



## *Ger Toshav, Shabbos, and Pikuach Nefesh*

Although the Gemara and Rishonim rule unambiguously that one may only violate Shabbos for the *Pikuach Nefesh* of a Yisrael, not for a *Nachri*, the *Chasam Sofer's* ruling on this matter is well known (*Shu"t* 2:131): if there is any concern of genuine *Sakana*, one may violate even *Issurim d'Oraisa*. It is also known that the *Divrei Chaim* records the *Takana* of the *Va'ad Arba Aratzos*<sup>1</sup> to permit *Issurim d'Oraisa* on Shabbos due to the concern of *Sakana*.

Nevertheless, studying the Gemara and Rishonim leads to practical Halachic ramifications. The *Rambam* writes in the second *Perek* of *Hilchos Shabbos*:

*One may assist in the birth of a daughter of a Ger Toshav for we are commanded to revive a Ger Toshav, [but] we may not desecrate Shabbos for her. (Halacha 12)*

The source of this Halacha is the Gemara in *Avoda Zara* that permits *Chillul Shabbos* if there is any concern of "*Eiva*" (potential enmity) if a Jew were to refrain from saving a gentile's life because of Shabbos. According to *Tosfos* (*ibid.* 26b) this only permits *Issurim d'Rabbanan*, and most Rishonim follow this approach.<sup>2</sup> Contemporary Poskim have discussed this matter in depth, outlining the circumstances when one may violate *Issurim d'Oraisa* due to *Sakana* and *Eiva*.

There is a fundamental distinction between a *Nachri* who worships *Avoda Zara* and a "*Ger Toshav*". What is a *Ger Toshav*? The Gemara (*Avoda Zara* 64) records several opinions: One opinion is that it refers to a *Nachri* who accepts all of the Mitzvos except for the prohibition to consume *Neveila* (meat of an animal that was not properly slaughtered). Another opinion is that he accepts not to worship *Avoda Zara*. The Halacha<sup>3</sup> follows the opinion of the *Chachamim* that it refers to a *Nachri* who accepts to observe the *Sheva Mitzvos B'nei Noach*. Unlike other *Nachrim*, there is a Mitzva to uphold the life of a *Ger Toshav* and he is permitted to dwell in Eretz Yisrael.

Despite his unique status, a *Ger Toshav* is considered a *Nachri* with regard to *Chilul Shabbos* to save his life. The reason for this is simple. The Gemara (*Yoma* 85) delineates two main reasons why *Pikuach Nefesh* supersedes Shabbos. One is "*v'Chai Bahem*", which only applies to a person who is obligated in Mitzvos, not *Nachrim*. The second is, "*v'Shamru V'nei Yisrael Es haShabbos*" – "*Desecrate one Shabbos for him so that he will observe many other Shabbosos*". This also clearly only applies to a Yisrael

<sup>1</sup> The Council of Four Lands was the central body of Jewish authority in the Polish–Lithuanian Commonwealth from the second half of the 16th century to 1764, located in Lublin. The Council's first law is recorded as having been passed in 1580.

<sup>2</sup> The *Ritva* holds that one may not even violate *Issurim d'Rabbanan*. Further discussion is beyond the scope of this essay.

<sup>3</sup> See *Shulchan Aruch Y.D.* 124, for example.

who is obligated to keep Shabbos. This is why the *Rambam* rules that one may not desecrate Shabbos even for the sake of a *Ger Toshav*.

In light of the above, the *Tashbetz*' stance on this matter is surprising. In his commentary on the *Azharos*<sup>4</sup>, entitled "*Zohar haRakia*" he states (*Azhara* 39):

*This is the Mitzva of Pikuach Nefesh which sets aside Shabbos. Included in this is a Ger Toshav, as they said: "If your brother becomes impoverished and his means falter, you shall strengthen him, Ger or resident, and he shall live with you."<sup>5</sup> The Gemara states: "A Ger – you are commanded to uphold his life. Nachri – you are not commanded to uphold his life."<sup>6</sup>*

Simply understood, the *Tashbetz*'s intent is that the Mitzva of *Pikuach Nefesh* sets aside Shabbos also for a *Ger Toshav*. However, since, this is a very difficult position to justify as detailed above, *haGaon Rav Asher Weiss Shlit"a* proposed a forced reading of the *Tashbetz* so that it will be consistent with the *Rambam*'s position:

*We should suggest a forced explanation ("Dachuk") that his intent is only that a Ger Toshav is included in this Mitzva; [i.e.,] that it is a Mitzva to save his life, not that his rescue sets aside Shabbos. When he states "This is the Mitzva of Pikuach Nefesh which sets aside Shabbos", his intent is only that saving a Yisrael – which constitutes the main application of this Mitzva – sets aside Shabbos but one is not forced to say that Shabbos is also desecrated to save the life of a Ger Toshav.*

However, Rav Asher concedes that this is not the simple understanding of the *Tashbetz*; apparently, he does hold that Shabbos is set aside to save the life of a *Ger Toshav*, unlike the position of the Poskim who unanimously rule like the *Rambam*.<sup>7</sup> This fascinating ruling of the *Tashbetz* may shed light on another of his rulings that is also the subject of great discussion among the Poskim.

The *Tzitz Eliezer* (10:25:2) discusses a fascinating question: May one desecrate Shabbos on account of a *Ger* who has had Bris Mila but has not yet immersed in a Mikva? *Gerus* is only complete after *Mila* followed by *Tevila*, and there must always be several days between the two because water is harmful to the fresh *Mila* (*Shulchan Aruch*, Y.D. 268:2). If he is in a state of *Sakana* on a Shabbos between his *Mila* and *Tevila*, is *Chilul Shabbos* permitted?

At first glance, the answer would seem to be no. The Halacha is that "*One who has Mila without Tevila, it is as if he has not had Mila*"; if so, he remains a *Nachri* for whom *Chilul Shabbos* is not permitted (absent any concern of *Eiva*). However, the *Tzitz*

<sup>4</sup> *Azharos* are *Piyutim* that list the *Taryag Mitzvos* and were recited on *Shavuot* in the time of the *Geonim*. The *Tashbetz* (R' Shimon ben Tzemach; 1361-1444, Barcelona) wrote a commentary on the *Azharos* of *Ibn Gabirol*.

<sup>5</sup> *Vayikra* 25:35

<sup>6</sup> *Pesachim* 21b

<sup>7</sup> Of course, in practice one must always consider the possibility of *Eiva*, as explained above.

*Eliezer* rules that *Chilul Shabbos* is warranted! His source is an extraordinary inference from another *Teshuva* of the *Tashbetz* (1:21) in which he rules that it is forbidden to perform *Bris Mila* on *Gerim* on Thursday because the third day following the *Mila* will be *Shabbos*. Since the third day is the most painful, this may lead to *Chilul Shabbos* due to *Sakana*. [As we have discussed on other occasions, it is forbidden to act in a manner that will cause *Pikuach Nefesh* on *Shabbos* thus requiring its desecration.] The *Tzitz Eliezer* points out that the *Ger* in question will not have performed *Tevila* before *Shabbos*; his *Mila* (which must precede the *Tevila*) was only on Thursday (and there must be several days between them, as explained above). If so, the *Tashbetz* is clearly stating that if the *Bris* would be performed on Thursday one would need to desecrate *Shabbos* if the *Ger's* life would be endangered, even though he has only had *Mila* and not *Tevila*!

This ruling of the *Tashbetz* is cited l'Halacha by the *Beis Yosef* (Y.D. *ibid.*) and the *Shach* (266:18); the *Poskim* do not question it. The *Tzitz Eliezer* notes that this is most surprising, after all, it appears to be an enormous *Chiddush*.

The *Tzitz Eliezer* discusses the *Tashbetz's* possible reasoning at length, in great depth and detail. He cites the *Binyan Tzion*<sup>8</sup> (91) who discusses a case that arose in *Yerushalayim* in 5608 of a *Ger* who had undergone *Mila* but not *Tevila*. One of the *Chachmei Yerushalayim* instructed him to desecrate *Shabbos* because "A *Nachri* who observes *Shabbos* is liable to the death penalty". Since he had only had *Mila* and not *Tevila*, he was a *Nachri* to whom this Halacha applied.

This ruling caused a small uproar. The *Binyan Tzion* opined that it is unlikely that it was forbidden for this *Ger* to observe *Shabbos*, after all, *Bris Mila* is a covenant between a person and Hashem, as invoked in the *Bracha*, "*Kores haBris*", and *Shabbos* is also a *Bris* between the Jewish people and Hashem. How can somebody who has already entered one *Bris* be forbidden from guarding the other *Bris*? In other words, even if the *Ger* was not yet considered a Jew, he nevertheless had a connection to the Jewish people with regard to observing *Shabbos*.

The *Tzitz Eliezer* says a remarkable *Chiddush*. In terms of *Pikuach Nefesh*, the deciding factor in whether *Chilul Shabbos* is permitted is the connection of the endangered person to the observance of *Shabbos*. In this case, according to the *Binyan Tzion*, the *Ger* had a connection to *Shabbos* and this would be sufficient to set aside *Shabbos* to save his life.

He bases this conclusion on the Gemara in *Avoda Zara* (26b) that explains why a midwife can refuse to deliver the baby of a *Nachris* on *Shabbos*, even when there is a concern of *Eiva*, and even for pay. The reason is that the midwife can allay the *Eiva* by claiming: "For one who observes *Shabbos*, it is permissible for us to desecrate *Shabbos* to

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<sup>8</sup> R' Yaakov Ettlinger (1798-1871), Rav of Altoona, Germany and author of *Aruch laNer*, *Bikurei Yaakov*, and *Shu"t Binyan Tzion*.

*save his life. But it is forbidden for us to desecrate Shabbos for one who does not observe Shabbos."*

This, contends the *Tzitz Eliezer*, is the determining factor in deciding for whom we desecrate Shabbos. We do not only do so for Jews, we do so for anybody who has a connection to Shabbos. Since the Gemara stated that we should "*Desecrate one Shabbos for him so that he will observe many other Shabbosos*", anybody who will observe Shabbos is included, even if they are not yet a Jew! This was the reasoning of the *Tashbetz*.

There is much to discuss about this remarkable approach. For example, invoking the reasoning of the midwife from the Gemara in *Avoda Zara* which seems to be only an excuse intended to mollify the *Nachris* seems slightly incongruous. However, it does perfectly explain the *Tashbetz*' position regarding a *Ger* who has had *Mila* but not *Tevila*.

Concerning a *Ger Toshav*, however, the Halacha would presumably be that one cannot be *Mechallel Shabbos* according to the *Tzitz Eliezer*. Since a *Ger Toshav* has no connection to Shabbos, there would seem to be no basis for *Chillul Shabbos* to save his life.

However, in light of the aforementioned ruling of the *Tashbetz* that one does desecrate Shabbos to save a *Ger Toshav*, we must suggest a different approach, one that renders the *Tzitz Eliezer*'s enormous *Pilpul* unnecessary! According to the *Tashbetz*, there is a broader ruling: Shabbos should be set aside even for a *Ger Toshav* who has only accepted the *Sheva Mitzvos B'nei Noach*. If so, it is no surprise at all that he would say the same of a *Ger* who had *Mila* and not *Tevila* as his Halachic status is certainly superior to that of a *Ger Toshav*!