YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur #15: Advance Arrangements to Prevent Shabbat Desecration (3)**

**Introduction**

The last two *shiurim* dealt with the novel position of the *Baal Ha-Ma'or*,in light of the Talmudic prohibition against setting out on a ship too close to Shabbat, that one is forbidden to perform an action that causes him to "appear as if he were stipulating to set aside Shabbat."

In this *shiur* we will complete the discussion, in light of another passage in tractate *Shabbat* – where we find another law from the teachings of the *Baal Ha-Ma'or.* The relationship between the two laws will lead us to another important principle pertaining to our discussion.

**Background – Bathing an Infant in Hot Water**

As mentioned in the previous *shiur*, a newborn who was circumcised is considered a "dangerously sick person." In the days of *Chazal*,certain medical procedures were regularly performed after circumcision to insure the infant's full recovery, the foremost of which was bathing the newly circumcised child in hot water. The Mishna teaches:

An infant may be bathed, both before and after the circumcision… Rabbi Eliezer ben Azarya said: An infant may be bathed on the third day [following circumcision] which falls on Shabbat, as it is stated: "And it came to pass on the third day, when they were sore." (*Shabbat* 134b)

The Gemara there discusses the details of this bathing, but the *Beit Yosef* points outthat, already in his time, this bathing is no longer customary. According to the medical knowledge we possess, bathing is not essential for the newborn’s recovery. Since there is a certain novelty in the fact that our customary practice is different from what is stated in the Gemara, the *Shulchan Arukh* goes to the trouble of explaining the matter at length and with a unique approach:

In the time of the Talmudic Sages, if they did not bathe the newborn in hot water before circumcision, after circumcision, and on the third day after circumcision, it was dangerous. Therefore, they thought it necessary to record the law concerning this if it falls on Shabbat.

Today, we do not bathe the infant at all, and the law regarding washing him, if they want, is the same as the law of washing any person. (*Shulchan Arukh Orach Chayim* 331:9)

The Rema in his gloss (ad loc.) emphasizes that if it seems that a newly circumcised infant does need hot water, this is certainly permitted, but the default assumption is that it is not essential.

**The Dispute Regarding Hot Water that Spilled**

In light of what we saw in the previous *shiurim*, it is clear that one would have to prepare hot water in advance for the bathing of the infant. While the bathing itself falls into the category of *pikuach nefesh*, the necessity is known in advance and thus it is the "will of the Torah" that one make the necessary arrangements before Shabbat in order to avoid heating the water on Shabbat.

What if hot water was not prepared in advance? The Gemara in tractate *Eiruvin* (67b-68a) raises this very question and discusses the case of a child for whom hot water had been prepared, but it spilled. The issue in the Gemara is how hot water can be provided without desecrating Shabbat on a Torah level – for instance, by asking a non-Jew to heat the water[[1]](#footnote-1) or by bringing hot water from another house in the same courtyard.

However, the Gemara does not explain – in *Eiruvin* or in *Shabbat* – what to do if none of the suggested solutions is applicable, and in practice there is no hot water with which to wash the infant after his circumcision. The *Rishonim* are divided on this question, and the Ramban brings both opinions:

But I am in doubt here about a case where he had sufficient hot water for before the circumcision, but not for the second washing after the circumcision, or where the hot water that had been prepared spilled before the circumcision. I say that we bathe [the infant] and circumcise him, for the preliminaries of circumcision are not setting anything aside, and after [the infant] is circumcised, surely *pikuach nefesh* sets Shabbat aside. And we do not say that the circumcision should be set aside so as not to bring him to danger and have to set Shabbat aside, but rather the circumcision itself sets Shabbat aside, and *pikuach nefesh* also sets it aside, and a *mitzva* has only its own time, and so we should not set the circumcision aside because of the setting aside of Shabbat that will come afterwards because of the danger.

But I have seen someone who maintains that we do not circumcise [the infant] unless we have the hot water and the medicines for after the circumcision, and if the [hot water] was spilled before the circumcision, the circumcision is set aside. The plain sense of the wording of the *Baal Halakhot* [*Gedolot*] supports him. But the matter itself seems to be decided as I have written. (*Chiddushei ha-Ramban*, *Shabbat* 134a, s.v. *aval*)

According to the Ramban, just as circumcision sets Shabbat aside, so too *pikuach nefesh* sets Shabbat aside, and there is no problem creating a situation that will require hot water for the purpose of *pikuach nefesh.* But he also mentions a dissenting view, which maintains that it is forbidden to create a situation of *pikuach nefesh* and that it is preferable to set the circumcision aside. This is the opinion of the *Baal Ha-Ma'or*:

The infant is bathed as usual before the circumcision with hot water that had been heated before Shabbat, and after the circumcision if the hot water was spilled, water is heated up for him even on Shabbat, because of the danger to the infant. This applies where the water was spilled after the circumcision, but if it spilled before the circumcision, the circumcision is set aside, and Shabbat is not set aside. Proof of this can be brought from the case of the child whose hot water was spilled. (*Ha-Ma'or ha-Katan Shabbat* 53a in the pages of Alfasi)

The *Shulchan Arukh* does not relate to this dispute, for he maintains that in any case, hot water is not necessary for *pikuach nefesh.* Of course, there could be other things that are needed for the circumcised child after his circumcision, and regarding those matters, the *Mishna Berura* decides in favor of the *Baal Ha-Ma'or*:

He should also not say: "I will circumcise him, and when he needs medicines afterward for the sake of *pikuach nefesh*, I will prepare them, for surely *pikuach nefesh* sets Shabbat aside." For since we already know that [the infant] will need medicines after the circumcision, it is preferable that the circumcision be set aside, and that he not bring himself to Shabbat desecration, since he could have prepared them the day before. (*Mishna Berura* 331, no. 24)

In the *Sha'ar ha-Tziyyun* (ad loc.), he emphasizes that this is the opinion of most of the halakhic authorities, "and not like the Ramban." Based on this, one is forbidden to put himself into a situation of *pikuach nefesh* even at the cost of delaying the mitzva of circumcision.

**Entering a Situation of *Pikuach Nefesh* Before Shabbat and on Shabbat Itself**

Many have had difficulty understanding why the *Baal Ha-Ma'or* is stringent in this case. After all, circumcision is "a matter of a mitzva" of the highest importance, and if it is permissible to set out on a ship on Friday for "a matter of a mitzva" – and we don't say that he "appears as if he is stipulating to desecrate Shabbat" – then all the more so, it should be permissible to circumcise on Shabbat and then do whatever is necessary afterwards for *pikuach nefesh*!

There is a simple answer to this in light of the Radbaz (part 4, no. 77) and the Mahari ben Lev (part 2, no. 56) that we saw in the previous *shiur*. The Gemara in *Shabbat* permits setting out on a ship for a matter of a *mitzva* when there is no certainty that it will become necessary to desecrate Shabbat. In contrast, where hot water will be needed for a newly circumcised child, the person is considered as one who is putting himself into a situation of certain *pikuach nefesh,* and therefore it is forbidden.

However, as we have already seen, the *Shulchan Arukh* rules in accordance with the view of the Rivash, that the allowance of "for a matter of a *mitzva*" applies even when it is certain that Shabbat will have to be desecrated. Furthermore, the *Baal Ha-Ma'or* and the Ramban do not mention at all the Talmudic passage concerning setting out on a ship, giving the impression that the issues are not connected even though they seem to be dealing with the very same thing.

Therefore, it stands to reason that a fundamental distinction can be drawn between setting out on a ship, in which case one puts himself in a situation of *pikuach nefesh* before Shabbat, and heating water for a circumcised child, which is a case of putting oneself in a situation of *pikuach nefesh* on Shabbat itself. I wish to cite two formulations of this distinction.

The *Sedei Chemed* writes:

As for this position of Rabbeinu Zerachya Halevi, that it is forbidden to perform circumcision if the hot water was spilled, so that we not have to desecrate Shabbat – I am puzzled by what Rabbeinu Zerachya Halevi himself wrote… that if he is going for a *mitzva*, he may set out even on Friday, and this is according to the reasoning of Rabbeinu Zerachya Halevi – ?!

… It must be said that it is specifically on Friday that he is permitted to set out for a mitzva, even though he knows that he will be desecrating Shabbat, and we don't say that he appears as if he is stipulating to desecrate Shabbat. But on Shabbat itself, when the desecration will be on that day, and he does the *mitzva* knowing that he will immediately desecrate Shabbat, as in the case where the hot water was spilled – in such a case, he does not "appear" to be stipulating that he will desecrate Shabbat, but rather he is considered as if he were actually stipulating to desecrate Shabbat, and therefore it is forbidden. (*Sedei Chemed*, part 9, *ma'arekhet Yom ha-Kippurim*, 1, letter 10)

The *Sedei Chemed* explicitly distinguishes between Friday and Shabbat, and the explanation that he proposes brings to mind the suggestion that we proposed above. That is to say, the desecration of Shabbat in the case of circumcision is direct, immediate, and certain, and therefore it leaves the category of "appearances" and is considered actual intention to desecrate Shabbat. According to this understanding, it is possible that there would be room for leniency if there were any doubt about the need for hot water after the circumcision, even though everything takes place on Shabbat itself.

Unlike the *Sedei Chemed*, the Steipler Rav in his *Kehillat Yaakov* proposes a fundamental distinction between before Shabbat and Shabbat itself:

It therefore seems that the main distinction is between before Shabbat and the day of Shabbat. For before Shabbat, he is not yet subject to the obligation to rest and keep Shabbat, and when he performs an action because of which he will have to perform a prohibited labor on Shabbat for the sake of *pikuach nefesh*, this does not fall into the category of Shabbat desecration, but merely causes it. When, however, it is already Shabbat, and he is obligated today to rest on it, then with any action that he performs, because of which he will be forced to desecrate Shabbat, he is considered **as starting now to desecrate it,** and now he is not in circumstances beyond his control, but rather he is creating those circumstances, and for that reason it is absolutely prohibited, and forbidden even for a *mitzva*. (*Kehillat Yaakov Shabbat*, no. 15)

The Steipler maintains that the model that guided us in the previous two *shiurim* changes fundamentally when it comes to entering a situation of *pikuach nefesh* on Shabbat itself: A person who puts himself into a situation of *pikuach nefesh* before Shabbat transgresses the "will of the Torah," but there is no clear violation of a Torah or Rabbinic law; at most, it is a case of "causing Shabbat desecration.” However, one who creates a situation of *pikuach nefesh* on Shabbat itself is considered as one who desecrates Shabbat!

Over the course of the week, we do indeed prepare for Shabbat, but a person cannot perform an action on a weekday that would be considered as a desecration of Shabbat. However, as soon as Shabbat begins, there is room to talk about the desecration of Shabbat not only through the performance of a prohibited labor itself, but even through the creation of a situation that will necessitate the desecration of Shabbat.

There is a certain novelty in this: The act of heating the water for the infant does not itself desecrate Shabbat, because it is done for the purpose of *pikuach nefesh* (subject to the issue of "permitted" versus "set aside"). However, the creation of the situation of *pikuach nefesh*, according to the Steipler, is in itself considered as a desecration of Shabbat.

It should be noted that the expression "the will of the Torah" comes from a letter of Rabbi Asher Weiss to the Beit Midrash for Halakha of the Military Rabbinate. In the same letter, Rabbi Weiss expresses some reservations about this line of thought. After emphasizing that even according to the Ramban, there is no sweeping allowance to create situations of *pikuach nefesh*, but only in this case of circumcision which sets aside Shabbat, Rabbi Weiss adds:

According to what has been explained, in my humble opinion, regarding the root of this prohibition, it is clear to me that there is no distinction between whether the action was performed on Shabbat or beforehand, for in any case, this act does not involve desecration of Shabbat, but rather the general value of the will of God. (Rabbi Asher Weiss's responsum to the Beit Midrash for Halakha of the Military Rabbinate)

According to Rabbi Weiss, then, even on Shabbat itself, the root of the prohibition is "the will of the Torah," and not actual desecration of Shabbat.

**Practical Halakha**

In the *shiur* that opened our discussion about making arrangements to prevent the desecration of Shabbat for the purpose of *pikuach nefesh*, I gave a practical example of a soldier who is serving somewhere with an electronic, who wishes to go out for a few minutes for a non-security matter but will have to activate the entry control to get back in. By leaving the place, he puts himself into a situation of *pikuach nefesh*, which will obligate him to activate the electric entry control when he returns.

In light of the words of the *Baal Ha-Ma'or*,which were accepted as *halakha* by the *Mishna Berura*, and especially according to the explanation of the *Kehillat Yaakov*, it seems that one should be more stringent in such a case, and try not to enter into such a situation on Shabbat.

However, to the extent that we accept the assumption that using electricity on Shabbat is forbidden not by Torah law, but by Rabbinic decree, in this case we are dealing with a person who is putting himself in a situation where he will be required to desecrate Shabbat by transgressing a Rabbinic rather than a Torah prohibition, and it stands to reason that we can be more lenient.[[2]](#footnote-2)

In the book *Torat Ha-Machaneh*, we summarized the matter as follows:

Some of the authorities of our generation have ruled leniently about leaving a *chamal* (military operations room) for the purpose of Shabbat meals (and prayers), when leaving the room does not involve any prohibition, even though he knows that when he returns he will have to enter using a magnetic card or a code, because he is only putting himself into a situation where he will later have to transgress a Rabbinic prohibition (of electrical operation) for the purpose of *pikuach nefesh*.

However, since this matter of the permissibility of entering into a situation of *pikuach nefesh* on Shabbat is subject to a dispute, it seems that in practice, a soldier who is assigned to serve in a *chamal* should arrange in advance that the change of shift will take place close to the times of prayer and the meals (so that he will not have to return), or else he should arrange in advance that when he returns, the door will be manually opened for him from the inside. (*Torat Ha-Machaneh* 43, 8)

It is important to emphasize regarding actual practice that leaving the *chamal* is often necessary for some essential need, such as the need to rest, eat, or use the restroom. In all these situations, leaving the *chamal* is permitted because, as stated, we are dealing with an essential need that enables the continuity of the operational activity.

(Translated by David Strauss)

1. This is one of the fundamental Talmudic discussions of the issue of asking a non-Jew to do something that is forbidden to a Jew, but that is not our concern in this *shiur*. [↑](#footnote-ref-1)
2. It seems to me that this distinction between Torah and Rabbinic prohibitions explains an interesting ruling regarding putting oneself into a situation of *pikuach nefesh* with respect to the laws of fasting, and not the laws of Shabbat. In *Responsa Iggerot Moshe* (*Orach Chaim*, part 4, no. 114), Rabbi Moshe Feinstein permits a person who is involved in raising money for a charitable purpose to continue working on a fast day, even though as a result of his work, he will feel weak and need to drink. The *Iggerot Moshe* hangs this allowance on the fact that we are dealing with an "illness," and the law is that one who is ill is exempt from the fasts that commemorate the destruction of the Temple.

   Even though this is not stated there explicitly, it is clear to me that the *Iggerot Moshe* would not issue a similar ruling regarding Yom Kippur. With respect to Yom Kippur, the instruction that is commonly given to sick people in certain situations is to remain in bed all day long, and not go out at all for the prayer services, so that they be able to complete the fast. In other words, they are forbidden to put themselves into a situation of *pikuach nefesh* that would permit them to eat and drink, and, as stated, the *Iggerot Moshe's* allowance applies only to the other fasts. [↑](#footnote-ref-2)