YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #13: Advance Arrangements to Prevent Shabbat Desecration (1) – Halakhic Principles**

**Introduction – Presentation of the Issues**

The previous *shiurim* discussed different ways of minimizing the degree of Shabbat desecration necessary because of *pikuach nefesh*, such as performing the prohibited act in an unconventional manner (with a *shinnui*) or enlisting a non-Jew to do it. Earlier in the series, we dealt with postponing medical treatment until Motzaei Shabbat, and in this *shiur*,we will consider the other side of the coin: making arrangements beforehand in order to prevent having to desecrate Shabbat for the purpose of *pikuach nefesh.*

This question is one of the most common and frequently asked questions for those involved in the areas of medicine and security; over the years, I myself have been asked about it many times. Usually the question goes as follows: A person is required to fill a shift on Shabbat (a doctor or a nurse in a hospital, security personnel, etc.). The shift in itself is certainly essential, as it involves *pikuach nefesh*, and if the need for it were to arise suddenly on Shabbat, it would be permitted to drive there. In most cases, however, shifts are planned in advance, leading to the question of whether one can rely on the necessity for *pikuach nefesh* and therefore permit traveling on Shabbat, or whether it is preferable, or even obligatory, to arrive before Shabbat.

Another common example relates to a pregnant woman whose due date is approaching: Must she spend Shabbat near the hospital, or is she permitted to stay home, knowing that if she goes into labor, she will drive to the hospital on Shabbat?

As mentioned, the question is very common, and it comes up mainly in the context of traveling on Shabbat. But sometimes the question is asked regarding other matters, e.g., an emergency medical technician who will have to bandage wounds on Shabbat – must he cut whatever he might need on Friday, or can he do it on Shabbat in a case where it is necessary for *pikuach nefesh*?

Sometimes, the question arises on Shabbat itself, and not before Shabbat. For example, a soldier is serving in a place whose entrance involves an electric entry control, and he wishes to go out for a few minutes for a non-security matter – but when he returns, he will have to activate the entry control. Entering the place is of course an operational necessity, but had he not gone out in the first place, he would not have to reenter; thus, he put himself in a situation that requires Shabbat desecration for the purpose of *pikuach nefesh.*

We see then that the fundamental question divides into three sub-themes:

1. Entering before Shabbat into a situation that will require Shabbat desecration for the purpose of *pikuach nefesh.*

2. Entering on Shabbat itself into a situation that will require Shabbat desecration for the purpose of *pikuach nefesh.*

3. Advance arrangements to avoid Shabbat desecration for the purpose of *pikuach nefesh*.

In this and the next two *shiurim*, I will try to clarify this issue from its sources.

**The Source of the Law – The Prohibition to Set Out in a Ship**

It is taught in a *baraita*:

Our Rabbis taught: One may not set out in a ship less than three days before Shabbat. (*Shabbat* 19a)[[1]](#footnote-1)

The *Rishonim* offer several different reasons for this prohibition. The *Tur* summarizes the three main reasons:

One may not set out in a ship less than three days before Shabbat… There are those who explain that this is because of **the prohibition to go beyond the Shabbat limit** (*techum Shabbat*)– and therefore they permit with a large ship that sails ten handbreadths above [sea level].

And Rav Alfasi explains that the reason is because [this will interfere with] **the enjoyment of Shabbat**, for all of the first three days, [the traveler's] body breaks, and his spirit does not return until after three days – and therefore they permit traveling on flowing rivers, where the person does not suffer distress…

And the Ri forbids everything, even within the Shabbat limit, because **he appears as if were floating** on the surface of the water, which is forbidden. (*Tur Orach Chaim*, 248)

However, the *Tur* does not cite the reason proposed by Rabbeinu Zerachya Ha-Levi, the *Ba'al ha-Ma'or*:

It seems to me that it is for a different reason… For they are all a place of danger, and all three days before Shabbat are called "before Shabbat," and **he appears as if he were stipulating to set aside Shabbat,** because nothing stands before *pikuach nefesh.* The same law applies to setting out into the desert or any place of danger, in which a person is likely to desecrate Shabbat. (*Ba'al ha-Ma'or*, *Shabbat* 7a in Alfasi)

According to the *Ba'al ha-Ma'or*, maneuvering a ship on the open sea requires actions that involve Torah or Rabbinic prohibitions. When the ship is out at sea, the performance of these actions is necessary for the sake of *pikuach nefesh*, and therefore, when a person boards a ship, he is putting himself into a situation which will require desecration of Shabbat for the sake of *pikuach nefesh.*

Even though the *Tur* does not cite the *Ba'al ha-Ma'or*, the *Shulchan Arukh*, followed by other halakhic authorities, understood the law in accordance with his position. This is how the *Shulchan Arukh* rules:

Those who set out with a caravan into the desert, and everyone knows that they will be required to desecrate Shabbat, for on account of the danger they will be unable to tarry in the desert on Shabbat by themselves – they are forbidden to set out on the three days before Shabbat. (*Shulchan Arukh Orach Chaim* 248:4)

The approach of the *Ba'al ha-Ma'or* relates explicitly to the question before us: One who sets out on a ship before Shabbat puts himself into a situation in which he will be required to desecrate Shabbat for the purpose of *pikuach nefesh,* and therefore, it is forbidden. It is important to note that one who violates this prohibition and sets out on such a voyage is certainly permitted to desecrate Shabbat, for nothing stands before *pikuach nefesh.* But it is precisely for this reason that one is forbidden to knowingly put oneself into such a situation. Thus, it follows from the words of the *Ba'al ha-Ma'or* that a doctor or a security official must arrive for his shift before Shabbat, and if he fails to do so, he is regarded as one who "stipulates to set aside Shabbat."

**The Reason for the Law**

Ostensibly, there is room to explain the position of the *Ba'al ha-Ma'or* in light of the question of "permitted" versus "set aside," which we discussed at length in earlier *shiurim* (see especially *shiurim* 5, 6 and 7): If we say that the Shabbat prohibitions are "set aside" in a situation of *pikuach nefesh*, then it should indeed be forbidden to perform an action that will lead to Shabbat desecration. But if we say that the Shabbat prohibitions are "permitted" in such a situation, why should it be forbidden to "appear as if he were stipulating to set aside Shabbat"? Ultimately, he will be desecrating Shabbat for the purpose of *pikuach nefesh*!

Indeed, this is the explanation offered in the book *Orchot Shabbat*:

If one is required to perform a prohibited labor for the purpose of *pikuach nefesh*, and he can do it before Shabbat, he must do it before Shabbat and not wait until Shabbat – this is obvious… Even though he does nothing to put himself into a situation of *pikuach nefesh*, nevertheless, since already before Shabbat he had to perform this labor, why wait for no reason until Shabbat? After all, Shabbat was not *permitted* in a situation of *pikuach nefesh*, but [only] *set aside*!" (*Orchot Shabbat*, vol. 2, chap. 20, par. 33, note 44)

From a logical perspective, however, it is not at all necessary to connect this law and the "permitted" versus "set aside" controversy, and there is reason to say that the *Ba'al ha-Ma'or's* principle is universally accepted – so that even if Shabbat is "permitted" in a case of *pikuach nefesh*,it is still forbidden to perform an action that will lead to its desecration.

It seems to me that this conclusion emerges quite clearly from an interesting responsum of the *Chatam Sofer.* The subject of the discussion there is whether it is permitted for a *kohen* to enter the room of a patient on his deathbed in order to check his condition, when it is possible that the patient has already died and it will turn out that the *kohen* contracted ritual impurity unnecessarily. During the course of the discussion, the fundamental question arises as to whether it is appropriate for a *kohen* to engage in the professions of medicine and rescue, which presumably will lead him to situations in which he will be defiled by the dead. The person asking the question was of the opinion that it is permitted, because in a situation of *pikuach nefesh*,the prohibition for a *kohen* to defile himself is "permitted" and not merely "set aside."

The *Chatam Sofer* completely rejects the questioner's argument. He clarifies that it is not at all clear that a *kohen*'s defilement is "permitted" in a situation of *pikuach nefesh*, but even if it were, this is irrelevant:

Even if we grant him his mistake [=that the *kohen*'s defilement is "permitted" in a situation of *pikuach nefesh*], that is if there stands before us a situation of *pikuach nefesh*, and there are before us a *kohen* and an ordinary Israelite, we say: Whoever is quick is praiseworthy, and we do not differentiate between the *kohen* and the Israelite. But that a *kohen* should prepare himself to waive the sanctity of his priesthood, that if a situation of *pikuach nefesh* presents itself before him, he should deal with it and not somebody else? Are we not commanded to prepare before Shabbat all the preparations for a birthing woman, for a sick person, and for a circumcision, so that we will not need to desecrate Shabbat? (*Responsa Chatam Sofer Yoreh De'a* 338)

The *Chatam Sofer* clarifies that even if the Shabbat prohibitions (in our case; he himself is speaking about a *kohen*'s defilement) are completely "permitted" in a situation of *pikuach nefesh*, it is still clear and obvious that one is obligated to prepare in advance as much as possible, in order to avoid the prohibited act.

The *Chatam Sofer* does not indicate a source for his position; apparently, it is obvious to him based on reason. Rabbi Asher Weiss explains as follows:

It is clear and well-known that a person is forbidden to perform an action that will lead to the necessity to desecrate Shabbat afterwards, even if this Shabbat desecration will be for the purpose of *pikuach nefesh*… But the root of this prohibition has not been explained, and I have seen confusion in the words of the *Acharonim* regarding the foundation of this law, whether it is from the Torah or by Rabbinic decree, and what is its nature and its source.

In my opinion, it is clear that this prohibition is because of the "will of the Torah." I have already explained at length that besides the 613 *mitzvot* of the Torah, a person is obligated to do the will of his Maker in many matters, and the straightforward will of the Torah obligates a person to do whatever is necessary in order to be able to observe the *mitzvot* and refrain from sins, and the Torah said: "Cursed is he who does not uphold the words of this Torah." It turns out that even though causing Shabbat desecration is not an actual desecration of Shabbat, nevertheless, the essence of its prohibition is from the Torah, and not an enactment of the Sages. (Rabbi Asher Weiss's responsum to the Beit Midrash for Halakha of the Military Rabbinate)

The "will of the Torah" – using Rabbi Weiss's terminology – teaches that the desecration of Shabbat for the purpose of *pikuach nefesh* is certainly not desirable, and therefore it is preferable not to perform actions that will necessarily lead to Shabbat desecration.[[2]](#footnote-2)

The halakhic term, the "will of the Torah," is a bit abstract, and we will examine two questions in order to sharpen it:

1. Is the prohibition to cause Shabbat desecration an actual prohibition, or merely pious conduct?

2. How much effort must be invested in order to make arrangements that will prevent Shabbat desecration?

**Making Arrangements in Order to Prevent Shabbat Desecration – An Outright Obligation or Pious Conduct?**

As mentioned, it follows from the words of the *Ba'al ha-Ma'or* that one is forbidden to perform an action that will lead to the desecration of Shabbat. The *Ba'al ha-Ma'or* himself explains that one who performs such an action "appears as if he were stipulating to set aside Shabbat" – that is to say, we are not dealing with an outright prohibition, but with the "appearance" of a violation. The Rivash clarifies this further:

That is, since he does nothing on Shabbat that is at all forbidden, and all there is here is that he set out on a weekday, so that it appears as if he were stipulating to desecrate Shabbat from the outset – this is not a Rabbinic prohibition of Shabbat, but a decree due to appearances. (*Responsa ha-Rivash* no. 101)

The Rivash clarifies that there is no actual prohibition here, not by Torah law nor by Rabbinic decree, but merely "a decree based on appearances."

To test the nature of this decree, let us return to one of the issues mentioned above: Is a pregnant woman who is close to term required to leave her house before Shabbat and go to the hospital, in order to minimize Shabbat desecration when she goes into labor? A discussion in tractate *Nidda* is liable to lead us to a far-reaching conclusion on the subject:

For it was taught in a *baraita*: The pious men of old performed their marital duty on a Wednesday only, in order that their wives should not be led to the desecration of Shabbat. (*Nidda* 38a)

The Gemara there details how exactly the weeks of pregnancy are calculated, but what concerns us is that already nine months before the birth, the pious men of old tried to arrange things in a way that would prevent Shabbat desecration for the sake of *pikuach nefesh*!

On the one hand, this passage proves the fundamental position of the *Ba'al ha-Ma'or.* On the other hand, the Gemara explicitly states that we are dealing with "the pious men of old," and it is quite clear that this is not a binding ruling for every person. That is to say, "the will of the Torah" is to avoid desecrating Shabbat for the purpose of *pikuach nefesh*, but there must be a limit to the efforts that must be made – and an effort like that in the Gemara, which plans a birth nine months in advance, is merely pious conduct.

As for pious conduct, we find two teachings on the matter in *Sefer Chassidim.* The first is connected to spiritual worlds.

If one's wife is pregnant, and the ninth month has arrived, he should pray that she should not give birth on Shabbat, so that Shabbat not be desecrated. And similarly with regard to one's daughter and daughter-in-law. And there was someone who would pray in the *Mincha* service on Friday afternoon that a fire should not break out on Shabbat, and that women should not give birth on Shabbat. (*Sefer Chassidim* 793)

Indeed, it is pious conduct to pray that we should not need Shabbat to be desecrated, not even for the purpose of *pikuach nefesh*.

But the second teaching on this subject in *Sefer Chassidim* is a practical ruling, and ostensibly it applies to all people:

Regarding a pregnant woman who is already in her ninth month, on Friday afternoon before it gets dark, one should put hot water in a warm place, so that if she gives birth on Friday night or Shabbat morning, there will be hot water available, and there will be no desecration of Shabbat. (*Sefer Chasidim* 855)

Here is an actual obligation to prepare for the needs of *pikuach nefesh*, in order to minimize the desecration of Shabbat in the event that the woman gives birth on Shabbat. This ruling in *Sefer Chassidim* is cited by the *Magen Avraham* as normative law:

Therefore, when she reaches her ninth month, he should prepare everything before Shabbat so as not to desecrate Shabbat. (*Magen Avraham* 330, no. 1)

The leading halakhic authorities, the *Mishna Berura* and the *Arukh ha-Shulchan*, ruled in accordance with the *Magen Avraham*, but with a different formulation. The *Mishna Berura* writes:

Therefore, it is appropriate (*min ha-ra’ui*)for a woman who has reached her ninth month to prepare all the things that she will need before Shabbat, so that should she give birth on Shabbat, she will not have to desecrate Shabbat. (*Mishna Berura* 330, no. 1)

There is no mention of an obligation here, but only that "it is appropriate" to act in this manner. The *Arukh ha-Shulchan* went further, formulating his ruling as follows:

Pious men and men of good deeds, when a woman reaches her ninth month, prepare everything she needs before Shabbat, so that should she give birth on Shabbat, they will not have to desecrate Shabbat. (*Arukh ha-Shulchan* 330, par. 3)

We see then that everyone agrees that a pregnant woman should prepare for giving birth – but the *Magen Avraham* presents it as a clear *halakha*, the *Mishna Berura* maintains that it is "appropriate," implying there is no absolute obligation, and the *Arukh ha-Shulchan* rules that this is the practice of "pious men and men of good deeds," just as we saw in the source in tractate *Nidda.*

It should, however, be noted that elsewhere, the *Mishna Berura* implies there is in fact a real obligation to make arrangements in order to prevent the desecration of Shabbat. The Gemara in tractate *Shabbat* (69b) deals with the (slightly strange) case of a man who was walking in the desert and forgot which day was Shabbat. The *halakha* is that every day he is permitted to do only the minimum that is required for *pikuach nefesh*, since each day could be Shabbat. But the Gemara also states that sometimes a person remembers when he set out, and that at least with respect to one of the days of the week, it is clear to him that it is not Shabbat. The *poskim* rule that in such a case, he should try to do everything necessary for his survival on that day, so he will not need to use the allowance of *pikuach nefesh* on the other days, when it might be Shabbat. Against the background of this law, the *Bi'ur Halakha* comments:

We can learn from this about a soldier who is required by the high government to do a certain act that is forbidden on Shabbat by Torah law, and he can do this before Shabbat, that he is certainly obligated to so in order that he not have to desecrate Shabbat on the following day, as I have clarified in *Sha'ar ha-Tziyun.* (*Bi'ur Halakha* 344:1, s.v. *metzumtzemet*)

Here, it is not stated that this is pious conduct or a good deed, but rather that one is "certainly obligated" to do everything he can to avoid desecrating Shabbat, even though in practice, that desecration of Shabbat would be for the purpose of *pikuach nefesh*, since his life will be in danger if he does not do what is assigned to him by the army of the "high government." It stands to reason that in the case of a soldier who must deal with this situation every Shabbat, and he knows with certainty that if he does not make the necessary arrangements before Shabbat, he will have to desecrate Shabbat, the *Mishna Berura* maintains that making these arrangements is a more definite obligation.

**Trouble and Effort to Prevent Shabbat Desecration**

At the end of the aforementioned letter of Rabbi Asher Weiss, he writes:

However, according to what was explained according to my opinion regarding the source of this prohibition, that it is only the general value of the will of God, it is understood that in a case of uncertainty, it is set aside by another mitzva*.* (Rabbi Asher Weiss's responsum to the Beit Midrash of Halakha of the Military Rabbinate)

When one *halakha* contradicts another *halakha*, there are rules for practical decision-making: a positive commandment sets aside a negative commandment, a Torah precept sets aside a Rabbinic decree, etc. But when there stands before us a *halakha* whose foundation is the "will of the Torah," it stands to reason that one must carefully examine whether it does not contradict another mitzva, or even the "will of the Torah" of a different kind.

This is true, for example, in the case we have been discussing regarding a pregnant woman. Without a doubt, leaving one's home at the end of pregnancy in order to be closer to the hospital is a great bother, which presumably will negatively impact on the enjoyment of Shabbat on the part of the woman and her family. Is such a hassle obligatory? Does not the enjoyment of Shabbat outweigh the pious measure of making arrangements to prevent the desecration of Shabbat for the purpose of *pikuach nefesh*?

Rabbi Shlomo Zalman Auerbach responded decisively to a responsum of Rabbi Moshe Feinstein on this matter. In *Responsa Iggerot Moshe*, Rabbi Feinstein discusses our question with respect to a doctor who is required to perform a shift on Shabbat morning. In light of the *Shulchan Arukh*’s rulingin accordance with the position of the *Ba'al ha-Ma'or,* Rabbi Feinstein rules that the doctor must make every effort to spend Shabbat near the hospital:

When the doctor knows about this before Shabbat, he is obligated to spend the night in some house near the hospital, for it is certainly possible to find a place to sleep. Even if he has to pay rent for the lodging, he should not be allowed to go home, which would bring him to desecrate Shabbat the next day, traveling to the hospital. Even if there is no place near the hospital to spend the night, he can spend the night in the hospital itself. Even if he will not have wine for *Kiddush* there, or a significant meal in honor of Shabbat, he must still remain there, for the mitzvaof a Shabbat meal and *Kiddush* does not set aside the prohibition of performing a forbidden labor on Shabbat. (*Responsa Iggerot Moshe*, *Orach Chaim* I, no. 131).

The *Iggerot Moshe* sees the traveling to the hospital as a "prohibited labor on Shabbat," even though it is necessary for the sake of *pikuach nefesh.* He therefore maintains that every effort must be made to avoid this, even at the cost of financial loss or impairing the enjoyment of Shabbat and the Shabbat meals.

As mentioned, Rabbi Sh. Z. Auerbach disagrees, as cited in his name in *Shemirat Shabbat ke-Hilkhata*:

See *Responsa Iggerot Moshe.* However, I heard from Rabbi Shlomo Zalman Auerbach that he favors leniency if on account of his being cut off from his house all of Friday night, he and the members of his household will be deprived of the enjoyment of Shabbat… and he is not obligated to leave his house before Shabbat. (*Shemirat Shabbat ke-Hilkhata*, chap. 40, note 64)

And similarly, in a responsum to soldiers:

If a group of soldiers was assigned to carry out a mission on Shabbat that involves *pikuach nefesh*, and they trained for it during the week, and after completing their training, they were granted leave to their homes on condition that they would return to the base by a certain time on Shabbat, since the operation was scheduled – for military reasons – towards the end of Shabbat – by law, **one is not obligated to object** to one who leaves before Shabbat in order to return for the purpose of *pikuach nefesh* on Shabbat. But all of this is specifically when he goes to join his family, **for he may not be stringent** at the expense of his family's suffering… It stands to reason that **we should be as lenient as possible** for those involved in saving lives. (*Halikhot Shlomo*, 248, no. 7, according to the book *Ha-Tzava ke-Halakha*)

Rabbi Auerbach opens by saying that one is not obligated to object against those who are lenient, continues by saying that a soldier may not practice stringency in the matter if that will impair his family’s enjoyment of Shabbat, and concludes with the assertion that we should be as lenient as possible for those who are involved in saving lives. (In the next *shiur*, we will discuss the fact that this ruling is also based on the fact that enjoying Shabbat is a mitzva.)

In my opinion, Rabbi Auerbach's approach fits in well with the notion of the "will of the Torah," which clarifies that it is indeed necessary to make arrangements to prevent the desecration of Shabbat for the purpose of *pikuach nefesh*, but arrangements that involve a great hassle and a cancellation of the enjoyment of Shabbat are not required, for in the end the traveling on Shabbat will be for the purpose of *pikuach nefesh.*

Of course, it is not always possible to precisely define the degree of trouble or of the impairment of enjoyment of Shabbat. Thus, in the case of a soldier who is required to report to a remote guard post, which can only be reached by driving, shortly after Shabbat begins – if his shift begins very shortly after sunset, it is certainly appropriate to arrive at his post early before Shabbat and save the traveling on Shabbat. But if his shift starts at a later time, and if the soldier stays with his unit, he will have time to pray the Shabbat prayer with a *minyan* and eat a meal in a proper manner, and only then drive out to his post, it is reasonable to say that this is what he should do, and there is no obligation to arrive early at his post before Shabbat. As stated, every case must be considered individually.

**Conclusion**

We saw in general terms the halakhic principle established by the *Ba'al ha-Ma'or*, and the interpretation of this principle against the background of the notion of the "will of the Torah.” In the next *shiur*,we will return to the Talmudic passage concerning setting out on a ship, and consider the fact that the Gemara itself narrows the scope of the prohibition to setting out on a ship, in a way that impacts upon the questions we have raised.

(Translated by David Strauss)

1. The continuation of the *baraita* records a parallel law regarding war on Shabbat: "Gentile cities must not be besieged less than three days before Shabbat, but once they commence, they need not leave off." We will address this source later in the series, in the context of communal *pikuach nefesh* and the laws of war on Shabbat. [↑](#footnote-ref-1)
2. The term "will of the Torah" is an established principle in the halakhic thought of Rabbi Asher Weiss. He has spoken and written about it on many occasions, and has even dedicated entire *shiurim* to explaining the principle and its applications. See, for example, *Minchat Asher*, *Devarim*, no. 51. [↑](#footnote-ref-2)