### YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur #14: Advance Arrangements to Prevent Shabbat Desecration (2) – Halakhic Principles**

**Setting Out on a Ship for the Purpose of a Mitzva**

The previous *shiur* addressed the prohibition of causing Shabbat to be desecrated for the purpose of *pikuach nefesh.* As we saw, the source of this prohibition lies in the *Ba'al ha-Ma'or's* understanding of the issue of setting out on a ship on the days before Shabbat, which is based on the idea that a person is forbidden to do anything that would make it "appear as if he were stipulating to set aside Shabbat."

In the Talmudic discussion of that issue, we find two situations in which it *is* permissible to set out on a ship. One situation follows from the very prohibition: One may not set out in a ship less than three days before Shabbat, but setting out earlier in the week is permitted. Of course, even if one sets out on a Sunday, it is possible that the trip will continue thought Shabbat, and it will become necessary to desecrate Shabbat for the purpose of *pikuach nefesh*; nevertheless, this is permitted.

A second situation is spelled out in the next line of the *baraita*:

Our Rabbis taught: One may not set out in a ship less than three days before Shabbat. This was said only [if it is] for a voluntary matter, but [if] for the matter of a mitzva, it is well. (*Shabbat* 19a)

One who sets out on a ship for the sake of a mitzvais permitted to do so even close to Shabbat, and we are not concerned about the appearance of stipulating to desecrate Shabbat. According to Rabbeinu Tam, this allowance is exceedingly broad, and includes almost every voyage:

Regarding the matter of a mitzva, Rabbeinu Tam explained that wherever a person goes for business or to see a friend, it is considered a matter of a mitzva*.* It is only considered a voluntary matter if he goes for pleasure. (*Tur Orach Chaim* 248 [based on what is brought in the *Mordekhai*, *Shabbat* 258])

The *Beit Yosef* (ibid.) expresses doubts about this far-reaching allowance, which greatly expands the definition of "the matter of a mitzva." The Rema, however, cites it in his glosses to the *Shulchan Arukh* (*Orach Chaim* 248:4) as the normative *halakha*, and notes that "it is customary in some places to be lenient about setting out on a ship," and that "they have what to rely upon."

Of course, even if we don't accept Rabbeinu Tam's novel position, there are many realms which are certainly considered "a matter of a mitzva." Thus, for example, the *Shulchan* *Arukh* clarifies that a person who is going to Eretz Yisrael is permitted to set sail even on a Friday, for that is clearly "a matter of a mitzva*.*"

In the previous *shiur*, we cited the words of the Rivash, who explained that the prohibition is fundamentally not by Torah law, nor even by Rabbinic decree, but is at most "a decree based on appearances." The Rivash's primary proof is from the leniency with regard to “a matter of a mitzva”:

As for what was permitted here for one who is setting out for the matter of a mitzva, that is because 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 based on appearances, and this they permitted for the matter of a mitzva, because of the lightness of the prohibition. (*Responsa ha-Rivash* no. 101)

This fits in well with the idea of the "will of the Torah" that was presented in the previous *shiur*: The Torah does not want a person to desecrate Shabbat for the purpose of *pikuach nefesh*. However, in a situation where this “will” contradicts another mitzva, it is overridden by the other mitzvah and one can enter a life-threatening situation – which in turn will "permit" the desecration of Shabbat for the purpose of *pikuach nefesh.*

**Possible or Definite Shabbat Desecration?**

**1. "And he stipulates with him that it is on condition that he will rest [on Shabbat]"**

We see then that there are two explicit allowances in the Gemara: setting out at the beginning of the week, and setting out for a mitzva. The same *baraita* goes on to record a dispute about whether an additional condition must be met in the framework of these allowances:

And he stipulates with him [the ship’s captain] that it is on condition that he will rest [on Shabbat], yet he does not rest; [these are] the words of Rabbi [Yehuda Ha-Nasi]. Rabban Shimon ben Gamliel says: It is unnecessary. (*Shabbat* 19a)

The "stipulation" here involves an agreement in principle that the ship will anchor on Shabbat. Rabban Shimon ben Gamliel maintains that there is no need to make such a stipulation, and even Rabbi Yehuda Ha-Nasi, who establishes the condition, is aware of the possibility that the ship will not anchor despite the agreement. Some *Rishonim* rule in accordance with Rabban Shimon ben Gamliel, but the Rambam and the *Shulchan Arukh* rule in accordance with Rabbi Yehuda Ha-Nasi (for a summary of the disagreement, see *Sha'ar ha-Tziyyun* 248, letter 1). Nevertheless, the *Mishna Berura* understands that this latter ruling is valid only *le-khatchila* (*a priori*); *be-diavad* (*a posteriori*), even if the ship's operator makes it clear that he has no intention of anchoring on Shabbat, one is permitted to set out on the ship for the purpose of a mitzva or at the beginning of the week.

The *Mishna Berura* explains that we are dealing with a case where the ship's operator is not Jewish, and it stands to reason that this is why it is permissible to set out even if it is clear that he will not anchor the ship on Shabbat. What, then, is the law in a case where the ship's crew is Jewish, or where the Jewish passenger himself will be required to desecrate Shabbat for the purpose of *pikuach nefesh*?Is this included in the allowances for the purpose of a mitzvaor at the beginning of the week? Halakhic authoritiesdisagree.

**2. The Rivash and the Radbaz regarding definite Shabbat desecration**

The Rivash, in his responsum mentioned at the beginning of our discussion, emphasizes that setting out on a ship (or going on journey in the desert) for the purpose of a mitzvaor at the beginning of the week is permitted even if the person knows with certainty that he will be required to desecrate Shabbat. Several decades later, two leading halakhic authorities disputed this ruling.

In *Responsa ha-Radbaz*,we learn:

The question that you asked me – I will inform you of my opinion:

Regarding what the Rivash *z"l* permitted in a responsum in the name of Rabbeinu Zerachya Halevi *z"l*,that one is permitted to set out with a caravan into the desert three days before Shabbat, even when he knows that he will certainly desecrate Shabbat – can one rely on this ruling?

Answer: I never relied on this ruling, for it leads to ruin… And even though I know about myself that I am not fit to disagree with the Rivash *z"l*, and all the more so that he was well-versed in the words of his teacher, the Ran *z"l*, I come to uphold our custom and not be lenient in a matter that the people have already treated as a prohibition; I am stringent and should not be censured for it. (*Responsa ha-Radbaz*, part 4, no. 77)

His younger contemporary, Mahari Ben Lev, writes similarly:

And according to this, it can be argued that even Rabbeinu Zerachya *z"l*, did not rule leniently in a case where there will *certainly* be Shabbat desecration, but only in a case where it is *possible*, even if the possibility is close to certainty... Thus it appears correct regarding a ship; even if the sailors and captains are all Jews, it is possible that they will anchor on Shabbat in some port, and not have to desecrate Shabbat.

But where the desecration of Shabbat is certain – for example, those Jews who go out into the desert with Arab caravans, and the like, who will definitely have to desecrate Shabbat on account of the danger – Rabbeinu Zerachya was not referring to such a case. Rather, it stands to reason that they all agree to be stringent. There is nothing more to add. (*Responsa Mahari ben Lev*, part 2, no. 56)

The Radbaz and Mahari ben Lev propose a fundamental distinction between Shabbat desecration that is certain and Shabbat desecration that is in doubt. In their opinion, the entire passage is dealing with uncertain Shabbat desecration, and that is why one is permitted to set out on a ship for the purpose of a mitzvaor at the beginning of the week. But a departure that will certainly lead to Shabbat desecration is prohibited in all cases – apparently because in such situations, not only does the person "appear" to be stipulating to desecrate Shabbat, but he openly declares that Shabbat will be desecrated for the purpose of *pikuach nefesh.*

As for *halakha*, the *Beit Yosef* cites the Rivash, and he rules accordingly in the *Shulchan Arukh* (*Orach Chaim* 248:4). In contrast, later authorities express a preference for abiding by the view of the Radbaz and Mahari ben Lev: *Shulchan Arukh ha-Rav* (ibid., 13) rules stringently, but notes that one who is lenient in accordance with the Rivash "has on whom to rely," whereas the *Mishna Berura* (ibid., no. 26, and in detail in *Biur Halakha*) writes that "we rely with stringency," that is to say, many go out with caravans or by ship, but refrain from all prohibited actions on Shabbat so it will not become clear retroactively that they performed an action that led to the desecration of Shabbat.

**3. The *Beit Yosef* and the *Shakh* regarding circumcision performed not on the eighth day**

The issue arises in a dispute in another context. As we know, when circumcision can be performed on the eighth day, it sets aside Shabbat, whereas a delayed circumcision does not set Shabbat aside. The *Beit Yosef* (*Bedek ha-Bayit*[[1]](#footnote-1) *Yoreh De'a* 268:1) cites a responsum of the Tashbetz, who proposed the novel position that it is forbidden to perform a delayed circumcision even on Thursday or Friday – because an infant is considered dangerously ill on the days following circumcision, so performing a circumcision late in the week would lead to Shabbat desecration for the purpose of *pikuach nefesh*.

The *Shakh* (*Yoreh De'a* 266, no. 18) rejects this view with the argument that "there is no mitzvagreater than circumcision" even when it is performed not on the eighth day, and surely we maintain that one may set out on a ship for the purpose of a mitzvaeven on a Friday.

Ostensibly, the dispute between the *Beit Yosef* and the *Shakh* is based on the discussion above: according to the *Beit Yosef*, even though there is a mitzvahere, it is forbidden because it will cause certain Shabbat desecration; according to the *Shakh*, on the other hand, the allowance for a matter of mitzva is sweeping, even if the Shabbat desecration is certain.

However, if we understand the dispute this way, it turns out that the *Beit Yosef* contradicts his own position, for in the laws of Shabbat, he rules in accordance with the position of the Rivash!

In *Responsa Yabi'a Omer* (*Yoreh De'a*, part 5, no 23, letter 2), Rabbi Ovadya Yosef cites many *Acharonim* who noted this contradiction and suggested ways to resolve it, especially the following argument: Setting out on a ship is a necessary part of life, and if it is forbidden wherever it will lead to certain Shabbat desecration, people will never be able to set out on a sea journey. Therefore, the *Shulchan Arukh* is lenient about setting out on a ship at the beginning of the week or for the purpose of a mitzva. In contrast, a delayed circumcision can always be performed at the beginning of the week rather than at the end of the week; thus, on the one hand, the mitzvais not cancelled, while on the other hand, there is no stipulation to desecrate Shabbat.

Later in his discussion, Rabbi Ovadya Yosef rejects the position of the *Shakh*. He sets forth that the Sefardi halakhic authorities certainly follow the position of the *Shulchan Arukh*, and even among the Ashkenazi authorities, many are stringent that a delayed circumcision not be performed on a Thursday or Friday, so as not to cause Shabbat desecration for the purpose of *pikuach nefesh.*

As mentioned, this applies only to circumcision; as for setting out on a ship, the *Yabi'a Omer* certainly rules in accordance with the *Shulchan Arukh* based on the Rivash. It should, however, be noted that the *Mishna Berura* (331, no. 33) rules explicitly in accordance with the *Shakh* with respect to performing a delayed circumcision on Friday, and he emphasizes that "we do not postpone the mitzva."

**4. The *Tzitz Eliezer*’s viewregarding non-urgent surgeries toward the end of the week**

*Responsa Tzitz Eliezer* contains a comprehensive and fascinating discussion of the issue in yet another context. The question raised there is whether or not it is permitted to perform non-urgent surgeries on a Thursday or Friday, when we know with certainty that the recovery process will require desecration of Shabbat. On the face of it, this is precisely the *halakha* regarding a circumcision performed not on the eighth day.

The *Tzitz Eliezer* discusses the matter in great detail, and due to the length of his answer, it cannot be cited here. But it is clear how much he hesitated and struggled with the matter. On the one hand, we are dealing with direct causation of Shabbat desecration that is not medically required, since the surgery is not urgent; on the other hand, management of a hospital does not always allow for arranging the surgery schedule to ensure such surgeries fall out at the beginning of the week. Moreover, it is always advisable to use the operating room when it is free; postponing the surgery from Thursday to Sunday may lead to further postponements if the need for an urgent emergency surgery arises. Furthermore, we find that some of the greatest *poskim* permit even certain Shabbat desecration for the purpose of a mitzva, and according to the *Tzitz Eliezer*, there is no greater mitzvathan healing the sick – and even if the surgery is not urgent, the patient is indeed sick[[2]](#footnote-2) and requires surgery.

After considerable deliberation, the *Tzitz Eliezer* decides in favor of leniency:

Therefore, from all that has been said and clarified, it seems clear that it should be permissible to perform the surgeries in question on Thursdays and Fridays, all in accordance with the decision of the attending physician, and there is no room for objection on the part of the patient based on *halakha*. And in the end, when they desecrate [Shabbat], they will do so with permission and as a mitzva, because of *pikuach nefesh*. (*Responsa Tzitz Eliezer*, part 12, no. 43, letter 13)

In my opinion, this conclusion is consistent with the idea of the "will of the Torah" that we encountered in the previous *shiur.* That is to say, the prohibition to perform an action that will lead to Shabbat desecration for the purpose of *pikuach nefesh* is not a Torah or a Rabbinic prohibition, but rather it is connected to the "will of the Torah" and determining appropriate policy regarding Shabbat. The complex question of hospital management necessitates taking a broad perspective that considers a wide set of considerations and constraints, and one is forced to the conclusion that it is permissible to perform surgeries even on Thursdays and Fridays.

**The Practical *Halakha* with Respect to Arriving for One’s Shift Before Shabbat**

The previous *shiur* mentioned the rulings of Rabbi Sh. Z. Auerbach for doctors and soldiers; we saw that his opinion was to be lenient and allow them to spend Friday night at home, and arrive for their shifts on Shabbat itself.

From the discussion above, it becomes clear that this ruling is based not only on the fact that the enjoyment of Shabbat sets aside the "will of the Torah," but also on the fact that we are dealing with "a matter of mitzva." This is in fact indicated by his words, which we will now cite in full:

I heard from Rabbi Shlomo Zalman Auerbach that he favors leniency, if on account of his being detached from his house all of Friday night, he and the members of his household will be deprived of the enjoyment of Shabbat, **since this is considered a matter of mitzva,** and since he does not perform any positive action before Shabbat that will cause a desecration of Shabbat the next day,[[3]](#footnote-3) **this is considered a matter of mitzva**, and he is not obligated to leave his house before Shabbat. (*Shemirat Shabbat ke-Hilkhata*, chap. 40, note 71)

Another point supporting leniency becomes clear in light of our words above, and mainly concerns the members of the security forces. The shift in the hospital will definitely take place. There is no realistic chance that all the patients will be cured and that the hospital will be closed, and therefore the doctor's traveling is certain. Military activity, on the other hand, is interspersed with unplanned events.

Rabbi Sh. Z. Auerbach was asked about the case of a military force that trained for a certain mission that was supposed to be carried out on a Shabbat. Such events are regularly cancelled or pushed off, and therefore it cannot be said that someone who brings in Shabbat at home stipulates with certainty that he will desecrate Shabbat, for it is not at all certain that the mission will actually be carried out, and it is certainly possible that in the end he will spend the entire Shabbat at home. In such a situation, there is a much more significant reason for being lenient, for when the desecration of Shabbat is in doubt, all agree that one may set out on a ship for a matter of a mitzvaeven on a Friday. This is how the issue is summarized in the book *Torat ha-Machaneh*, published by the Beit Midrash of the Military Rabbinate:

It is permissible for a soldier to go home on Friday in order to observe the *mitzvot* of Shabbat (for himself and his family members) and its enjoyment in a princely fashion, despite the concern that he will be called back to his base on Shabbat and he will have to desecrate Shabbat for that. However, one should not be lenient about this in a case where it is clear that he will have to return to his base on Shabbat, unless he will return with a non-Jewish driver, or in special cases, and after consulting with the rabbi of the unit, even when he drives the car himself. It should be noted that in the military framework there is usually no certainty that he will have to return on Shabbat, because it is almost always possible that the mission will be postponed due to some circumstantial necessity. (*Torat ha-Machaneh* 36, 3)

On the one hand, this conclusion relies on the lenient ruling of Rabbi Sh. Z. Auerbach; at the same time, it tries to avoid clear situations of unnecessary travel on Shabbat.

.

It is important to emphasize that when it comes to a regular soldier who is scheduled for a planned shift on Shabbat, it is very appropriate that he refrain from traveling on Shabbat, in keeping with the position of the *Iggerot Moshe* that we saw in the previous *shiur.* The army provides its soldiers with a place to stay and proper food, so arriving before Shabbat does not impair his enjoyment of Shabbat.

However, in the case of a commander (for example), who is faced with the question time and time again over the course of a long and challenging permanent service, it is more correct to be lenient and allow him to be with his family at least on Friday night.

I will conclude with a true story. In the middle of Operation Tzuk Eitan, a community rabbi called me and asked the following question: An officer in a combat unit was told on Friday morning that he could go home for a few hours to freshen up, but he would have to return to his unit on Shabbat morning. The officer turned to the community rabbi to ask whether this was permitted, and the community rabbi turned to me.

I asked the rabbi: What is the rank of the officer? What is his marital status? How long was he away from home? Is he an officer in the permanent army or in the reserves? The rabbi answered: "I didn't think to ask him all these questions..."

In my humble opinion, what emerges from what we saw in this and the previous *shiur* is that these questions are essential for issuing a ruling. On the one hand, at stake is traveling on Shabbat, concerning which the "will of the Torah" is surely to prevent as much as possible. On the other hand, there are no less significant principles, such as the enjoyment of Shabbat, physical and mental refreshment, and even the completeness of the family unit with an emphasis on those who dedicate their lives to the security of the state. In such a situation, in my humble opinion, there is a broad enough basis to be lenient and not be concerned about "stipulating to desecrate Shabbat," and, as argued by Rabbi Sh. Z. Auerbach, "it stands to reason that we should be as lenient as possible for those involved in saving lives."

(Translated by David Strauss)

1. Rabbi Yosef Karo's additions and corrections to his monumental work, the *Beit Yosef.* [↑](#footnote-ref-1)
2. The *Shemirat Shabbat ke-Hilkhata* (chap. 32, note 99) brings the ruling of Rabbi Sh. Z. Auerbach that if a doctor treats patients only on Thursday or Friday, it is permissible to receive treatment from him "as in a place of mitzva." This ruling as well is based on the assumption that the treatment of a patient – even when it is not urgent or necessary for immediate *pikuach nefesh* – is still considered to be for the purpose of a mitzva*.* [↑](#footnote-ref-2)
3. From the wording of the Rabbi Auerbach here, it can be understood that he distinguishes between a doctor who is at home, whom we do not require to make a special trip to the hospital, and someone who is already at the hospital, and proactively goes home close to the onset of Shabbat. Regarding the latter, it may be argued that he "causes a desecration of Shabbat the next day."

   Elsewhere (*Shemirat Shabbat ke-Hilkhata*, chap. 32, note 106), Rabbi Sh. Z. Auerbach emphasizes that there is an essential difference between one who sets out on a ship or with a caravan, "who performs an action," and one who "merely" fails to make the necessary arrangements to avoid the desecration of Shabbat, for whom the law is more lenient. [↑](#footnote-ref-3)