



Hierarchy of *Melachos Shabbos* – Part 2

[R' Itiel Katz Shlit"א, a Chaver of our Beis Medrash, has authored an additional volume in our set of *Sifrei Hadracha* discussing the parameters of *Melechtes Machsheves* in the context of *Hilchos Refua on Shabbos*. This essay will conclude the summary of one section of the *Sefer* that was distributed last week.]

Melechtes Katan

The Mishna (Shabbos 121a) states that one must prevent a minor from extinguishing a flame since it is incumbent upon adults to restrain a *Katan* from performing *Melacha* on Shabbos. The Gemara (ibid.) explains that this applies to a minor who performs the *Melacha* with the implicit consent of his father. *Rashi* explains that since the son sees that his father is pleased by his actions, it is as if the father had commanded him to perform it. *Tosfos* add that the Gemara refers to a minor who has not reached the age of *Chinuch*.

The Gemara (Yevamos 113:2) relates that R' Yitzchak once lost the keys to the *Beis haMedrash* in a *Reshus haRabim*. Since the keys were needed on Shabbos, R' Pedas suggested sending a *Katan* and *Ketana* to play in the area where the keys had been lost so that they would find them and bring them of their own accord. The Gemara derives from this incident that *Beis Din* are not commanded to prevent a *Katan* from transgressing an *Issur* and the Shulchan Aruch codifies this in *Siman* 343.

A further source about *Melechtes Katan* appears earlier in the *Shulchan Aruch* (266:5). It rules that if a traveler is carrying his wallet as Shabbos begins, he should give it to a young child who is with him since the *Katan* is not obligated in *Mitzvos*. The *Biur Halacha* (ibid.) qualifies that if the child is his son it is preferable not to give him the wallet since a child's *Chinuch* is incumbent upon his father. Regarding cases of *Pikuach Nefesh*, it is not only permissible to enlist a *Katan*, but sometimes it is even preferable. See the *Shulchan Aruch* (328:12).

Shinui vs. Katan

R' Zalman Nechemia Goldberg zt"l (*Halacha u'Refua* 3 page 138 - paragraph 53) discusses the preferred way to answer an emergency phone call on Shabbos. Is it preferable for the doctor to answer with a *Shinui* or for a child to answer? He concludes that the doctor should answer with a *Shinui*, even if the child is not his son. However, he adds that if the *Katan* will answer with a *Shinui* or if [the child] is

unaware that he is performing a *Melacha* or which *Melacha* he will be performing¹, it is preferable to instruct the *Katan* to answer.

Shinui vs. Shnayim she'Asu

The *Tzitz Eliezer* (*Shu"t* 17:20:3) rules that it is preferable to perform a *Melacha* via a *Shinui* rather than by two people together (*Shnayim she'Asu*). The *Pnei Baruch* (*Bikur Cholim k'Hilchaso* 3) rules likewise, explaining that some hold that the *Heter* of *Shnayim she'Asu* is only an exemption from punishment, but the *Issur d'Oraisa* remains.

Nachri vs. Grama

R' Akiva Eiger *zt"l* (*Shu"t* 64) derives that a *Melacha* performed through *Grama* by a Jew is preferable to *Amira l'Nachri* from the *Halacha* that one may not instruct a *Nachri* directly to extinguish a fire² but it is permissible to cause the flames to be extinguished indirectly. Rav Shlomo Zalman Auerbach *zt"l* rules likewise (*Shu"t Minchas Shlomo* 2, p83-4, 166). However, the *Chasam Sofer* (*Shu"t* E.H 20) seems to disagree. The *Zecher Yitzchak* (*Shu"t* 54) infers from the Rambam that the two are equally stringent.

Summary

When *Halacha* allows (or demands) performing a *Melacha* on Shabbos, the following hierarchy of *Melacha* (from lenient to stringent) applies:

- 1) ***Amira l'Nachri*** - An *Issur d'Rabbanan* and the most lenient option as there is no *Ma'aseh*.
- 2) ***Grama*** - Permitted in cases of *Hefsed*. Some contend that this is preferred over *Amira l'Nachri*.
- 3) ***Amira l'Katan*** - If the *Katan* is not his son it is an *Issur d'Rabbanan* and one must prevent him from *Chillul Shabbos*. It is an *Issur d'Oraisa* for a father to instruct his son to be *Mechalel Shabbos* since he is obligated to prevent his son from performing *Melacha*.
- 4) ***Shinui*** - An *Issur d'Rabbanan* and not considered *Melech Machsheves*.
- 5) ***Shnayim she'Asu*** - An *Issur d'Rabbanan*. The exemption is from punishment but the *Issur* remains and some hold that there is liability *b'Dinei Shamayim*.
- 6) ***Melacha she'Aina Tzricha l'Gufa*** - An *Issur d'Rabbanan* and the most stringent option as it is close to an *Issur d'Oraisa*.

¹ [Editor's note: Earlier in the essay (paragraph 48), R' Zalman Nechemia writes "It appears that even if the *Katan* knows that it is forbidden to pick up the telephone on Shabbos but he doesn't know which *Melacha* is being performed, there is no transgression here since he is performing the *Melacha* without *Machshava* [and, therefore,] he did not perform a *Melech Machsheves*."

² It is only permissible to declare, "Anyone who extinguishes [the fire] will not lose out".

Order of Preference for Pikuach Nefesh

- 1) **If immediate action is required:** According to all opinions the *Melacha* should be performed by a Jewish adult without a *Shinui*.
- 2) **If immediate action is not required:** According to the *Shulchan Aruch*, it is always preferable for a Jew to perform the *Melacha* rather than a *Nachri* or *Katan*. According to the *Rema*, it is preferable to enlist a *Nachri* when possible. The prevailing *Minhag* is according to the *Shulchan Aruch*.
- 3) **When a Jew performs the Melacha:** If immediate action is required, he should act without a *Shinui*. Otherwise, it is preferable to perform the *Melacha* with either a *Shinui* or together with another person.