



A Question of Intent

In this week's essay, we will elucidate some of the basic principles of *Hilchos Shabbos: Davar sheEino Miskavein, Pesik Reisha, Pesik Reisha d'Lo Nicha Lei*, and *Sh'vus d'Shvus ("Trei d'Rabbanan")* and explore many of the sources for these fundamental rules. We will then apply these principles to two practical questions, one common and one less common but nevertheless fascinating.

Min haTorah, an act can only constitute a *Melacha* if the person intended to perform it for its usual and customary purpose. If his action leads to a forbidden outcome that he did not intend to occur (i.e., as a byproduct of his action), it is considered permissible, as the Halacha follows R' Shimon's leniency regarding "*Davar sheEino Miskavein*", not R' Yehuda's strict opinion.¹ According to several *Rishonim*, R' Shimon's reasoning is that a *Davar sheEino Miskavein* is not considered "*Melech Machsheves*" – a condition derived from the building of the Mishkan.²

The classic example of a *Davar sheEino Miskavein*³ is dragging a bench outdoors and unintentionally creating a furrow. Although creating a furrow is forbidden on Shabbos, since his intention was solely to move the bench (which is entirely permissible⁴), and he has no intention to cause the forbidden outcome, it is permissible. It is similarly permitted to walk on grass on Shabbos and a person does not need to be concerned that he will unwittingly uproot some blades of grass since that is not his intent.

However, this is only true if the outcome is not inevitable. If dragging the bench would inevitably cause a furrow or walking across a lawn would inevitably uproot some grass, it is forbidden even though he has no intention to do so. This is known as "*Pesik Reisha*" and even R' Shimon concedes that the act is forbidden.

For this reason, a *Nazir* may brush his hair but not comb it, as combing it will inevitably detach some hair.⁵ Likewise, one is liable for opening a door that will inevitably cause a candle to be extinguished.⁶ Similarly, one may not remove berries

¹ *Beitza* 23b, *Shabbos* 29b & 95a

² See *Chagiga* 10a-b, *Rashi ad. loc. s.v. "Melech"*, and *Tosfos, Shabbos* 110b s.v. "*Talmud*".

³ Mentioned by the *Shulchan Aruch, Orach Chaim* 337:1 and 336:3.

⁴ [Editor's note: assuming that there are no issues of carrying in a public or semi-public domain]

⁵ *Kesubos* 6a; see *Shabbos* 50b.

⁶ *Shabbos* 120b



from a *Hadas* on Yom Tov, even with the intention of eating them, as doing so will make the *Hadas* suitable for Mitzva usage (which violates the *Melacha* of *Makeh b'Patish*).⁷

The term *Pesik Reisha* comes from the phrase "*Pesik Reisha v'Lo Yamus? – If you decapitate its head will it not die?*" referring to cutting off the head of a chicken to give to a child as a toy – an act that is forbidden on Shabbos. Though his sole intention is to give his child a toy and he does not intend to kill the chicken, it is forbidden, as the chicken's death is inevitable.

The *Kovetz Shiurim*⁸ presents two possible reasons why a *Pesik Reisha* constitutes a *Melacha*. One possibility is that in a case of *Pesik Reisha* we disregard his "lack of intent" and consider it as though he did intend it, as it is reasonable to assume that a person does intend to cause the outcome if it is an inevitable consequence of his action. This is implied by Rashi⁹ who states, "*Since it is impossible that [the chicken] not die, it is considered as if he intended it*". The other possibility is that although we do not consider the person to have had direct intent for the forbidden outcome, nevertheless, since it is an inevitable consequence of the action that he performed, the outcome is considered an inherent part of that deliberate action.

The *Nafka Mina* (practical distinction) between these two possibilities is as follows:

There is another important *Machlokes Rishonim* regarding *Pesik Reisha*. The view of the *Aruch*¹⁰ is that a *Pesik Reisha* is only prohibited when the person has a benefit from the consequence. If he has no benefit and the outcome is of no consequence to him, the act is permissible. This is known as "*Pesik Reisha d'Lo Nicha Lei*".

The simple explanation of this position is that if the outcome is of no interest to the one who is performing the action, it cannot be considered a *Melech Machsheves*. If so, this would only be applicable to *Hilchos Shabbos*.¹¹ However, R' Akiva Eiger proves that the *Aruch's* position applies in other areas of Halacha as well. If so, the basis of the leniency must be that when the outcome is of no interest, it remains a *Davar sheEino Miskavein*, unlike a "regular" *Pesik Reisha*.

Tosfos (ibid.) cite the *Ri* who disagrees with the *Aruch*. *Tosfos* imply that the *Ri's* reasoning is that a *Pesik Reisha d'Lo Nicha Lei* cannot be considered "*Eino Miskavein*".

⁷ *Sukka* 33a

⁸ *Kesubos* 19

⁹ *Sukka* 33b s.v. "*v'ha modi R' Shimon b'pesik reishai v'lo yamus*"

¹⁰ Cited in *Tosfos* in *Kesubos* *ibid.* and *Shabbos* 103a and by the *Ramban*, *Shabbos* 111a

¹¹ See the *Rosh*, *Rashba*, and *Ran* to *Shabbos* 111a.



The *Kovetz Shiurim*¹² explains that the *Ri* ascribes to the second possibility delineated above, namely that an inevitable outcome of an action is considered part and parcel of the action. If so, it makes little difference if it affords him no benefit or use – since he had intent to perform the act, that is sufficient to consider it as if he intended to cause the forbidden outcome as well.

In spite of this, *Tosfos* imply that even the *Ri* agrees that a *Pesik Reisha d'Lo Nicha Lei* is only *Asur mi'd'Rabbanan*.¹³ They state this explicitly in *Shabbos* 103a¹⁴ and in *Yoma* 35a.¹⁵ The *Shita Mekubetzes*¹⁶ and *Ramban*¹⁷ explain that without benefit from the outcome, the act becomes a *Melacha she'Eina Tzricha l'Gufa* which is only *Asur mi'd'Rabbanan*. These *Rishonim* ultimately concur with the *Ri* and state that it is only *Asur mi'd'Rabbanan*. The *Rivash* (394) attests that the *Rishonim* discounted the position of the *Aruch*.

The *Beis Yosef*¹⁸ cites the *Machlokes* between the *Aruch* and *Tosfos* and states that the *Semag* and *Sefer haTerumos* appear to side with *Tosfos*. He also notes that *Rabbenu Yerucham* attested to the fact that with regard to one type of case they were lenient in “many lands” in line with the *Aruch's* position.¹⁹ The *Beis Yosef* cites the *Kol Bo* who suggests a technical reason as to why they were lenient in that case. In *Shulchan Aruch*²⁰, he cites the *Machlokes* between *Tosfos* and the *Aruch* and also the justification of leniency based on the *Kol Bo's* reasoning. The *Taz* infers that the *Shulchan Aruch* sides with the stringent position of *Tosfos*.²¹ The *Mishna Berura* also rules stringently (see the *Biur Halacha ibid.*)

The *Poskim* discuss whether a *Pesik Reisha d'Lo Nicha Lei* includes cases where the person has *no interest* in the outcome²², or only when he absolutely *doesn't want it*.²³ The *Meiri*²⁴, who rules like *Tosfos* over the *Aruch*, asserts that R' Shimon would certainly permit an act whose outcome is not wanted at all. This implies that the

¹² *ibid.* 18

¹³ See *Kovetz Shiurim ibid.*

¹⁴ s.v. *b'Ara* – see also s.v. “*lo tzricha*” *ibid.*

¹⁵ s.v. “*hani mili*”

¹⁶ *Kesubos* s.v. “*u'b'shita yeshana*”

¹⁷ *Shabbos* 111a, see also the *Shulchan Aruch*, *Orach Chaim* 320:18 and *Magen Avraham* 21

¹⁸ *O.C.* 320:18

¹⁹ [Editor's note: The case discussed by the *Beis Yosef* is a barrel of wine that had an absorbable material used as a stopper that would inevitably be squeezed when removed to dispense the contents, potentially violating the *Isur Sechita*. Since the details are irrelevant to our discussion of how the *Poskim* ruled on the question of *Pesik Reisha d'Lo Nicha Lei*, we will omit further examination of the specifics of that case.]

²⁰ *ibid.*

²¹ See also the *Magen Avraham* (23), *Machatzis haShekel*, and *Ma'amar Mordechai (ibid.* 18).

²² “*Pesik Reisha d'Lo Ichpas Lei*”

²³ See *Ramban*, *Shabbos* 111a.

²⁴ *Shabbos* 103



Machlokes between *Tosfos* and the *Aruch* only applies in a case where the outcomes of the act is of no consequence, not if he absolutely doesn't want it.²⁵ However, *Tosfos* and the other *Rishonim* in *Kesubos* imply that the *Machlokes* even applies in a case where he doesn't want the outcome.

(This matter requires further study. We noted that the *Acharonim* explain that the *Ri* holds that *Pesik Reisha* is *Asur* because an inevitable outcome is included in the original act for which the person had intention. This is why the *Ri* is stringent regarding *Pesik Reisha d'Lo Nicha Lei*. If so, there would seem no reason to distinguish between an outcome that is of no consequence and one that the person doesn't want.)

As stated, the Halacha is in accordance with *Tosfos* and a *Pesik Reisha d'Lo Nicha Lei* is *Asur mi'd'Rabbanan*. However, the *Mishna Berura* rules that although we do not follow the *Aruch l'Chatchila*, one may be lenient where there are other reasons to permit it.²⁶ An example is where there is "*Trei d'Rabbanan*", as explained below.

The manner in which a *Melacha* is performed can downgrade it from an *Isur d'Oraisa* to *Isur d'Rabbanan*. For example, one is only liable *Min haTorah* when performing a *Melacha* for a creative and positive purpose, and not when it is wrought in a destructive manner (unless the destruction is intended to allow a constructive act can be performed, such as tearing a button from a garment so that it can be sewn on again more tightly).

An additional, though more complex, principle, is that one is only liable *Min haTorah* when performing a *Melacha* in the regular way and not by means of a *Shinui* (in which case it is only *Asur mi'd'Rabbanan*. For example, it is only *Asur min haTorah* to cut one's nails with scissors or clippers, not to bite them off.²⁷ Performing a *Melacha* with one's elbow is also considered a *Shinui*. (This Halacha is extremely significant to those working in the hospital on Shabbos who need to enter medical information on a computer. Many type with a thimble on their finger, which constitutes a *Shinui*.)²⁸

Returning to *Pesik Reisha d'Lo Nicha Lei*, as stated above, one may be lenient in a case of *Trei d'Rabbanan*. Let us discuss two relevant cases, one in which we rule stringently and one where there is room for leniency.

²⁵ See also the *Meiri's* comments *ibid.* 29b.

²⁶ See 320:53 and *Biur Halacha* s.v. "Yesh" and s.v. "Tov".

²⁷ See *Orach Chaim* 340:1 and *Mishna Berura* and *Biur Halacha ad. loc.*

²⁸ In some cases, a *Shinui* renders an act completely permissible, as in the case of *Melechtes Tochen*; we permit mashing fruits with a *Shinui* in certain cases. However, in other cases, such as in certain examples of *Melechtes Borer* it is still forbidden; if a person removes the "*Pesoles*" from the "*Ochel*", and the "*Ochel*" is not needed for immediate use, he is liable even if he performs the act in an unusual way and does not use the implement that is usually used for that act.



1. Brushing teeth on Shabbos raises many Halachic issues, among them, smoothing the toothpaste ("*Memarei'ach*"), the question of *Nolad* when squeezing the paste from the tube, *Uvdin d'Chol*, tearing bristles from the brush, squeezing out the brush, etc. A less common question relates to those whose gums usually bleed while brushing. For most people this is an uncommon occurrence and would definitely be considered a *Davar sheEino Miskaven*. However, for others this occurs every time they brush their teeth. Clearly, they have no intention for this to occur, however, it is a *Pesik Reisha* and therefore forbidden.
2. On Rosh Hashana, some *Ba'alei Toke'a* find that after blowing many *Tekios* their lips will bleed. This does not forbid them from blowing *Shofar* as it is certainly not desirable, and thus constitutes a *Pesik Reisha d'Lo Nicha Lei*. In addition, it is a "*Kilkul*" – a destructive outcome and a *Shinui*, as blood is not usually extracted from a source in that manner. If so, there are two reasons to downgrade the *Melacha* to the level of a *d'Rabbanan*, and one may be lenient as it is a case of *Pesik Reisha d'Lo Nicha Lei* with *Trei d'Rabbanan*.