YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #11: *Pikuach Nefesh* Performed with a *Shinnui* (1):**

**The Foundation of the Law**

**Introduction**

As noted at the beginning of the previous *shiur*, there are two fundamental ways to reduce the severity of a desecration of Shabbat that is carried out for the purpose of *pikuach nefesh*: 1) enlisting a non-Jew to perform the prohibited labor, and 2) performing the prohibited labor with a *shinnui*, i.e.,in an unconventional manner. As we saw in the previous *shiur*, the possibility of doing the prohibited labor by way of a non-Jew is subject to a dispute among the *Rishonim* and later authorities. We shall now see that the possibility of using a *shinnui* is also not accepted by all authorities; with God's help, we will address this topic in this *shiur* and the next.

**The Case of a Birthing Woman**

In discussing the care of a birthing woman on Shabbat, the Gemara states that if a woman in labor needs oil, it is permissible to bring it to her even through a public domain, but it then qualifies that allowance:

As much as it is possible to change [the manner in which the prohibited labor is performed], we change it. (*Shabbat* 128b)

Various potential changes are detailed in the Gemara there, mostly creative ways to bring the oil by hand or in one's hair rather than in the usual container. The question of what counts as a *shinnui* cuts across all of the laws of Shabbat, and this is not the place to address it. What is important here is the fact that the Gemara presents the requirement to use some type of *shinnui* as a simple and undisputed matter, and the same rule is brought as the normative law: Rif (51b in Alfasi); Rambam (*Hilkhot Shabbat* 2:11); Rosh (18, 5); and *Shulchan Arukh* (*Orach Chaim* 330:1).

On the other hand, as we saw in the previous *shiur* with regard to asking a non-Jew to perform the prohibited labor, so too the *Rishonim* clarify with regard to performing such a labor with a *shinnui*:

As for what [*Chazal*] said,"As much as it is possible to change [the manner in which the prohibited labor is performed], we change it," that is only when that delay will not bring [the sick person] to danger. (*Chiddushei ha-Ritva*, *Shabbat* 128b, s.v. *ve-ha*)

That is to say, reducing the severity of the prohibition is indeed a goal, but it must be remembered that *pikuach nefesh* takes precedence over the laws of Shabbat, and therefore in practice, the necessary action should only be done in an unconventional manner if it will not involve any danger to the well-being of the birthing woman.

**The Case of a Dangerously Ill Person**

The *Rishonim* disagree whether the requirement *Chazal* established regarding a birthing woman applies to other dangerously ill patients as well. The Ramban writes as follows:

Infer from here that regarding all the needs of a sick person, even if his life is in danger – wherever it is possible to perform the prohibited labor in an unconventional manner, so that the Shabbat will not be desecrated, we do it in an unconventional manner and refrain from desecrating Shabbat. This is only if the needs of the sick person will not be delayed at all because of the change. (*Torat Chaim*, *inyan ha-sakana*, letter 4)

The Ramban applies the law that was taught regarding a birthing woman, that "as much as it is possible to change [the manner in which the prohibited labor is performed], we change it," to any dangerously ill person. He proves this from the Gemara in *Shabbat* (133a) that states that if the medications and bandages needed by an infant after his circumcision were not prepared before Shabbat, they may be prepared on Shabbat because of *pikuach nefesh*, but it must be done in an unconventional manner (e.g., chewing with one's teeth instead of grinding with a utensil).

In contrast to the Ramban, the Meiri writes:

Despite the fact that regarding other sick people, it is not necessary to perform the prohibited labor in an unconventional manner, a birthing woman is different, for most of them are not in such danger. (*Meiri*, *Shabbat* 128b, s.v. *yoledet*)

That is to say, the requirement to perform the prohibited labor in an unconventional manner "as much as possible" does not apply to a dangerously ill person, but only to a birthing woman, because "most of them are not in such danger." According to the *Maggid Mishneh*, this is also the position of the Rambam: in the framework of treating a birthing woman, he states that the prohibited labor should be performed in an unconventional manner, but he does not mention a similar requirement when discussing a dangerously ill person. The *Maggid Mishneh* explains this as follows:

The reason for this seems to be that the birthing woman's labor pains are natural for her, and not one in a thousand women dies in childbirth. Therefore, they were stringent and required a *shinnui* wherever possible, but they were not stringent about a [dangerously sick] person. And according to our master [Rambam], the law regarding circumcision is for another reason, because they are preliminary actions that could have been done before Shabbat. (*Maggid Mishneh*, *Hilkhot Shabbat* 2:11)

According to the *Maggid Mishneh*, prohibited labors that must be performed for a dangerously ill patient need not be performed in an unconventional manner, with the exception of two cases: 1) a birthing woman, regarding whom the danger is remote; and 2) when it was possible to prepare the matter in advance, as in the case of circumcision on Shabbat (which never comes as a surprise, but is known eight days earlier).

As for the law in practice, the *Shulchan Arukh* and the Rema disagree. While the *Shulchan Arukh* rules (*Orach Chaim* 330:1) that a *shinnui* is required in the case of a birthing woman, he omits this requirement when discussing a dangerously ill person. Furthermore, as we learned in the previous *shiur*, the *Shulchan Arukh* explicitly rules that prohibited labors that are necessary for the sake of a dangerously ill person should not be performed by a non-Jew, but by “the great men of Israel and their sages.”

It may also be recalled that the Rema disagrees with the *Shulchan Arukh*, and ties the two possibilities (*shinnui* and a non-Jew) together:

Some authorities say that if it is possible to perform the treatment without delay in an unconventional manner, he should do it in an unconventional 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. (Rema, *Orach Chaim* 328:12)

In the Rema's opinion, one should try to reduce the severity of the prohibition – either by performing the prohibited labor in an unconventional manner, or by asking a non-Jew to do it for him. As stated, the *Shulchan Arukh* explicitly disagrees about asking a non-Jew, and his wording implies that he also rejects the requirement of a *shinnui*, except in the case of a birthing woman.

As further discussed in the previous *shiur*, the *Taz* strongly disagrees with the Rema's ruling about asking a non-Jew. It is not clear from his words, however, whether he also means to reject the requirement to perform the labor in an unconventional manner. On the face of it, the arguments raised by the *Rishonim* against asking a non-Jew should apply equally to performing it with a *shinnui*: first, we should be concerned that the change will lead to a delay in treatment; second, we should be concerned that performing the labor in an unconventional manner will lead people to the erroneous conclusion that performing a prohibited labor for the sake of *pikuach nefesh* is an allowance of last resort, and in the future there will be those who will seek to avoid it.

We find, however, that the *Rishonim* distinguished between the two issues. In the previous *shiur*, we cited the view of the Rosh in his *Tosafot*, that even if a non-Jew is readily available, the prohibited labor should not be performed by him. The Rosh emphasizes that a distinction should be made between this law and the law of performing the labor in an unconventional manner, which is stated explicitly regarding a birthing woman, though he does not explain the distinction. The *Or Zaru'a* expands on the issue:

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. That is to say, even if there are non-Jews and minors available to do it immediately, we do not ask them to do it. The reason is that if you tell them to do it when they are immediately available, there are times when they will not be available, and you will look for them, and [the sick person] will come to danger. For this reason, they issued an absolute allowance and made it a *mitzva* for each and every person to act immediately.

There is, however, a question, for regarding a birthing woman, we say in chapter *Mefanin* that as much as it is possible to change the manner in which the prohibited labor is performed, we change it, and we look for a permitted solution, and there too there is danger to life! It seems, however, that wherever the Jew can do it by himself in an unconventional manner, and there will be no delay because of this *shinnui*, it is certainly preferable that he do it in a permitted manner and not in a prohibited manner… If there will be no delay because of that change, why should he not do it in a permitted manner? But as for non-Jews and minors, even if [now] there is no delay, we should be concerned that it will lead to delay, as I have explained. (*Or Zaru'a* 2, 38).

The *Or Zaru'a* maintains that asking a non-Jew to perform a prohibited labor gives rise to significant concern about the future, and therefore, a prohibited labor that is necessary for *pikuach nefesh* should not be performed by a non-Jew. This fear does not apply regarding a *shinnui*, and therefore, the prohibited labor should be performed in an unconventional manner whenever that is possible.

The halakhic authorities of our time also disagree. The author of *Responsa Tzitz Eliezer* (9, 17, chap. 2, sec. 2) writes simply that according to the *Taz*,a prohibited labor that is necessary for *pikuach nefesh* should not be performed in an unconventional manner. This *teshuva* is part of an exchange with Rabbi Shlomo Zalman Auerbach, and from the *Tzitz Eliezer’s* reply, it seems that Rabbi Auerbach in his letter was inclined to say the *Taz* does not disagree about a *shinnui* that will not delay the rescue, and that even according to him, if it is possible to perform the labor with a *shinnui*, it is appropriate to do so. This is a very reasonable position, for with respect to a prohibited labor performed by a non-Jew, the Rema's view is a novelty and is based on the opinions of *Rishonim* (e.g., the Rid and the Ravya) who interpreted the Tosefta in *Yoma* not in its plain sense. Regarding a labor performed in an unconventional manner, on the other hand, explicit Talmudic passages require a *shinnui*, and there are many opinions in each direction among the *Rishonim*, as explained above and as stated explicitly in the *Or Zaru'a.*

**The Obligation to Perform a Prohibited Labor in an Unconventional Manner in a Situation of *Pikuach Nefesh***

**1. "Permitted" vs. "set aside"**

We find two explanations of the Rema's ruling among *Acharonim*. The prevailing explanation is that which we saw in the previous *shiur*, based on *Shulchan Arukh ha-Rav*:

Some authorities say that since Shabbat is set aside, 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. (*Shulchan Arukh ha-Rav* 328:13)

According to this, both ways of minimizing the prohibition – asking a non-Jew, and performing the labor in an unconventional manner – depend on the question of whether the Shabbat prohibitions are “permitted” in a situation of *pikuach nefesh* or only “set aside.”

**2. When it is possible to perform the labor in an unconventional manner, is there any allowance of *pikuach nefesh*?**

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The author of *Emek Berakha*[[1]](#footnote-1) cites an explanation similar to that of the *Shulchan Arukh ha-Rav*, but rejects it. According to him, even if the Rema would say that the prohibitions of Shabbat are *permitted* in a situation of *pikuach nefesh*, he would still say the prohibited labors should be performed in an unconventional manner. He explains as follows:

However, after examination, it seems that even if *pikuach nefesh* is entirely permitted on Shabbat, nevertheless, the allowance only applies to what is necessary for the sick person, but as for any prohibited labor that is not necessary for the sick person, there is no allowance at all of *pikuach nefesh* on Shabbat.

If so, regarding any prohibited labor that can be performed in an unconventional manner – if it is performed in its usual manner, it is not needed by the sick person at all, for it suffices for him that it be done in an unconventional manner. It turns out then that *for that labor performed in its usual manner*, there is no allowance of *pikuach nefesh*, since [the sick person] does not need the labor to be performed in its usual manner.

For this reason, we say that we feed him with the less forbidden things first, even though *pikuach nefesh* is permitted, for in a place where there is something less forbidden, the more forbidden thing is not needed by the sick person, and there is no allowance of *pikuach nefesh* at all. (*Emek Berakha*, *inyan Yom Kippurim*, letter 3)

According to the *Emek Berakha*, wherever it is possible to avoid desecrating Shabbat, the allowance is revoked. On the face of it, there is a simple practical difference between the two explanations, namely: what is the law if a prohibited labor was performed for the sake of *pikuach nefesh,* but not in an unconventional manner? According to the *Emek Berakha*, in such a case there is no allowance of *pikuach nefesh*, and so it turns out that it was absolutely forbidden. According to the *Shulchan Arukh ha-Rav*, on the other hand, the ruling that the Shabbat prohibitions are “set aside” in a situation of *pikuach nefesh* requires one to look for a permitted solution, but it does not deny the fundamental definition of the situation as one of *pikuach nefesh.*

In order to fully understand the meaning of this practical ramification, we must expand the discussion and address a case of a prohibited labor that was performed for the sake of *pikuach nefesh*, where the person’s life could have been saved even without it.

**The Allowance of *Pikuach Nefesh* When it is Possible to Manage Without it**

1. **Extinguishing the candle or distancing the sick person from it?**

The Mishna in chapter *Bameh Madlikin* allows one to extinguish a candle for the sake of a sick person. The Rambam comments:

This sick person is a sick person whose life is in danger, and this is on condition that it is impossible to move him to another place or to hide the light from him. (Rambam, Commentary to the Mishna, *Shabbat* 2:5)

According to the Rambam, the allowance to extinguish the candle applies only in the absence of an alternative.

The Ritva disagrees with the Rambam. He opens with a question: What does the Mishna come to teach us? Surely it is clear that it is permissible to do whatever is necessary for a patient whose life is in danger! He answers as follows:

It teaches us that in a situation of danger, he who is quick is praiseworthy, and we don’t delay by covering the candle with a utensil or moving him to a different house in the courtyard. (*Chiddushei ha-Ritva*, *Shabbat* 30a, s.v. *le-olam*)

According to the Ritva, the novelty in the Mishna is that one should act quickly with regard to *pikuach nefesh*, even at the cost of performing a prohibited labor, and not delay and look for permitted solutions. The author of *Torat Refa’el*[[2]](#footnote-2) (no. 36) explains that the words of the Ritva are a clear example of the understanding that the Shabbat prohibitions are “permitted” in a situation of *pikuach nefesh*. (This would mean we must say that the Rambam maintains that they are “set aside,” but as may be recalled, that is the subject of a very extensive discussion.)

The *Mishna Berura* (278*,* *s.k.*1) rules in accordance with the Rambam that the allowance to desecrate Shabbat for a sick person only applies when there is no other way to help him. In his *Biur Halakha,* he adds:

It seems that according to the Rambam, if it is possible to utilize an alternative solution, not only is there a prohibition but there is also a liability for a sin-offering… Nevertheless, in practice, one should be stringent according to all opinions where there is an alternative solution. (*Biur Halakha*, 278, 1, s.v. *mutar*)

The words of the *Biur Halakha* fit in well with the explanation offered by the *Emek Berakha*: When it is possible to help the sick person in a permitted manner, there is no allowance at all of *pikuach nefesh*. The Shabbat prohibitions are neither permitted nor set aside, and one who desecrates Shabbat in such a situation is liable for a sin-offering. The novelty in the *Emek Berakha* is that wherever it is possible to perform the prohibited labor in an unconventional manner, the allowance of *pikuach nefesh* does not exist at all.

**2. "We feed him the less forbidden food first"**

Rabbi Sh. Z. Auerbach notes that the Mabit(Rabbi Moshe of Trani)disagrees with the *Biur Halakha.* The Gemara in *Yoma* (83a) states that if a dangerously sick person must eat forbidden foods, "we feed him the less forbidden food first" – meaning it is preferable to give him a food with a less severe prohibition (e.g., one punishable with lashes, rather than with *karet*, or one forbidden by Rabbinic decree, rather than by Torah law). The Rambam (*Hilkhot Ma'akhalot Asurot* 14:16) codifies this law, and the Mabit comments:

It seems that that which *Chazal* said, that we feed him the less forbidden food first, is only by Rabbinic decree; but by Torah law, there is nothing so severe that it stands before *pikuach nefesh*.(*Kiryat Sefer* on the Rambam, *Hilkhot Ma'akhalot*, chap. 14)

Of course, the Mabit does not reject the obligation itself to search for a permitted solution and avoid the prohibition, but he maintains that this obligation does not detract from the essence of the allowance of *pikuach nefesh*.

As mentioned, Rabbi Sh. Z. Auerbach notes that the words of the Mabit differ from the *Biur Halakha*’s ruling in accordance with the Rambam:

The words of the *Kiryat Sefer* are a great novelty and many disagree with him, because according to logical reasoning, if the light prohibition and the severe prohibition are before us, why should it be permissible to feed him the more severely forbidden food for no need? See the *Biur Halakha*, sec. 278, that if it is possible to utilize an alternative solution, and he desecrates Shabbat, he is liable to bring a sin-offering. It is also possible that the *Kiryat Sefer* wrote this only when they give the sick person himself the forbidden foods, but not when others must commit a transgression such as the desecration of Shabbat. (*Responsa Minchat Shlomo* 1, 7)

Rabbi Sh. Z. Auerbach raises an interesting and original distinction: For the sick person himself, all the prohibitions are sweepingly permitted, and the obligation to search for "the less forbidden food first" is only by Rabbinic decree. But for other people who are asked to provide assistance, in a situation where a permitted solution is easily available, there is indeed no allowance to desecrate Shabbat a more severe way.

In contrast to Rabbi Sh. Z. Auerbach, Rabbi Ovadya Yosef (in discussing matters connected to circumcision on Shabbat, which, as we mentioned above, the Gemara says must be performed in an unconventional manner) is inclined to agree with the Mabit's conclusion,[[3]](#footnote-3) and to extend it to performing a prohibited labor in an unconventional manner:

It may also be said that even though, by Torah law, *pikuach nefesh* is like circumcision, concerning which the Shabbat prohibitions are permitted, by Rabbinic law we are stringent about *pikuach nefesh* that wherever it is possible to do something in a permitted matter without causing a delay, we must do so, and therefore they said that we feed him the less forbidden food first. (*Responsa Yechaveh Da'at*, part IV, no. 30)

 We learn from this that the entire obligation to search for a permitted solution is only by Rabbinic decree, and therefore it is clear that one who did not do so would not be liable for a sin-offering.

**3. Distinguishing between different levels of danger**

To complete the discussion regarding the law that "we feed him the less forbidden food first," I would like to add two comments:

a. One of the *halakhot* connected to the law that "we feed him the less forbidden food first" is the idea of drinking small amounts at a time (*le-shiurin*) on Yom Kippur. Rabbi Chaim of Brisk proposed the novel understanding that the codified law (*Shulchan Arukh Orach Chaim* 618:7) regarding drinking small amounts at a time applies only to one who drinks so that he not get sick and put his life in danger. But someone who is already defined as a sick person whose life is in danger may drink in a normal manner. His position is cited by his son, Rabbi Yitzchak Soloveitchik:

My revered father, the Gaon *zt"l*, would rule regarding any dangerously sick person… that we feed him on Yom Kippur whatever he needs, and not less than the measure [for which there is liability]. And he explained the reason – that since he is already a dangerously sick person, Yom Kippur is pushed aside for him for anything that will be more beneficial for his recovery, which includes strengthening his body…

That which the *Shulchan Arukh* says that we feed him small amounts at a time applies only to a sick person who is not in danger, but the doctor says that if he is not fed on Yom Kippur, his sickness will worsen and his life will be in danger. (*Chiddushei Maran Riz Ha-Levi*, *Hilkhot Shevitat Asor* 2:8)

Many have disagreed with this novel ruling (as is explained in *Responsa Yechaveh Da'at*, part VI, no. 39), but if we accept the position of Rabbi Chaim, we can suggest that there is a fundamental difference between reducing the severity of the prohibition when the sick person is not yet in danger – which is indeed obligatory – and reducing the severity of the prohibition when the sick person is already in danger – regarding which the level of obligation is less.

b. At the end of the last *shiur*, a distinction was proposed between different levels of *pikuach nefesh* in relation to prohibited labors performed by non-Jews. It stands to reason that this distinction is also relevant for the matter under discussion: With respect to direct life-saving actions, there is no obligation to adopt the policy of "feeding the sick person the less forbidden food first," and even if such an obligation exists, it is only by Rabbinic decree. On the other hand, with respect to indirect life-saving actions, e.g., extinguishing a candle so the sick person can sleep, the obligation to search for an alternative, permitted solution is absolute, and one who does not conduct himself in that manner is liable for a sin-offering.

**Summary and Conclusion**

In light of our discussion of the allowance of *pikuach nefesh* in a situation where we can manage without it, let us return to the question of performing a prohibited labor in an unconventional manner in a situation of *pikuach nefesh*. Above, we discussed the two ways to explain the Rema's ruling: that the Shabbat prohibitions are only "set aside," or alternatively, that there is no allowance at all to desecrate Shabbat if the prohibited labor can be performed with a *shinnui*. The broad discussion regarding the allowance of *pikuach nefesh* in a situation where it is possible to manage without it is connected to this question; however, the two questions are not identical.

Rabbi Sh. Z. Auerbach himself noted this fact and emphasized:

Even those who maintain that ideally, [the prohibited labor] should be performed by way of a non-Jew or in an unconventional manner – 328:12 in the Rema – do not mention at all that if one did not conduct himself in this manner, he is liable for a sin-offering… And especially according to the *Kiryat Sefer*,who maintains that the obligation to eat the less forbidden food first is only by Rabbinic decree… And that which is written in sec. 278, in the *Biur Halakha*, s.v. *mutar*, regarding one who extinguishes a candle – that in a case where it would have been possible to remove the sick person from the room, he is liable for a sin-offering – it is possible that there it is different because it is considered as if there is no need at all to extinguish the candle. (*Shemirat Shabbat ke-Hilkhata*, chap. 32, note 19)

It turns out, then, that in a situation where the danger could have been avoided in the first place, there is room for the *Biur Halakha*’s view inaccordance with the Rambam, because there was no allowance at all of *pikuach nefesh*; one who performs a prohibited action is liable for a sin-offering. In contrast, in a situation where there is a danger that requires desecration of Shabbat, there is clearly an allowance of *pikuach nefesh* – but nevertheless, the Rema rules that the prohibited labor should be performed in an unconventional manner, in an attempt to follow the path of "feeding the sick person the less forbidden food first."

Therefore, even if we accept the *Emek Berakha*'s explanation of the Rema's ruling, there is no necessity to reach the conclusion that one who performs the prohibited labor in the usual manner, and not with a *shinnui*, is liable for a sin-offering. His whole innovation is that the law is based not on the fact that the Shabbat prohibitions are "permitted" as opposed to "set aside," but on a more fundamental perception of the definition of *pikuach nefesh* in a case where an alternative solution can be found that does not involve the desecration of Shabbat.

(Translated by David Strauss)

1. Rabbi Aryeh Pomeranchik was a Torah scholar who immigrated to Israel from Brisk, was one of the close students of the Rabbi Yitzchak Solovetchik from Brisk, and died suddenly and at a young age in 5702. He left us two great books: *Emek Berakha* on matters of *Orach Chaim*, and *Torat Zera'im* on matters related to the order of *Zera'im*. [↑](#footnote-ref-1)
2. Rabbi Raphael Shapira of Volozhin, son-in-law of the Netziv and father-in-law of Rabbi Chaim of Brisk (Rabbi Chaim was married to the granddaughter of the Netziv). He headed the Yeshiva of Volozhin in the years before the First World War, and passed away shortly after it. His teachings are found in the Netziv's well-known commentary to the *She'iltot*, and in his own *Torat Refa'el.* In the section cited here, he even notes: "And so I wrote in the *She'iltot*," which implies that he had a real part in its writing. One of his famous students was Rabbi Isser Yehuda Unterman, the Chief Rabbi of Israel. [↑](#footnote-ref-2)
3. For further discussion, see *Responsa Sho'el u-Meishiv*, 4th edition, no. 42, where the issue of eating a food forbidden by a severe prohibition, in a case where one could instead eat a food forbidden by a less severe prohibition, is examined in detail. Rabbi Yosef Shaul Nathanson maintains that the question fundamentally dependson the issue of "permitted" versus "set aside." See there at length. What also emerges from his words is that the obligation to eat the less forbidden food is by Torah law, against the Mabit. [↑](#footnote-ref-3)