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur 37: "Until it Falls" – In the Civil Arena**

**Introduction**

In the previous *shiur*, we saw various examples taken from Rabbi Goren's rulings of special allowances granted during a time of war based on the law of "until it falls." As we saw, the fundamental definition of this law applies only to actions "in the battlefield and in the time of battle," though Rabbi Goren sometimes expanded it to include other security-related actions as well.

However, in his comprehensive article on the subject of "until it falls," Rabbi Goren mentions another source in the words of *Chazal ­*– in the Jerusalem Talmud – which seems to expand this law and apply it in the civil arena as well. That is to say, even a simple civil action, which a person performs on his own and not as part of a military or security force in a general campaign, may be affected by this law.

In this *shiur*, I would like to examine the relevant passage in the Jerusalem Talmud and thereby clarify the novel rulings that have been issued in light of it.

**The Talmudic Source – Violating a Rabbinic Prohibition for the Sake of the Mitzva of Settling the Land of Israel**

The Gemara in tractate *Gittin* (8b), in the Babylonian Talmud, states that one is permitted to ask a gentile to draw up a contract on Shabbat for the purpose of purchasing land in the Land of Israel. The Gemara explains that even though asking a gentile to perform a prohibited labor on Shabbat is forbidden by Rabbinic law, “where it is a question of furthering the [Jewish] settlement of the Land of Israel, the Rabbis did not apply the prohibition."

The *Rishonim* disagree (see, for example, *Tosafot*, ad loc., s.v. *af al gav*, and *Chiddushei ha-Rashba*, *Eiruvin* 68a, s.v. *bein*) as to whether it is possible to conclude from this passage that it is permissible to ask a gentile to perform a labor forbidden to a Jew by Torah law[[1]](#footnote-1) for the sake of *any* mitzva, or whether there is something unique about the mitzva of settling the Land of Israel, such that transgressing this Rabbinic prohibition is permitted for it but not for other *mitzvot*.

The *Rishonim* also disagree (see *Chiddushei ha-Rashba*, ibid; *Magen Avraham* 306, no. 19, and the strictures of the *Birkei Yosef*, ad loc.) as to whether the Sages permitted *all* Rabbinic prohibitions for the sake of the mitzvaof settling the Land of Israel, or whether they were specifically lenient about asking a gentile to perform a labor because that is in the halakhic category of "a prohibition that does not involve an action" (*issur she-ein bo maaseh*): the Jew merely *talks* to the gentile, asking him to draw up a contract, but does not perform any direct action.

According to the Ramban, the passage does in fact issue a unique ruling that pertains only to the mitzvaof settling the Land of Israel:

For there, it is a mitzvaand a benefit for all of Israel that the holy land should not be destroyed.[[2]](#footnote-2) And furthermore, that we do not weigh one mitzvaagainst another, and we do not know the rewards of the *mitzvot*, so that it can be said: Just as they permitted this, so we will permit that as well. (*Chiddushei ha-Ramban*, *Shabbat* 130b, s.v. *ha de-tanya*)

The mitzva of settling the Land of Israel is a national mitzva, which falls upon the entire community. Therefore, the Sages issued a novel allowance permitting one to ask a non-Jew to draw up a deed of sale even though writing is prohibited on Shabbat by Torah law. However, despite all the importance and significance of settling the Land of Israel, all that was permitted was a Rabbinic prohibition – and even further, as noted, the *Rishonim* disagree as to whether all Rabbinic prohibitions were permitted or only some of them.

**The Position of the Jerusalem Talmud – "Until it Falls"**

The *halakha* recorded in the Babylonian Talmud is mentioned in the Jerusalem Talmud as well, except that there we find an additional explanation:

Rabbi Yehoshua ben Levi asked Rabbi Shimon ben Lakish: What is the law regarding buying houses from a gentile? He said to him: About when does the master ask? About Shabbat? It was taught: On Shabbat it is permitted. How does one do it? He shows him wallets full of dinars, and the gentile signs [a contract] and brings it to a court. For we find that Jericho was conquered on Shabbat, as it is written: "Thus shall you do six days" (*Yehoshua* 6:3), and it is written: "And the seventh day you shall compass the city seven times" (ibid., v. 4), and it is written: "Until it falls" (*Devarim* 20:20) – even on Shabbat. (Jerusalem Talmud, *Moed Katan* 2:4)[[3]](#footnote-3)

As far as the law itself, the Jerusalem Talmud says the same thing as the Babylonian Talmud: the Jew alludes to the purchase price, and the gentile draws up the contract and signs it. But the reasoning is new: redemption of land from gentiles in the Land of Israel is learned from the Biblical passage describing the conquest of Jericho, and is covered by the law of "until it falls."

There is a twofold novelty in the words of the Jerusalem Talmud. First, it applies the law of "until it falls" in a civil context, completely detached from "the battlefield and the time of battle." A person who buys land in Israel is not at war; in fact, it is likely that he does so precisely in a time of peace, or at least in a time of relative calm. Furthermore, in general, such a person does not act as part of a broader system, but conducts a completely private transaction of purchasing land.

Second, as we have already learned, the allowance of "until it falls" permits doing *anything* necessary for war; it is not at all limited to Rabbinic prohibitions. Hence, the question arises: According to the Jerusalem Talmud, is it permissible to redeem land in the Land of Israel even when that involves a transgression of Biblical prohibitions, based on the law of "until it falls"? Some of the greatest *poskim* felt that such an understanding could be suggested for the Jerusalem Talmud, but they rejected it outright. Thus, for example, writes the Chida:

That which is brought in the Jerusalem Talmud, which is cited by the *Elya Rabba*, "for Jericho was conquered on Shabbat," is merely an *asmakhta*, a support, for there it was based on a Divine command. And furthermore, in the days of Yehoshua, the Rabbinic decrees were not yet enacted. (*Birkei Yosef Orach Chaim* 306, *Shiyurei Berakha,* 11, letter 1)

According to the Chida, the allowance in the Jerusalem Talmud is certainly no broader than that in the Babylonian Talmud, and permits only Rabbinic prohibitions. According to him, since we are dealing with Rabbinic prohibitions, there is no room to adduce proof from Yehoshua in Jericho, and thus it must be that Jericho is mentioned in the Jerusalem Talmud merely as a support.

Rabbi Avraham Yitzchak Kook's remarks on the subject are even more emphatic. In response to a question posed by a person who apparently wanted to allow even Torah prohibitions for the purpose of redeeming land in Israel, Rav Kook writes:

His precious letter reached me, and I was very surprised how things came to such an error, to think that it is permitted to desecrate the holy Shabbat for the Land of Israel, without the limitation that we learned from *Chazal* that it was only with regard to asking a gentile to perform a prohibited labor, which is only forbidden by Rabbinic law, that the Rabbis did not issue a decree against someone buying a house in the Land of Israel… God forbid that one should even imagine an allowance to desecrate Shabbat with the transgression of a Torah prohibition. (*Responsa Mishpat Kohen*, no. 146)

Later in his responsum, Rav Kook explains how to understand what is written in the Jerusalem Talmud:

Even though the Jerusalem Talmud concludes there with the reason, "for we find that Jericho was conquered on Shabbat," and the *Korban ha-Eida* explains there: "That is to say, that we find that for the sake of settling the Land of Israel, it is permitted to desecrate Shabbat," this does not mean that it is permitted, God forbid, to desecrate Shabbat in other matters for the sake of settling the Land of Israel. Rather, that we find that an obligatory war sets aside Shabbat, and we learn this from Jericho in the Jerusalem Talmud, the first chapter of *Shabbat*, *halakha* 8 – but for the sake of acquisition in the Land of Israel, we only derive an allowance to desecrate Shabbat regarding a *Rabbinic* prohibition, for the Sages in all places restrained their words in the place of a mitzva*.* And we come back to the law, that God forbid that one should think that it is permitted to desecrate the holy Shabbat for the sake of the Land of Israel, as I have written. (Ibid.)

In other words, the Jerusalem Talmud draws a partial comparison between two laws: Just as we learn from the law of "until it falls" that it is permitted to desecrate Shabbat *in a war* by doing whatever is necessary to win the battle, so may it be assumed that in a time of peace, it is permitted to transgress *Rabbinic* prohibitions in order to redeem land in the Land of Israel. But this type of land redemption is not a real war, and therefore it is unthinkable to permit the transgression of Torah prohibitions in its name.

Indeed, contemporary *poskim* (see, for example, *Responsa Be-Ohelah shel Torah*, II, 30, and *Responsa Binyan Av*, III, 41) have determined that even when there is an urgent need to hold or take control of territories in the Land of Israel, for example, when it is necessary to take advantage of an international window of opportunity to establish new settlements in Judea and Samaria, one may at most permit Rabbinic prohibitions – not Torah prohibitions.[[4]](#footnote-4)

**Working the Land During the *Shemitta* Year for the Sake of Settling the Land**

As mentioned in the *shiur* dealing with a border town (*#*33)*,* Rabbinic prohibitions were permitted for the sake of settling the Land of Israel not only in the realm of the laws of Shabbat, but also in the realm of the laws of the *shemitta* year.

In a similar vein, Rabbi Eliyahu Bakshi Doron permitted asking a gentile to plant trees during the *shemitta* year in order to acquire a hold on the land:

It is clear that even though the mitzvaof settling the Land of Israel is of utmost importance, no allowance was granted to transgress a Torah prohibition in order to redeem the land… and therefore only planting by way of gentiles may be permitted. The planting should be carried out not on Tu Be-Shvat, but at a different time, so that it does not appear as if one is planting for the sake of working the land. (*Responsa Binyan Av*, III, no. 41)

Similarly, Rabbi Goren permitted settlers in Judea and Samaria to do things during a *shemitta* year that are designed to ensure the preservation of the land. Though he conditions the allowance on the *heter mekhira*, insisting that the land be sold by way of the military governor, he adds:

Every act of settlement, building, or agriculture strengthens Jewish ownership in Judea and Samaria… It is of great importance to work the land for any purpose in order to strengthen Jewish settlement in these areas – which, according to the Jerusalem Talmud in *Moed Katan*, involves conquest of the land and a strengthening of its sanctity. Therefore, you are permitted to garden the areas intended for that purpose in order to strengthen your connection to the place. (Rabbi Shlomo Goren, *Torat ha-Aretz*, I, no. 9)

Rabbi Goren also wrote:

A second way can be found to permit the *shemitta* prohibitions in the settlements, since they are engaged in a difficult struggle to ensure Jewish ownership of the land, and according to the *halakha*, demonstration of Jewish ownership and cultivation of the land are treated like conquest of the territory, as is explained in the Jerusalem Talmud, tractate *Moed Katan…* And it is written: "'Until it falls' – even on Shabbat," which indicates that acquiring Jewish ownership of land in the Land of Israel is considered like conquest. And certainly everything connected to cultivation of the land in the settlements is considered like conquest, and releasing the land from the hands of the gentiles sets aside the prohibitions of *shemitta* at this time, when they are Rabbinic, just as they permitted Rabbinic prohibitions of Shabbat for the sake of acquiring ownership of the land in the Land of Israel, as is brought in tractate *Gittin* and in the aforementioned Jerusalem Talmud. (Ibid., I, no. 1)

On the one hand, Rabbi Goren permits only Rabbinic prohibitions, in accordance with the plain sense of the Talmudic passages and as was emphasized by the Chida and Rav Kook. On the other hand, it seems that Rabbi Goren saw a stronger connection between the law of "until it falls," in its straightforward sense, and the special allowances for *shemitta.* According to him, this is not a mere "support" or partial comparison, but the very same law, which relates to special allowances in the framework of combat – except that the allowances that follow from it are not the same in every case: sometimes it permits all prohibitions in a sweeping fashion, and sometimes it permits only Rabbinic prohibitions.

Indeed, this is how Rabbi Goren himself explained the issue in his foundational responsum regarding the law of "until it falls":

We learn from here that the allowance of "until it falls" is not only related to conquest of the land by means of war, and that the impetus for this allowance is not the commandment of war or any kind of *pikuach nefesh* in war; rather, it is the mitzvaof conquering the land and settling it that sets aside the prohibitions of Shabbat… The mitzvaof conquering the land and settling it is what sets Shabbat aside, and therefore not only conquest by way of combat sets aside Shabbat, but so too redemption of the land in civil ways and the settling of the land, the goal of which is preventing the possibility of the gentiles taking control of it, sets Shabbat aside based on the reason of "‘until it falls’ – even on Shabbat.”

It is true that the Jerusalem Talmud there does not permit violation of Torah prohibitions on Shabbat… Nevertheless, since the Jerusalem Talmud brings a proof for this from the conquest of Jericho, and from "until it falls," as in tractate *Shabbat* 1:8, regarding laying a siege on gentile cities – learn from this that even the redemption of the land in a civil manner is treated fundamentally like an obligatory warwhich sets Shabbat aside, and in practice, they permitted the violation of Rabbinic prohibitions for this purpose. (*Responsa Meishiv Milchama*, I, no. 2)

Later in his words, Rabbi Goren presents a revised formulation, according to which "the Sages did not permit the violation of Torah prohibitions" for the sake of settling the land. But this requires further study, for the allowance to desecrate Shabbat and transgress other prohibitions based on “until it falls" is a Torah law, not a Rabbinic allowance. Nevertheless, for our purposes, Rabbi Goren's intention is clear: The law of "until it falls" *itself* includes civil settlement in the Land of Israel, though for the sake of this settlement, only Rabbinic prohibitions were permitted.

**Going Up to the Temple Mount**

It is relevant here to mention another ruling by Rabbi Goren, that expands the concept of "until it falls" in its civil context even further.

*Responsa Meishiv Milchama*, in which Rabbi Goren compiled his responsa relating to military matters, is comprised of three volumes. Rabbi Goren also published a fourth volume, not about the military but about the Temple Mount. Already after the Six-Day War, Rabbi Goren dedicated much time to clarify the halakhic issues related to the Temple Mount, with an emphasis on the attempt to determine where precisely the Temple stood, and based on that, exactly where one is permitted or not permitted to go.

The issue of going up to the Temple Mount is sensitive and complex, and often provokes difficult and poignant discussions. Many rabbis, including the Chief Rabbinate of Israel across the generations, strictly forbade ascent to the Temple Mount. But Rabbi Goren's position was that it is permissible, and even mandatory, to go up to those places that people who contracted impurity from a corpse are permitted to enter. When Rabbi Goren was asked to explain why in his opinion one should go up to the Temple Mount, he referred to the words of the Jerusalem Talmud in the matter of "until it falls" – in the civil arena. He wrote as follows:

There is no doubt that in such a case, when there is a danger of gentiles taking control of Mount Moriya, it is even permissible to enter the area of the Temple courtyard, so as not to give them an encampment on the Mountain of God, because Jews going up to the mountain in such a situation is considered like conquest, and establishing possession and preventing gentiles from taking control of it, which according to the Jerusalem Talmud sets aside the prohibitions of Shabbat, as we find in the Jerusalem Talmud in tractate *Moed Katan*… What is implied by this is that purchasing land from gentiles in the Land of Israel is considered like the conquest of Jericho on Shabbat. Even though even the Jerusalem Talmud seems to imply that they only permitted Rabbinic prohibitions on Shabbat, and not Torah prohibitions, as they explained in the Babylonian Talmud in tractate *Gittin*… In any event, the comparison made by the Jerusalem Talmud between the purchase of land from a gentile in the Land of Israel and the conquest of Jericho on Shabbat proves that redeeming land from the hands of gentiles in the Land of Israel is treated like the conquest of the Land, which is a Torah mitzva even in our time, according to the Ramban, and it is possible that even the Rambam agrees with him, as it is implied in the Jerusalem Talmud. (*Responsa Meishiv Milkhama*, IV, introduction)

The beginning of this passage implies that it would have been possible to permit even severe Torah prohibitions, such as entry into the Temple courtyard by those who are ritually impure, for the sake of the mitzvaof conquest – based on the law of "until it falls." Later in his words, Rabbi Goren retracts, as *Chazal* explicitly say they only permitted Rabbinic prohibitions, yet his approach still stands out prominently. According to him, the words of the Jerusalem Talmud are a firm foundation for the significance of the law of "until it falls" even in the realm of civil actions that are performed in a private manner, and not necessarily as part of an overall war effort.

**"War" in a Civilian Context**

To conclude this *shiur*, I would like to quote two interesting statements, by two contemporary *poskim*, which in my opinion complete the discussion of the allowance of "until it falls" in the civil arena.

1. Rabbi Shlomo Zalman Auerbach was asked whether – and when – it is permitted to use an experimental drug. Using the drug advances science and is liable to save others, but of course it poses a certain danger to one who participates in the trial. This question was discussed in other sources, but Rabbi Auerbach examines it in the context of a "war" against disease:

If we are honest about this, it is possible to argue that war against diseases that endanger human life are also a kind of obligatory war. If we were to merit that everything be done in accordance with Torah law, it is possible that the *beit din* would see the need for drug trials as an obligatory war to save lives. (*Responsa Minchat Shlomo*, II, no. 82)

That is to say, the allowances based on "war" may also be significant in "battlefields" which essentially belong to the civil arena. However, in contrast to the primary issue with which we have been dealing, regarding a private citizen purchasing land for himself, here we are dealing with a real communal and national struggle – except that, as already mentioned, it is being waged not on a military battlefield, but on a civilian one.

2. Throughout this series of *shiurim*, I have focused primarily on the fact that the law of "until it falls" permits the desecration of Shabbat and the transgression of other prohibitions (whether Torah law or Rabbinic) in order to decide the battle.

But of course, the very phenomenon of war also involves a different type of allowance, namely, the allowance to take risks. *Pikuach nefesh* sets aside all the *mitzvot* in the Torah, but even so, when a solider is asked to go out to battle, he puts himself in danger for the sake of his people and country, and fights "until it falls."

During the events of the Second Intifada (2001-2003), Rabbi Eliyahu Bakshi Doron was asked whether settlers in Judea and Samaria are permitted to risk routine road travel, or whether they are obligated to travel only by way of armored vehicles, convoys, or other stringent defensive measures. He explained the two sides of the question: On the one hand, a person is obligated to be careful and not put himself in a situation of danger. On the other hand, strict defensive procedures harm the morale of the residents, and there is a significant fear that adherence to such procedures, which do not allow for a normal routine, will lead to the abandonment of communities in areas of hostility.

Rabbi Bakshi Doron discusses the issue at length, focusing on the question of whether it is possible to define the residents of Judea and Samaria as being in a state of war. If indeed we are dealing with a war, then it is also permissible to take risks in order to maintain the integrity of the country. But if it is not a war, *pikuach nefesh* overrides considerations of holding on to the land.

After discussing the issue at length, Rabbi Bakshi Doron determines that a question of this type must be a national and public question. According to him, the Israeli government is the body that decides whether the situation is defined as a war. As long as the government has not reached such a decision, a private citizen cannot decide on his own that we are dealing with a war, and thus he does not have permission to risk his life based on the law of "until it falls":

The determination that the mitzva of settling the Land of Israel through conquest and war is not subject to the rule that *pikuach nefesh* sets aside the entire Torah, and that the very mitzvaof conquest and war involves an allowance and even an obligation to risk one's life, was stated with respect to all of Israel, who are commanded to conquer and settle the land – not to the individual, who is commanded to settle the land but cannot wage war and conquest… Therefore, as long as the government does not conduct itself with regard to holding the territories and guarding them as in a state of war with all the implications… the settlers as individuals are not obligated to risk their lives in order to protect the places, because this is not a personal obligation. (Rabbi Eliyahu Bakshi Doron, "*She'eilot Hilkhatiyot eikev ha-Matzav ha-Bitchoni*," in: *Torah she-be-Al Peh*, vol. 43)

We see that in his opinion, the law of "until it falls" is relevant only in the case of an overall public campaign, in which every individual has a part; a private individual cannot simply decide to apply it to himself. Rabbi Bakshi Doron makes this distinction in the context of the allowance to risk one's life, but it can certainly be concluded that with respect to Shabbat desecration and other forbidden activities as well, the law of "until it falls" only applies to communal and national actions, and not to the actions of individuals.

(Translated by David Strauss)

1. Most of the *Rishonim* understand as a simple matter that the passage is dealing with a non-Jew who is performing a labor that is forbidden by Torah law – writing. In contrast, the *Or Zaru'a* understands it to be about a non-Jew who is writing a deed in a foreign script, not Hebrew, and concludes from the passage that the only writing that is prohibited by Torah law on Shabbat is writing in the Hebrew script. According to the *Or Zaru'a,* we are dealing here with a labor that is prohibited only by Rabbinic law for two reasons [*shevut de-shevut*]: it is a non-Jew who is performing a prohibited labor on Shabbat, and the labor is prohibited only by Rabbinic law.

   However, the position of the *Or Zaru'a* is very novel, and although it is mentioned by the Rema (*Orach Chaim* 306:11), most *poskim* ruled against it, as explained in the *Mishna Berura* and *Bei'ur Halakha*, ad loc. [↑](#footnote-ref-1)
2. These words of the Ramban are reminiscent of his position, in his strictures to the Rambam's *Sefer Ha-Mitzvot* (forgotten positive commandment, no. 4), that settling the Land of Israel is a positive commandment in the list of the 613 *mitzvot*, and that it includes the obligation "not to leave it in the hands of other nations or in desolation." [↑](#footnote-ref-2)
3. This is stated explicitly also in *Midrash Bereishit Rabba* (*Parashat Lekh-Lekha*, 10), and there it is explained that the allowance is based on the fact that "the Land of Israel is precious." [↑](#footnote-ref-3)
4. For interesting examples of the application of this law in recent generations, see Dr. Moshe Ehrenwald, "*Keniyat Karka be-Eretz Yisrael le-Halakha u-le-Ma'aseh*," in: *Ha-Ma'ayan*, Tishrei 5781 (available here). [↑](#footnote-ref-4)