YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #10: Help from a Non-Jew in a Situation of *Pikuach Nefesh***

1. **Introduction**

In the previous two *shiurim*, we dealt with questions that are indirectly related to the issue of whether the Shabbat prohibitions are "permitted" in a situation of *pikuach nefesh*, or "set aside," with respect to actions that are not essential for the patient's recovery as well as actions that can be postponed until Motzaei Shabbat.

It seems, however, that the main ramification of the issue of "permitted" versus "set aside" relates to the necessity of performing actions necessary for *pikuach nefesh* in a way that minimizes the desecration of Shabbat. The two basic ways of doing this are to (1) for a non-Jew to do the action, or (2) to do it in an unconventional manner (with a *shinnui*). This *shiur* will be devoted to the former, and we will discuss the latter in the next *shiurim*.

1. **"The Great Men of Israel and Their Sages"**

On the face of it, the issue is clear, for the Gemara in *Yoma* cites the Tosefta (*Shabbat* 15:15), which expressly states:

And these things are not to be done by non-Jews or Cutheans, but by adult Jews [*gedolei Yisrael*]. (*Yoma* 84b)

According to most *Rishonim*, the reference to "adult Jews " indicates that just as the forbidden labor should not be performed a non-Jew, so too it should be performed not by a minor, but by an adult. The Rambam (*Hilkhot Shabbat* 2:3) adds: "the great men of Israel[[1]](#footnote-1) *and their sages*" [*gedolei Yisrael ve-chakhmeihem*]; according to many commentators, he wishes to emphasize that not only should Shabbat be “desecrated” in this situation by an adult, but specifically by the great men of Israel and heads of the community, in order to set a personal example and to be quick in saving lives.[[2]](#footnote-2)

1. **Why isn't the forbidden labor performed by a Non-Jew?**

` Even though the Tosefta seems clear, there is a broad disagreement among the *Rishonim* and *Acharonim* about the practical implementation of this ruling, which depends on its rationale.

### 1. The Rid in his *pesakim*: Shabbat is "permitted"

The simplest way to explain this ruling is that the Shabbat prohibitions are completely "permitted" in a situation of *pikuach nefesh*, and therefore, there is no reason to seek alternative solutions that avoid desecration of Shabbat. This is how the Rid (Rabbi Yeshaya of Trani) explains it, in the context of Rabbi Eliezer’s view that circumcision is "permitted" on Shabbat:

For they made Shabbat like an ordinary weekday with respect to circumcision, and there is no need to look for a permitted alternative. For this reason, regarding *pikuach nefesh*,which is permitted by way of a Jew, there is no need to look for a non-Jew. Since Shabbat can be completely pushed aside, the Rabbis made it like a weekday, and we do not have to look for a permitted alternative, since they are all equal. And similarly we say regarding the Paschal offering in *Keitzad Tzolin*, according to those who say impurity is permitted in order to offer communal sacrifices. (*Piskei ha-Rid* *Shabbat* 130b)

The Rid returns to the issue of whether impurity is "permitted" or "set aside" in the case of a communal sacrifice, and he clarifies that the Shabbat prohibitions are "permitted" in a situation of *pikuach nefesh*; therefore, there is no need to look for other permitted solutions.

However, among the other *Rishonim* – and in the words of the Rid himself elsewhere – we find entirely different explanations.

**2. *Tosafot*: "Lest the non-Jew be lazy"**

The *Tosafot* go in a different direction, explaining as follows:

"But by adult Jews" – Even where it can be done by a non-Jew, it is a mitzva that it be done by a Jew, lest the non-Jew be lazy and not do it, and [the sick person] come to danger. (*Tosafot Yoma* 64b, s.v. *ela*)

The *Tosafot* do not trust that a non-Jew will do what is required with the necessary speed and efficiency. Based on their reasoning, it is possible that if there is a non-Jewish professional available, who will surely provide help quickly and efficiently, it would be preferable to minimize Shabbat desecration and make use of his assistance. But there is no explicit reference to such a case in the words of the *Tosafot.*

**3. The Rosh in his *Tosafot*: Concern about delay**

A more prevalent concern among the *Rishonim* is that perhaps the search for a non-Jew will lead to a delay in the rescue. Thus, for example, we find in *Tosafot ha-Rosh*:

We do not say that these things should be done by non-Jews or by minors, but rather [they should be done] by adult Jews. This is true even if there are minors available to do it immediately, for we are concerned that sometimes they will not be available, and they will look for them, and [the sick person] will come to danger. Even though regarding a birthing woman, we say in chapter *Mefanim* that whatever can be done in a nonconventional manner, we do it that way, for example, her friend brings her oil in her hair, there the *shinnui* does not cause any delay, but if they would look for non-Jews or minors, this would cause a delay. (*Tosafot ha-Rosh Yoma ad loc*., and similarly in his *Halakhot*)

The Rosh emphasizes that the concern is not that the non-Jew will be negligent in the patient's treatment, but that looking for a non-Jew will delay the treatment. The Rosh compares a prohibited labor performed by a non-Jew to a prohibited labor performed with a *shinnui*, and he explains that even if a *shinnui* is required in the act of *pikuach nefesh* (we will relate to this issue in the coming *shiurim*), it is not necessary that the action be performed specifically by a non-Jew, due to the concern about delay and postponement.

**4. Two explanations in the Meiri:** "**Lest people say that [the Sages] permitted it with difficulty," or** "**So Shabbat will not be light in their eyes"**

Another explanation stems from the continuation of the Tosefta (*Shabbat* 15:15), quoted in the Gemara:

And we do not say that these things should be done based on the opinions of women or of Cutheans, but they join with the opinion of another. (*Yoma* 84b)

The *Rishonim* disagree about the statement that "they join with the opinion of another [*mitztarfin le-da'at acheret*]." Rashi (*ad loc*.) explains that the Gemara is addressing a situation in which doctors or other experts are in dispute regarding the patient's diagnosis, and the novelty being presented is that the opinion of a woman or a Cuthean is counted and taken into consideration. The Meiri, however, points out that many *Rishonim* explained that the joining to another opinion is connected to the first part of the Tosefta and to the fundamental concern about someone other than an adult Jewish man performing prohibited labors for the sake of *pikuach nefesh*:

One must be careful that these things not be done by women or Cutheans, because they "join a different opinion," that is to say, they are hesitant about the matter, because they question our instructing them to do something when we don't do it ourselves – that perhaps there is an element of prohibition in the matter, and we make light of them, not to be concerned if guilt is hung on their necks. And some explain that they compare one case to another and will come to be lenient [even] where there is no danger. (Meiri, *Yoma* 84b, s.v. *mechamin*)

According to this approach, "a different opinion" means an incorrect understanding of what is permitted and what is forbidden.[[3]](#footnote-3) The first possibility is that the Cuthean we ask to perform the prohibited labor will not do it, because he will think that it is in fact forbidden to desecrate Shabbat for the sake of *pikuach nefesh* and that is why he is the one being asked to do it.

The second explanation offered by the Meiri is that the Cuthean will think there is a blanket allowance, and that one is permitted to desecrate Shabbat even in matters that are not *pikuach nefesh*. This is also implied by the wording of the Rambam (*Hilkhot Shabbat* 2:3), who explains "so they will not view Shabbat flippantly," that is to say, the concern is about a more general disregard for keeping Shabbat.

Let us go back to the first explanation offered by the Meiri. In light of his explanation, we can explain the first part of the *baraita* as follows: The prohibited labor should not be performed by a non-Jew, because that might lead to the erroneous conclusion that the allowance of *pikuach nefesh* on Shabbat is an allowance of last resort which is better to avoid. In order to remove this error, the action should be done by the great men of Israel and their sages. This is how the Ran explained the matter:

The things that must be done for a dangerously ill patient on Shabbat are not to be done at all by non-Jews or minors, even by chance, lest others say that it was only with difficulty that they permitted *pikuach nefesh*, while ideally we do not allow it to be done by those who are obligated in *mitzvot*. (Ran on the Rif, *Yoma* 4b in Alfasi, s.v. *ve-ein*)

The Ran also goes on to note the concern that by the time we find an available non-Jew, the patient will be in danger, but what is important for our purposes is his explanation of "a different opinion," and the mistaken understanding that the allowance of *pikuach nefesh* is an allowance of last resort, an error that could cost human lives.[[4]](#footnote-4)

**5. Intermediate summary and the novel position of the *Divrei Malkhiel***

In conclusion, the ruling under discussion could have been explained as following from the principle that the Shabbat prohibitions are "permitted" in a situation of *pikuach nefesh*, as we do in fact find in *Piskei ha-Rid*. Most *Rishonim*, however,understood the law as stemming from one of a variety of possible concerns, rather than from a principled position concerning the laws of *pikuach nefesh*. As noted, R. Yosef Caro in the *Kessef Mishneh* understood the Rambam as saying the prohibitions of Shabbat are "set aside," not "permitted" – yet he rules in the *Shulchan Arukh* that forbidden acts which are necessary for the sake of *pikuach nefesh* should not be done by a non-Jew, as we shall see shortly.

In spite of all of this, the author of *Responsa Divrei Malkhiel*[[5]](#footnote-5)proposes the novel position that the one depends on the other, that is to say, the consideration given to the various concerns depends on the position that the Shabbat prohibitions are *permitted* in a situation of *pikuach nefesh*:

It seems to me that the Rambam as well maintains that all of the prohibitions are *permitted* in a situation of *pikuach nefesh*… and so too is it proven from what the Rambam writes in Chapter 2 of *Hilkhot Shabbat*,and with more explanation in his commentary to the Mishna, at the end of chapter 18 of *Shabbat*,that the reason that in a situation of *pikuach nefesh*, the labors are performed only by adult Jews, is that if they are performed by minors or non-Jews, they will come to make light of the desecration of Shabbat, because they will not know that this was permitted only for the sake of *pikuach nefesh*.

But if we say that the Shabbat prohibitions are *set aside* in a situation of *pikuach nefesh*, and therefore by Torah law one must try to do it in a permitted manner, how could they institute that it be done specifically by great men on account of some concern? Even though *Chazal* have the authority to uproot a Torah law, that is where that serves as a safeguard, but not in a case like ours. Perforce, we must say as has been explained, that the Rambam maintains that the Shabbat prohibitions are permitted in a situation of *pikuach nefesh*. (*Responsa Divrei Malkhiel*, 4, 15)

According to the *Divrei Malkhiel*, if the Rambam were of the opinion that the Shabbat prohibitions are "set aside" in a situation of *pikuach nefesh*, he would certainly require that the Shabbat desecration be done by a non-Jew, even if there is a remote concern about "a different opinion" or misunderstandings. Only the position of "permitted," which effectively eliminates the need to seek a permitted solution and enlist the help of a non-Jew, makes it possible to introduce the concerns that were mentioned above.

1. **Rishonim Who Insist the Prohibited Labor Must Be Performed by a Non-Jew**

Thus far, we have surveyed various explanations of the ruling that any prohibited labors necessary for *pikuach nefesh* should not be performed by a non-Jew. What is common to all of them is agreement about the ruling itself – that the desecration of Shabbat in this situation should be done by adult Jews. The Rid, however, writes:

We do not say these things are to be done by non-Jews or by minors, but by adult Jews. This means we do not say that we should seek non-Jews or minors who are not subject to the laws of Shabbat, if while we are looking for them the sick person's condition will deteriorate, but rather those things are to be done by adult Jews who are subject to the laws of Shabbat. But certainly, if they are available, it is better that those things be done by non-Jews and not by a Jew, and by minors and not by adults. (*Tosafot Rid* *Yoma* 84b, s.v. *ve-ein*, and similarly in *Piskei ha-Rid* there)

The Rid accepts the Rosh's opinion that the concern is that the search for a non-Jew will lead to a delay, and he concludes that if a non-Jew is readily available, it is indeed better that he be the one to perform the labor and desecrate Shabbat. The Rosh cited above argued that this is not the case, for even if a non-Jew is currently available, there is concern that on some other occasion, there will be no available non-Jew and the patient's life will be endangered. Apparently, the Rid sees this as a remote concern, and therefore he disregards it.

Earlier, we saw a passage in the Rid’s *Pesakim* on tractate Shabbat that directly contradicts what he says here, and I am not aware of anyone who has addressed this contradiction. But the position itself that is adopted by the Rid here, according to which it is indeed appropriate that the prohibited labor be performed by a non-Jew when there is no concern that treatment will be delayed, is explicit in the words of other *Rishonim* as well. For example, the Ravya writes:

It seems to me that we learn from here that that which they said that he who is quick is praiseworthy, is where, for example, we would have to wait a little while for a non-Jew. But if it is possible to be as quick with a non-Jew as with a Jew, it should be done by the non-Jew. (Ravya, part II, *Yoma* 531)

Later in that passage, the Ravya asserts that if it is necessary to heat wine on Shabbat for a dangerously sick person, it is better that this be done by a non-Jew. The *Beit Yosef* (*Orach Chaim* 328:12) has difficulty with this, for, as we learned in previous *shiurim*, it is better for a Jew to desecrate Shabbat for the sake of the sick person than to serve him a forbidden food (such as *neveila* meat, or in this case, *yain nesekh*). Indeed, the *Beit Yosef* rejects the Ravya's position on this matter.

The Rema as well, in *Darkhei Moshe*, comments on the fact that the words of the Ravya contradict the law that the prohibited labor should be performed by a Jew and not by a non-Jew, but the Rema then concludes by saying:

However, it seems to me, that the common practice is in accordance with the words of the Ravya, that wherever it is possible with a non-Jew without delay, everything is done for him by a non-Jew. (*Darkhei Moshe Orach Chaim* 328, 15)

**The opinion of the Rema and those who disagree with him**

As for the practical *halakha*, in light of all that was said above, the *Shulchan Arukh* rules as follows:

When Shabbat must be desecrated for a dangerously sick person, we try that this not be done by non-Jews, minors, or women, but by male adult Jews with full mental capacity. (*Shulchan Arukh Orach Chaim* 328:12)

The Rema (*ad loc*.), in his usual manner, brings the accepted custom as a halakhic ruling:

Some authorities say that if it is possible to perform the treatment in a non-conventional manner without delay, he should do it in a non-conventional manner; and if it is possible to do it by way of a non-Jew without any delay, he should do it by way of a non-Jew. This is the common practice.

The Rema connects performing a labor with a *shinnui* and performing it by way of a non-Jew, and explicitly states that it is the common practice to desecrate the Shabbat by way of a non-Jew if in fact this will not cause a delay in the patient's treatment.

Some of the greatest halakhic authorities were perplexed by this ruling of the Rema. The *Taz* defined it as "a matter of astonishment" and went on to summarize the various concerns *Rishonim* expressed regarding enlisting a non-Jew to do the prohibited act even in a case where there is no concern of delay or postponement. The *Taz* concludes:

Even though the Rema writes that this is the common practice, this does not prove anything, for it is not the practice of the ancients. (*Taz*, *Orach Chaim* 328, *s.k.* 5)

He further writes that even if someone conducts himself like the Rema and has a non-Jew perform the necessary actions for a sick person, he should "reveal [the matter] publicly," that is to say, he should declare and clarify that the fundamental law is that it is permissible to desecrate Shabbat for the sake of *pikuach nefesh,* even by way of a Jew.

The *Arukh ha-Shulchan* also rules like the *Taz*, stating that "one must wonder" why the Rema ruled as he did.

In contrast, the *Mishna* *Berura* (328, *s.k.* 35; 331, *s.k.* 24, and *Sha'ar ha-Tziyun* there) indicates that he accepts the Rema's ruling, and even where he cites the words of the *Taz* (328, *s.k.* 37), he is inclined to be stringent only if there is indeed concern – even a remote concern – that performing the labor by way of a non-Jew will lead to some delay.[[6]](#footnote-6)

Rabbi Shneur Zalman of Liadi, in his *Shulchan Arukh ha-Rav*, summarizes the controversy in detail and concludes that the common practice is indeed in accordance with the Rema, but that it is preferable to act in accordance with the view of the *Taz.* In the course of his discussion, he emphasizes the strong connection between aspects of the entire discussion and the question of "permitted" versus "set aside":

Nevertheless, even if standing before us there are non-Jews or minors who are not obligated in the *mitzvot*, we do not say that they can do it, and Shabbat will not be desecrated by Jews who are obligated in the *mitzvot*. Since the only way to save the sick person is through the performance of a labor that is prohibited on Shabbat, Shabbat is set aside for his sake for Jews who are obligated to save him, and there is no desecration at all…

Some authorities say that since Shabbat is set aside and not permitted, whatever is possible to do without desecrating a Torah law must be done without desecrating Shabbat with a labor prohibited by Torah law. Therefore, if it is possible to do it without postponement and without delay in an unconventional manner, he must do it in an unconventional manner, in which case there is no Torah prohibition. And if it is possible to do it by way of a non-Jew with any delay at all, he must do it by way of a non-Jew by Torah law; they only forbade that it be done by a non-Jew in a situation where there is concern that the non-Jew may be lazy and come to delay and postponement, but not if there is a Jew standing over him hastening him in the matter, in which case there is no concern at all.

What is correct is the first opinion, and nevertheless, the common practice in these countries is in accordance with the second opinion, but it is better not to act in that manner, because we are concerned that people will see it is being done only by non-Jews and they will think that it is always forbidden by way of a Jew, and sometimes no non-Jew will be available, and the sick person will be in danger because they are waiting for a non-Jew. In any event, someone who wishes that it be done by a non-Jew should reveal to the public at that time that permission is granted to a Jew himself, but a non-Jew was available. (*Shulchan Arukh ha-Rav* 328:13)

1. **A Distinction of the Acharonim Between Different Levels of *Pikuach Nefesh***

One of the main topics that will be addressed later in the series is the precise definition of *pikuach nefesh* with respect to current and future dangers. Without going now into the thick of the issue, it seems the distinction between different levels of *pikuach nefesh* is also very significant for our current topic.

For example, some hospitals employ "transcribers" on Shabbat who in effect serve as "Shabbat goys"; it is their job to keep records, or perform other actions involving Torah prohibitions, for the patients. These transcribers do their job even when it comes to dangerously ill patients, who supposedly are to be treated by "the great men of Israel and their sages"!

It stands to reason that when it comes to essential but routine actions, as opposed to providing urgent and immediate help in a specific case, there is more room to be stringent and carry out prohibited labors by way of non-Jews.

A number of important halakhic authorities have expressed this principle in different ways. For example, Rabbi Shmuel Wosner, author of *Responsa Shevet ha-Levi*,was asked to determine when fractures of different types are considered *pikuach nefesh*, and he writes at the end of his responsum:

From all that has been said above, it appears that the issue of fractures is an obscure issue, for sometimes Shabbat is desecrated for nothing and clear laws are uprooted, and sometimes it is permissible to desecrate Shabbat. Therefore, listen well: the Hatzalah medical services team should include observant Jews who know the laws, as well as non-Jewish doctors and paramedics, and in any case there should be in the office a fervent Jew standing over them…

Even though the *Taz* inclines to say that things should be done specifically by a Jew, that is only in a place of clear danger, and not in a place of uncertain danger. The person manning the telephone can also be an understanding non-Jew, and alongside him there should be a Jew who issues the orders and sends them out when necessary. The concern of the *Taz* that perhaps people will say Jews are forbidden to desecrate Shabbat, and this will be a stumbling block in the future, does not apply in your case, for whenever there is a clear danger, Jews also go out to the rescue. (*Responsa Shevet ha-Levi* 6, 25)

According to Rabbi Wosner, situations defined as uncertain *pikuach nefesh* permit the desecration of Shabbat, but in such cases it is more appropriate that the desecration be done by a non-Jew.

Another example of this is connected to a more distant layer of *pikuach nefesh*. We saw in previous *shiurim* the allowance to light a fire for a sick person in order to keep him warm; in this context, the *Mishna Berura* writes:

For unless we know otherwise, a person who is sick is considered dangerously ill with respect to cold. If it is possible by way of a non-Jew, it should be done by way of a non-Jew. (*Mishna Berura* 328, *s.k.* 62)

It might be argued that this ruling of the *Mishna Berura* is consistent with his general position that the law is fundamentally in accordance with the Rema. However, the *Arukh ha-Shulchan*, who, as we saw earlier, strongly argues with the Rema's position, accepts this ruling. He explains:

We make him a fire, but if it is possible by way of a non-Jew, it is good that he light it. For in this case there is no rush, and it is not needed at this moment, unless the doctor says that he needs to be warmed up immediately, in which case there is a *mitzva* for the Jew to light a fire for him and not wait until he finds a non-Jew. (*Arukh ha-Shulchan* 328:28)

That is to say, there are situations in which it is exceedingly clear that there is no urgency at all, and in such cases, it is appropriate that the forbidden labor be done by a non-Jew.

*Shemirat Shabbat ke-Hilkhata* summarizes the matter as follows:

Regarding the vital needs of a dangerously sick person, concerning which there is no urgency at the moment, but they will be needed over the course of Shabbat, if possible, it is preferable that they be done by a non-Jew. If, of course, there is no non-Jew in that place, there is a *mitzva* on the Jew to fulfil those needs for the dangerously sick person, even if they involve the performance of labors that are prohibited by Torah law.

Therefore, on cold days when a dangerously sick patient needs the house to be heated, but he does not need it urgently, if possible, a non-Jew should light the furnace; regarding a dangerously sick person for whom sleep would be beneficial, but the light is on in his room and it disturbs him, if possible, a non-Jew should turn it off. (*Shemirat Shabbat ke-Hilkhata* 38, 2)

Recently, there have been several announcements about a "Shabbat medical service center manned by a non-Jewish doctor." The primary beneficiaries of such centers are patients who are not dangerously ill, but from all that we have seen, we have learned that sometimes even dangerously ill patients require the involvement of a non-Jewish doctor, provided that this will not cause a postponement or delay of his treatment.

(Translated by David Strauss)

1. It is difficult to be certain of this translation: in light of Rambam’s addition of “and their sages,” he may be using *gedolei* in that sense as well; alternatively, perhaps Rambam uses *gedolei Yisrael* meaning simply “adult Jews,” as in the Tosefta (this is how *Kessef Mishneh* explains it). [↑](#footnote-ref-1)
2. The *Kessef Mishneh* (*ad loc*.) does not explain the Rambam in this manner, but many other commentators do, and it stands to reason that this relates to the polemic with the non-believers (which was discussed at length in *shiur* 2). For all this, see the extensive discussion in *Responsa Tzitz Eliezer*, vol. 8, no. 15, chap. 2, letters 6-7. [↑](#footnote-ref-2)
3. The concern was that those who typically did not study *halakha* in depth might draw erroneous conclusions. [↑](#footnote-ref-3)
4. As stated above, according to this approach, the two *halakhot* in the Tosefta (regarding a non-Jew and regarding a woman) deal with the same issue. The *Beit Yosef* (*Orach Chaim* 328, 12) discusses the matter, and indeed emphasizes that the *Rishonim* disagree about whether the Tosefta deals with two different laws or only one law. [↑](#footnote-ref-4)
5. Rabbi Malkhiel Zvi Tannenbaum was the rabbi of the city of Lomza, and one of the most important halakhic authorities in Lithuania at the end of the 19th century and the beginning of the 20th century. [↑](#footnote-ref-5)
6. For a summary of additional opinions among the *Acharonim* on the question of whether or not to rule in accordance with the Rema, see *Responsa Tzitz Eliezer* (note 1 above), letter 13. [↑](#footnote-ref-6)