

## Dementia and *Ma'ase Shabbos*

Unfortunately, patients with advanced dementia often lose the ability to remember the day of the week, and even when oriented to the day of the week may not recall that a particular action is prohibited on Shabbos. They may come to perform *Melachos* without realizing it, and the outcome may be beneficial to family members. For example, switching on the heating on a cold day or boiling water for coffee. Under these circumstances, may others derive benefit from the *Melachos*?

This is a complex question, relating to the fundamental tenets of "*Ma'ase Shabbos*" – the *Issur* imposed by *Chaza"l* on benefiting from the results of a prohibited activity on Shabbos. The circumstances in which the *Issur* is enforced, for how long the *Issur* is in effect, and to whom the *Issur* applies are the subject of a *Machlokes* between three *Tana'im* recorded in various *Masechtos* (see, for example, *Chulin*, 15a).

R' Meir holds that the *Issur* only applies to *Melachos* performed deliberately (*b'Meizid*), and the *Issur* applies to everyone and remains in effect until Shabbos is over. R' Yehuda has a stricter opinion: The *Issur* applies until after Shabbos even for *Melachos* performed unknowingly (*b'Shogeg*<sup>1</sup>), but if the *Melacha* was performed *b'Meizid*, the *Issur* remains in effect for everyone else until Shabbos ends but forever for the perpetrator himself. R' Yochanan haSandlar rules even more stringently: the *Issur* remains in effect for others until after Shabbos but forever for the perpetrator himself if the *Melachos* were done *b'Shogeg*. If they were performed *b'Meizid*, the ban remains in effect forever for everyone.

The *Shulchan Aruch* (318:1), in line with the *Rif* and *Rambam*, rules like R' Yehuda:

*A person who cooks on Shabbos (or performs another of the forbidden Melachos): If [he performed them] deliberately, it is forbidden to him forever but to others it is permitted immediately after Shabbos has departed. If [he performed them] unintentionally, it is forbidden on Shabbos even for other beneficiaries, but in the evening it is immediately permissible even for the perpetrator himself. (If one instructed a non-Jew to perform a Melacha on his behalf, see 307:20)*

However, the Vilna Gaon holds like *Tosfos*, who rules like R' Meir. This represents a leniency both for *Melachos* performed *b'Shogeg* – whose outcome is not

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<sup>1</sup> [Editor's note: This means that the one who performed the action forgot or was unaware either that it was Shabbos or that the action was prohibited.]

subject to any *Issur* – and those done *b'Meizid* as even the perpetrator himself may benefit from the *Melachos* once Shabbos is over.

The *Mishna Berura* and *Chazon Ish* disagree as to whether it is acceptable to rely on the more lenient view of the *Gra*. The *Chazon Ish* insists that it is not acceptable but the *Mishna Berura* (318:7) disagrees:

*Concerning Shogeg, the Gemara records the disagreement between R' Meir and R' Yehuda. The Shulchan Aruch rules like R' Yehuda because this is the consensus of the Rif, Rambam, and Geonim. However, the Gra in his commentary agrees with Tosfos and others who rule in accordance with R' Meir. That is, b'Meizid the proceeds are forbidden to the perpetrator and others until after Shabbos, but b'Shogeg they are permitted even to the perpetrator himself immediately. When necessary ("B'makom hatzorech"), one may rely on this view if somebody cooked b'Shogeg.*

The *Mishna Berura* implies that there is an important caveat in relying on the lenient view of R' Meir, namely, one may only do so when the *Melacha* was performed *b'Shogeg*. This is noted by R' Shlomo Zalman Auerbach *zt"l* (*Shemiras Shabbos Kehilchasa*, 66, footnote 169) and *haGaon* Rav Asher Weiss *Shlit"a*.

It seemingly would follow that the results of the mindless actions of a dementia patient, all of which are unintentional [with regard to Shabbos], should be forbidden until after Shabbos, but when necessary, may be enjoyed with immediate effect, as per the ruling of the *Mishna Berura*.

However, it is not that simple. Halacha distinguishes between *Melachos* performed by a Jew and those performed by a non-Jew acting on behalf of a Jew. In the latter case, all Jews are forbidden to benefit from his actions for the duration of Shabbos, whether his services were enlisted by a Jew *b'Shogeg* or *b'Meizid*. Furthermore, the *Issur* extends until *b'Chedei sheYa'asu* – the duration of time that the activity would have taken (to avoid any benefit from the *Chillul Shabbos*). However, as explained above, if a *Melacha* is performed by a Jew, other Jews are permitted to benefit from it immediately after the Shabbos, even if it was performed on their behalf.

The *Mishna Berura* explains (318:5):

*"In the evening it is permissible immediately" – Even for the person on whose behalf it was cooked, since it is only obligatory to wait b'Chedei sheYa'asu when a non-Jew performs a Melacha on behalf of a Jew. The reason for this is that the Issur of instructing a non-Jew is less weighty in a person's eyes and he may come to perform it again in order to have something ready immediately after Shabbos. However, when something is performed by a Jew, there is certainly no concern that if we permit the proceeds immediately after Shabbos he will come to instruct the*

*Jew to cook again on his behalf to achieve this benefit, and also the Jew will not listen to him since people do not sin when they have nothing to gain personally.*

In summary:

- If a Jew performs a *Melacha b'Shogeg* the proceeds are forbidden to everybody until after Shabbos. Then they are permitted to everybody – even to the party on whose behalf the *Melacha* was performed. According to the *Mishna Berura*, when necessary, a person may use it immediately on Shabbos itself.
- If a Jew performs a *Melacha b'Meizid* the proceeds are forbidden to everybody until after Shabbos. As soon as Shabbos ends, they are permitted to everybody except the perpetrator himself.
- If a non-Jew performs a *Melacha* on behalf of a Jew, whether *b'Shogeg* or *b'Meizid*, the proceeds are forbidden to everybody until after Shabbos and the passage of *b'Chedei sheYa'asu*.

The reasons the Poskim provide for the distinctions between *Melachos* performed by a non-Jew and those performed by a Jew are important when considering the actions of a *Shoteh*. Do we apply the Halacha of a Jew or a non-Jew to a *Shoteh*?

The *Pri Megadim* (*Siman 325*) contends that the Poskim's reasoning as to why a more lenient ban is applied to a Jew does not apply to a *Shoteh*. While a competent Jewish person would not perform a prohibited activity without personal gain, a *Shoteh* might. Therefore, the *Issur* usually reserved for the *Melachos* of non-Jews should be applied. The *Mishna Berura* appears to accept this argument in *Bi'ur Halacha 325:10*.

Accordingly, if a patient with dementia boils water on someone else's behalf, it would be forbidden to benefit from it until after Shabbos and *b'Chedei sheYa'asu*, as the case would be with a non-Jew (with no distinction between *Shogeg* and *Meizid*). Moreover, as is the case with a non-Jew, the *Issur* applies both to the individual for whom the *Melacha* was performed and to anybody else. [However, if he boiled the kettle for himself, others may benefit from the hot water on Shabbos itself.]

Furthermore, if family members expressly instructed him to boil the kettle on their behalf, it is viewed as though they deliberately performed the *Melacha* themselves and the proceeds are *Assur* to them forever.

However, the Poskim offer a second reason for the distinction between *Melachos* performed by a Jew and those performed by a non-Jew. The *Taz* explains that the stricter *Issur* is required to disincentivize Jews from requesting the services of a non-Jew since there is no *Issur d'Oraisa* in doing so. Less incentive is required to prevent people from committing the *Issur d'Oraisa* of "*Lifnei Iver Lo Siten Michshol*" which prohibits Jews from encouraging other Jews to sin.

The *Achronim* discuss whether the reasoning of the *Taz* sheds light on another question of the *Pri Megadim*, namely, which *Issur* is applied to the proceeds of a *Melacha* perpetrated by a non-religious Jew. If we adopt the first rationale, namely, that there is little concern of a Jew transgressing an *Issur* when there is no personal gain, this should not apply to an irreligious Jew who has no qualms over transgressing prohibitions. We would therefore apply the more stringent ban typically applied to a *Melacha* performed by a non-Jew. On the other hand, if we adopt the rationale of the *Taz* this would not be the case. Since the prohibition of "*Lifnei Iver Lo Siten Michshol*" applies to all Jews, the identical *Issur* ought to be applied to *Melachos* performed by both religious and irreligious Jews.

Similar arguments could be applied to a *Melacha* performed by a *Shoteh*. On the one hand, a *Shoteh* will have no qualms about performing a *Melacha* in the future. This suggests that the stricter *Issur* should be applied. On the other hand, it can be argued that people will refrain from asking a *Shoteh* to be *Mechalel Shabbos* for them since this is a violation of "*Lifnei Iver*". This requires further study, as perhaps we should be concerned that people may erroneously conclude that since the patient is a *Shoteh* and exempt from *Mitzvos*, there is no *Issur* Torah to request him to perform *Melachos* on *Shabbos*.

We must stress that this question only pertains to a *Melacha* that a *Shoteh* performs on behalf of others. If he performed it for his own benefit, others may benefit from it immediately. This is stated by the *Magen Avraham* (325:22) regarding minors, and is equally applicable to *Shotim*, as evident in the *Magen Avraham* and *Bi'ur Halacha* (*ibid.*).

The source of this Halacha is a *Tosfos* in *Shabbos* (122a). The Gemara in *Yevamos* (114a) relates that R' Yitzchak once brought children to play in the street in an area where it was presumed that somebody had dropped the keys for the Shul. He hoped that the children would independently find the keys and unlock the Shul on everybody's behalf. *Tosfos* (*Shabbos, ibid.*) point out that this demonstrates that one may immediately benefit from the *Melacha* of a minor performed for his own sake.

In conclusion, it is categorically forbidden to ask a patient with dementia to perform *Melachos* on *Shabbos*. If he boiled water for himself, others may benefit immediately from the hot water. However, if he boiled it on someone else's behalf, the other person may only benefit from it after *Shabbos* and the passage of *b'Chedei sheYa'asu*.