



Hierarchy of *Melachos Shabbos* – Part 1

R' Itiel Katz *Shlit"a*, a *Chaver* of our *Beis Medrash*, has authored an additional volume in our set of *Sifrei Hadracha* discussing the parameters of *Melech Machsheves* in the context of *Hilchos Refua* on Shabbos. This essay will summarize one section of the Sefer.

Using a *Nachri*

The Mishna rules that if a person is walking in a place without an *Eiruv* as Shabbos comes in, he must give his items to a *Nachri* until Motzaei Shabbos (*Shabbos* 153a). The Gemara explains that since a person worries about his possessions, the *Chachamim* allowed him to hand over his items to a *Nachri* to carry them until he reaches a place where he could safely store them. *Rashi* explains that it would have been forbidden without this special allowance since the *Nachri* would be considered the Jew's *Shliach*. This Halacha is codified by the *Shulchan Aruch* (266:1).

Using a *Nachri* in Cases of *Pikuach Nefesh*

The Gemara states (*Yoma* 84b):

One may heat water for a Choleh on Shabbos, whether he needs it for drinking or washing. They said this not only regarding the current Shabbos but even for a [future] Shabbos. We do not say, "Let us wait for perhaps he will heal", rather we heat it immediately since Safek Pikuach Nefesh overrides Shabbos, [and] not only a Safek for this Shabbos but even a Safek for a [future] Shabbos. These matters should not be performed by Nachrim or Kusim but by Jewish adults. We do not say, "Let these matters be performed" on the advice of women or Kusim [who claim that the Choleh is endangered], but we join their opinion to that of others.

In other words, in cases of *Pikuach Nefesh*, any necessary *Chillul Shabbos* should be performed by an adult Jew.

Tosfos (ibid.) explain that this is because we are concerned that the *Nachri* will be lax in saving the person. The *Rosh* (*Yoma* 8:14) gives a different reason. He explains that people may believe that it is necessary to enlist a *Nachri* in cases like this. The next time, they may search for a *Nachri* or a *Katan*, thus inadvertently causing a patient's death.¹

Tosfos Rid (*Yoma* 84b) explains that the Gemara means to exclude an obligation to search for a *Nachri* or *Katan*. However, if they are readily available, it is

¹ See the *Shalmei Yehonasan* (328:12) who provides seven Halachic differences between *Tosfos* and the *Rosh*.

indeed preferable for Shabbos to be desecrated by them. According to this explanation, the Gemara's choice of wording, "We do not say" rather than, "We do not save", is particularly apt. The *Shulchan Aruch* (328:12) rules that in cases where *Chillul Shabbos* is necessary for a *Choleh*, it should be performed by a competent Jewish adult. The *Mishna Berura* (*ibid.*) explains that the *Shulchan Aruch* holds like the *Rosh*. He adds that one should do whatever possible to minimize the *Issur*, for example, by using a *Shinui*.

However, the *Rema* (*ibid.*) rules like the *Tosfos Rid* that *Chillul Shabbos* should be performed via a *Shinui* or by a *Nachri* – provided that it will not cause any delay. He also asserts that the custom is to use *Nachrim* for *Pikuach Nefesh*. The *Taz* (328:5) contends that this is not a commendable custom since a Jew will naturally be more zealous and expedient in saving an endangered person.

The *Mishna Berura* seems to support the *Rema's* view. The *Shulchan Aruch* (278) rules that one may extinguish a flame for the sake of an endangered *Choleh*. The *Mishna Berura* (*ibid.* 2) qualifies that it is preferable to request a *Nachri* to extinguish the flame if it will not cause a delay.

R' Shlomo Zalman Auerbach *zt"l* (*Shulchan Shlomo, Shabbos* 328:12:16:3) explains why the *Taz* rejects the *Rema's Minhag*. Since the *Nachri* may not act with zeal, we are concerned that an onlooker will think it unnecessary to be hasty in such a matter. It is therefore preferable to have it done by a Jew.²

R' Moshe Feinstein *zt"l* (*Igros Moshe O.C* 8, 25) also rules like the *Taz*, against the *Minhag* cited by the *Rema*. He explains (*Igros Moshe C.M.* 2, 79:3-4) that the *Taz's* approach is consistent even with those who hold that Shabbos is *Dechuya* (set aside but not completely waived) on account of *Pikuach Nefesh*. Since *Hatzalas Nefashos* requires alacrity, one need not delay for the possibility of desecrating Shabbos in a less stringent manner.

The *Shevet haLevi* (8:74), also rules like the *Taz*. However, he contends that the custom is according to the *Rema* if there will be no delay. The *Shemiras Shabbos Kehilchasa* (32:28) emphasizes the need to reduce the number of *Issurim*. He also rules that the *Chillul Shabbos* must be performed via a *Shinui* where possible. In such a case, R' Shlomo Zalman (*ibid.*, see footnote) requires that onlookers be told that it is permissible to act without a *Shinui* if necessary. He adds that if a person erred and did not perform the *Chillul Shabbos* via a *Shinui* when he could have, he is not considered to have been *Mechalel Shabbos* since he acted for the sake of *Pikuach Nefesh*. However, if it could have been performed without *Chillul Shabbos* and he erred and desecrated Shabbos, he is considered to have been *Mechalel Shabbos*.

² He further rules (*ibid.* 16:1) that it is preferable to transgress two *Issurim* simultaneously (*e.g.*, a phone call to a *Nachri*, involving the use of electricity, and *Amira l'Nachri*) rather than to transgress one *Issur* many times (*e.g.*, driving a car).

The *Chut Shani* (*Shabbos* 4, p. 194) rules that it is preferable to use medical equipment that involves fewer *Issurim*. However, if the situation demands immediate action, one should act without consideration for the number of *Issurim*. He adds that if a person is required to travel he should preferably order a non-Jewish driver rather than drive himself.

Melacha she'Aina Tzricha l'Gufa* vs. Regular *Issurim

The *Rif* (*Shabbos* 61) contends that the *Chachamim* permitted the performance of *Melacha* on *Shabbos Kil'achar Yad*, in cases of suffering or financial loss. The *Ran* (*ibid.*) wonders why one may not extinguish a fire on *Shabbos* if it is a *Melacha she'Aina Tzricha l'Gufa*. His first answer is that as the *Melacha* itself is *d'Oraisa* when performed *l'Gufa*, the *Chachamim* forbade it even in a case of financial loss lest people err.³

This indicates that *Melacha she'Aina Tzricha l'Gufa* is more stringent than other *Issurim d'Rabbanan* since the *Melacha* itself is *Assur mid'Oraisa*. The *Shulchan Aruch* (329:1) rules that one may extinguish a fire to save lives. The *Magen Avraham* (*ibid.*) asserts that even if one could save people by carrying them out of danger, it is preferable to extinguish the fire since it is a *Melacha she'Aina Tzricha l'Gufa* (unlike *Hotza'ah* which is *l'Gufa*).

The *Chaye Adam* (45-46, 15) argues that it is preferable to perform *Hotza'ah* since nowadays there is no Halachic *Reshus haRabim*. Thus, a *Melacha she'Aina Tzricha l'Gufa* is more stringent than *Hotza'ah d'Rabbanan*, as per the *Ran*.⁴

A further example of the stringency of *Melacha she'Aina Tzricha l'Gufa* is provided by the *Mishna Berura*. The *Shulchan Aruch* rules (342:1) that all *Issurei Shabbos* apply during *Bein haShemashos*, except for *Issurim d'Rabbanan* performed in a case of need or a *Mitzva*. The *Mishna Berura* (*ibid.*) qualifies that, due to its stringency, *Melacha she'Aina Tzricha l'Gufa* is also forbidden during *Bein haShemashos*.⁵

Similarly, the *Shulchan Aruch* (316:9) rules that killing a louse does not constitute *Chillul Shabbos* whereas killing a fly does. The *Mishna Berura* rules that at night if a person cannot determine whether the insect is a louse or fly, he may trap it but may not kill it. The *Sha'ar haTziyun* (*ibid.* 61) explains that even though killing a fly is a *Melacha she'Aina Tzricha l'Gufa* and should therefore be permissible, since the *Melacha* itself is *Asur mi'd'Oraisa*, it is forbidden in cases of doubt.

³ [Editor's note: In contrast to *Shinui*, where the *Melacha* is not performed in the usual manner, in the case of *Melacha she'Aina Tzricha l'Gufa*, the *Melacha* is performed in the usual manner.]

⁴ See the *Mishna Berura* (278:1) who rules likewise.

⁵ See the *Sha'ar haTziyun* who quotes the *Pri Megadim* stating that one may not tell a *Nachri* to extinguish a flame during *Bein haShemashos*. This is because it is a stringent *Issur* and is considered like telling the *Nachri* to light a flame.

Shinui vs. Regular Issurim d'Rabbanan

The Gemara (*Pesachim* 66a) records that when the *Korban Pesach* was brought on Shabbos, people would secure the knife for *Shechita* in the animal's wool or between its horns to bring it to the *Beis Hamikdash*. The Gemara asks how this could be performed on Shabbos since it violates the *Issur* of *Mechamer* and answers that although the *Melacha* is a *Shevus*, *Chaza"l* were lenient and did not apply the *Gezeira* for in the setting of a *Mitzva*. Hillel did not recall the source for this teaching but permitted the Minhag to continue since "*Yisrael bnei Nevi'im hem*". *Rashi* explains that an *Issur Shevus* performed *Kil'achar Yad* is more lenient than regular *Issurim d'Rabbanan* since it is not common. In other words, the *Gezeira* against was never enacted [in the setting of a *Mitzva*] when the action is performed unusually since it is not common.⁶

Shinui vs. Nachri

The *Rif* (*Shabbos* 61) states that the *Chachamim* permitted performing a *Melacha Kil'achar Yad* on Shabbos in cases of suffering or financial loss. As mentioned above, the *Ran* (*ibid.*) wonders why one may not extinguish a fire on Shabbos if it is a *Melacha sheAina Tzricha l'Gufa*. His second answer (according to the *Maharam's* text) leads to the conclusion that the case of a *Melacha* performed *Kil'achar Yad* by a Jew is more lenient than a *Melacha* performed by a *Nachri* without a *Shinui*.

The *Shulchan Aruch* (328:17) records several views regarding the treatment of a *Choleh* on Shabbos. The *Mor u'Ketzia* (328) rules against the *Ran* and, in his opinion, it is better to have a *Nachri* perform a *Melacha* than for a Jew to do it with a *Shinui*. The *Ketzos haShulchan* (134:4) also rules likewise, explaining that a *Shevus* that lacks an action (*Amira l'Nachri*) is less stringent than a *Shevus* that consists of an action (*Shinui*). This seems to be the view of the *Mishna Berura*. The *Shulchan Aruch* (266) explains how a traveler should act if Shabbos begins while carrying his wallet. The *Mishna Berura* (*ibid.* 29) qualifies that the *Heter* of walking in a way that does not transgress an *Issur d'Oraisa*⁷ is limited to when there is no *Nachri* or minor available. This implies that *Melacha* performed by a *Nachri* is preferable to the *Heter* of *Shinui*. In light of this *Mishna Berura*, the *Chazon Ish* (*Shabbos* 56:4) is perplexed by the *Ran's* view.

The *Shevet haLevi* (*Shu"t* 5:38) makes a compromise: If the *Melacha* is *Assur mid'Rabbanan*, a *Nachri* should perform it. But if it is *Assur mid'Oraisa*, it should be performed by a Jew with a *Shinui*.

To be continued...

⁶ Regarding *Shinui* in a case of *Pikuach Nefesh*, see above where we cite the *Shulchan Aruch* 328:12.

⁷ [Editor's note: e.g., walking in interrupted sets of 4 Amos or less.]