YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #54: Notifying a Rescue Mission of Cancellation on Shabbat (2): The Halakha in Practice**

**Introduction**

In the previous *shiur* (no. 53), we saw the dispute among contemporary *poskim* about whether a telephone call may be made on Shabbat in order to inform security or medical personnel, who had gone on a rescue mission involving violation of Shabbat, that the alert has been cancelled and they are no longer needed. As we have seen, Rabbi Shlomo Zalman Auerbach, Rabbi Yosef Shalom Elyashiv, and Rabbi Shmuel Wosner all rule that this is forbidden, since those on the mission are engaged in a great mitzva and are not desecrating Shabbat in any way (such that they would need to be stopped), whereas Rabbi Asher Weiss and Rabbi Chaim Pinchas Scheinberg rule that it is permitted, and that in such a case, we do say: "Sin, in order that your friend may gain thereby" (*Shabbat* 4a).

**Setting Aside *Terumot* and *Ma'aserot* for a Dangerously Ill Person**

When asked a few years ago for clarification and a practical halakhic ruling on this issue, I consulted with Rabbi Zalman Nechemya Goldberg *ztz"l.* He was of the opinion that there is room to be lenient and to permit a telephone call to be made with a *shinnui*, i.e., in an unconventional manner, in order to inform soldiers who were sent out on an alert that the alert has been cancelled. According to him, we may rely in such a case on a certain responsum of the author of the *Ketzot ha-Choshen*, published at the end of his book *Avnei Milu'im* on *Shulchan Arukh Even ha-Ezer.* In order to appreciate the novelty in this responsum, we must survey the issue from its source.

The Gemara in *Yoma* (83a-b) teaches that when a person who is dangerously ill is required to eat forbidden foods, it is preferable that he eat "the less forbidden thing first." The Gemara goes into detail about how to determine which is "the less forbidden thing"; for example, if he has the choice between eating improperly slaughtered meat (*neveila*), which is a basic negative commandment, or eating untithed produce (*tevel*),which also carries the punishment of death at the hands of Heaven – he should eat the *neveila*.

The *Tannaim* there disagree, however, as to what the person should do if he has to choose between eating *teruma* or *tevel.* In terms of punishment, both are equally stringent (death at the hands of Heaven), but each one has an additional aggravating factor: on the one hand, *teruma* cannot be remedied, whereas *tevel* could be remedied by setting aside its *terumot* and *ma'aserot;* on the other hand, *teruma* is permitted to priests, whereas *tevel* is forbidden to all.

In the course of the discussion, the Gemara notes that if it is possible to set aside *terumot* and *ma'aserot* from the *tevel*, that should certainly be done, and thus the person can avoid eating forbidden food altogether. Even if the need arose on Shabbat, when *Chazal* forbade the setting aside of *terumot* and *ma'aserot*, it is preferable to violate this minor Rabbinic prohibition and thus prevent the sick person from eating a more severely forbidden food.

But there is one situation in which even setting aside *terumot* and *ma'aserot* will not help, and that is when there is only a limited amount of produce and the sick person needs to eat all of it. In such a case, even if we separate *terumot* and *ma'aserot* and fix the *tevel*, the sick person will still be required to eat both the *chullin* [the non-sacred produce] and the *teruma*. If so, it may be better to eat *tevel* and not *Teruma*; indeed, the Rambam (*Mishneh Torah*, *Hilkhot* *Ma'akhalot* *Asurot* 14:17) rules that when there is no possibility of setting aside *terumot* and *ma'aserot*, it is preferable to eat *tevel* and not *teruma*, because *teruma* is more sacred.

The author of the *Mishneh la-Melekh*, in his book *Parashat Derakhim*, raised an interesting question: Even in a situation where the patient is required to eat all the produce, it would be possible to set aside *teruma* from the *tevel* and then mix it into the *chullin*, thereby bringing about a situation where the *teruma* is nullified in the majority of *chullin.* While it is true that the rule is that "one may not nullify a prohibited item at the outset" (*Beitza* 4b), according to many *poskim*, this prohibition is Rabbinic in nature, and even for those who maintain that it is a Torah prohibition, it is certainly less severe than the prohibition against eating *teruma*, which is punishable by death at the hands of Heaven. And so, we have here a solution that will enable the sick person to eat all the produce, without eating any prohibited food whatsoever!

To explain why the Gemara did not suggest this possibility, the *Parashat* *Derakhim* makes use of a fundamental principle in the laws of *pikuach nefesh:*

But here, with this prohibition that we are nullifying a prohibited food, this is not needed for the sick person at all, for what does it matter to him whether we nullify the prohibition or not? And even though we are saving him from a more serious prohibition, nevertheless, since this is not needed for the sick person, this prohibition may not be set aside, even though it is a light prohibition. It is better that the sick person transgress a more stringent prohibition, since it is needed for the sick person, than that we transgress a light prohibition, since this [lighter] prohibition is not needed for the sick person. (*Parashat Derakhim*, *derush* no. 19)

The *Parashat Derakhim* maintains that one may not transgress the ban on deliberate nullification in order to save a sick person from a more serious prohibition. However, when a sick person eats *tevel* or *teruma* in order to save his life, this is permitted and is included in the category of "the needs of a sick person."

Picking up on the end of the previous *shiur* (no. 53), we can explain that forbidden foods fall into the category of "permitted" (*hutra*) with regard to a dangerously ill person, and therefore there is no prohibition at all in his eating it. Nullifying the forbidden food from the outset, however, does not directly serve the sick person, and therefore we may not transgress that prohibition in order to avoid an action that is permitted for the sake of *pikuach nefesh*.

On the face of it, the words of the *Parashat Derakhim* lead us to the conclusion that in a case of *pikuach nefesh*, we do not apply the rule of "sin, in order that your friend may gain thereby." That is to say, one who eats a forbidden food in a situation of *pikuach nefesh* is not sinning, and therefore there is no need to transgress another prohibition – that of nullifying a forbidden food from the outset – in order to save him from eating it.

However, the *Parashat Derakhim* acknowledges that there is a difficulty with his approach in that the Gemara itself permits violating a light prohibition – setting aside *terumot* and *ma'aserot* on Shabbat – in order to save a sick person from eating *teruma*. And in fact, the author of *Responsa Avnei Milu'im* says the words of the *Parashat Derakhim* "require further examination," for his entire approach is fundamentally flawed:

And in my opinion, it seems that in the case of a Rabbinic prohibition, it is obvious that even if it is not needed for the sick person, it is preferable that we should transgress a Rabbinic prohibition so that the sick person should not transgress a Torah prohibition, for in such a situation we say to a person: "Sin, in order that your friend may gain thereby." (*Responsa Avnei Milu'im*, no. 18)

The *Avnei Milu'im* goes on to explain that the reason one should not set aside the *teruma* and then mix it into the *chullin* and nullify it with the majority of *chullin*, as proposed by the *Parashat Derakhim*, is that it would be a breach of the law of "guarding *teruma*" (*Shabbat* 25a), which requires that the *teruma* be guarded not only from impurity, but also from nullification. According to him, this is a Torah prohibition. This explicit ruling is of paramount importance for our purposes: Even in a case of *pikuach nefesh*, the eating of a forbidden food is considered a sin, and therefore it is appropriate to transgress a lesser (Rabbinic) prohibition in order to save another person from such a sin.

The *Peri Megadim* (*Eishel Avraham* 329, no. 9) cites the words of the *Parashat Derakhim,* and seems to agree in practice. However, as noted above, Rabbi Zalman Nechemya Goldberg maintains that one should rely on the position of the *Avnei Milu'im.* Accordingly, even those on a rescue mission, who are engaged in *pikuach nefesh*, are considered to be desecrating Shabbat, and therefore, if it is possible to save them from this desecration by transgressing the lighter prohibition of a telephone conversation, this is what should be done.

**"You Will Cause Them to Stumble in the Future"**

As noted at the beginning of the previous *shiur* (no. 53), determining the *halakha* in our scenario requires taking into account the fundamental principle of "you will cause them to stumble in the future" (Mishna, *Rosh Hashana* 1:6, 21b). Let us imagine the feelings of a doctor or an ambulance driver who was called for an emergency and made the entire trip on Shabbat, only to find out that it was for nothing. Regardless of the aspect of Shabbat violation, for which it has already been established that he will be amply rewarded by God, the practical effect will be frustration and resentment at the futility of the effort.

Indeed, in the book *Ha-Tzava ka-Halakha*, even though the author cites Rabbi Shlomo Zalman Auerbach’s ruling against desecrating Shabbat with a telephone call to cancel the dispatch of a medical or military force, he qualifies this ruling – in the name of the Rabbi Auerbach – as follows:

If there is reason to fear that because of the non-cancellation of the dispatch, the medical crew will hesitate in responding to a subsequent call and not give their all to arrive as quickly as possible, then the dispatch should be cancelled, even if that involves desecration of Shabbat, because then we should join to the consideration of "minimizing Shabbat desecration for the sake of *pikuach nefesh* that has become unnecessary" the consideration of concern about a future life-saving situation for the people who were called or others. And thus I heard from Rabbi Sh. Z. Auerbach. (*Ha-Tzava ka-Halakha*, chap. 32, par. 2, note 7)

As we have already learned, the fear of a future mishap that will lead to a delay in lifesaving activities may be considered a life-threatening situation already in the present. In such a case, those who were sent out on a rescue mission should certainly be informed of the cancellation of the call.

Rabbi Asher Weiss wrote in a similar vein, in response to an objection to his fundamental approach to the subject:

Regarding the point that was raised from what is taught in *Rosh Hashana* (21b): "It once happened that more than forty pairs [of witnesses] were on their way [to Jerusalem] and Rabbi Akiva detained them in Lod. Rabban Gamliel sent [this message] to him: If you prevent the multitude [from coming to give evidence], you will cause them to stumble in the future" – even though their testimony was not needed, nevertheless, the witnesses should not be prevented from coming and testifying, and similarly in our case, we should not prevent them from coming and rescuing.

Here, in the case at hand, it is clear that the opposite is the case, that this passage reinforces my opinion and ruling, as it is as obvious as the noonday sun that if the rescuers will come to the scene two or three times and see that their efforts were in vain and they have been called away from their homes and there is no *pikuach nefesh* at all, they will prefer in the future to ignore the distress calls and stay at home, and it will turn out that you will cause them to stumble in the future. But if we inform them that the danger has passed and they can be at home with their families, they will hastily come to the rescue [next time], in accordance with the instructions of *Chazal*, and this is praiseworthy. And because of all this, the Mishna has not moved from its place. (*Responsa Minchat Asher*, part II, no. 43)

As stated, in many situations this concern is a real and palpable one, and it mandates notification of the cancellation of the dispatch on Shabbat. Not infrequently, this concern is compounded by the fact that a security or medical force making its way to one event is unable to be on standby in case of another event at the same time. This too is a matter of potential *pikuach nefesh*, which requires that the rescuers be informed of the cancellation of the dispatch.[[1]](#footnote-1)

Thus, we see that just as returning from a rescue event on Shabbat, which has no life-saving dimension, is sometimes necessary and permitted based on the systemic consideration of potential future mishaps, so too a phone call to cancel a dispatch, which similarly does not involve an urgent life-saving need, may be permitted in order to avoid causing those who go out to rescue from stumbling in the future.

**"Sin, In Order That *You* May Gain Thereby"**

As we learned in the previous *shiur*, much of the discussion surrounding our question is based on the premise that we do not say to a person, "Sin, in order that your friend may gain thereby." However, two additional considerations should be examined.

First, according to one of the answers in the *Tosafot*, when one is the cause of his friend’s potential sin, he is permitted to transgress a light prohibition in order to save him from a more severe one. It may be that this is also the case in our situation: When a person calls an ambulance, or when a commander mobilizes a military force, they are the ones who caused the "desecration of Shabbat" in the first place. Accordingly, it is incumbent upon them to rectify the situation and inform the responders of the cancellation of the dispatch.

Of course, if we assume that one who goes out to rescue does not desecrate Shabbat at all, we must also reject the above reasoning, for the person who issued the call in the first place is not regarded as having caused his friend to stumble. Nevertheless, from a logical perspective, there is certainly room for such a consideration.

Second, it is clear in the passage in *Shabbat* that this law pertains to the relationship between one person and another. In regard to the individual himself, it is clear and obvious that he is permitted to transgress a lesser prohibition in order to save *himself* from a greater one:

Rav Acha son of Rava taught this explicitly: Rav Bibi bar Abaye said: If one places a loaf in an oven, he is permitted to remove it before he comes to a transgression bearing the punishment of stoning. (*Shabbat* 4a)

The Gemara's words were codified by the *Shulchan Arukh* (*Orach Chaim* 354:6) and the *Mishna Berura* (s.k. 39-41).

We noted above that the *Peri Megadim* cites the view of the *Parashat Derakhim* that the eating of *tevel*, which is directly needed by the sick person, is preferable to nullifying the forbidden item from the outset. The *Peri Megadim* adds:

According to this, the sick person himself can mix the *teruma* into the *chullin* and thereby nullify it, and that is preferable to his eating something that is forbidden by Torah law by way of several negative commandments. (*Peri Megadim*, *Eshel Avraham* 328, no. 9)

That is to say, the words of the *Parashat Derakhim* apply only to one who wants to help a sick person by mixing *teruma* into *chullin* for him, in order to nullify the forbidden food in the permitted majority. But the sick person himself can certainly do it, despite the transgression involved, in order to save himself from eating prohibited foods – even if those prohibited foods would be eaten in a situation of *pikuach nefesh.*

Thus, we learn that even according to the *poskim* who prohibit violating Shabbat by calling to cancel a dispatch, there may be room to be lenient with respect to the person himself.[[2]](#footnote-2) That is to say, if a soldier was summoned for a matter of *pikuach nefesh*, but has good reason to think it was a false alarm, or that the operational situation has changed, he may call his commander and inquire whether the dispatch is still in effect.

This notwithstanding, in the book *Torat ha-Yoledet* (chap. 21), Rabbi Yitzchak Zilberstein writes in the name of his father-in-law, Rabbi Elyashiv, that a person who was summoned on Shabbat to stand by a family member in a life-threatening situation may not call to inquire whether his presence is still needed, as such a phone call is not life-saving, and therefore he must travel for the sake of *pikuach nefesh.* However, when this subject was raised with Rabbi Zilberstein and the military reality was described wherein a unit may be called up en masse on Shabbat but it is very likely that some of its members are not urgently needed, and therefore a phone call is required to ascertain who will be going, he responded as follows:

If the soldier surmises that it is highly probable that there is no real *pikuach nefesh* here, and he thinks that the officer who summoned them did so not in negligence, but rather, out of panic, thinking that war was imminent and therefore summoned all the soldiers at once – then there is room to permit calling him in an unconventional manner in order to save him from sin. (Rabbi Yitzchak Zilberstein, letter to the IDF Rabbinate, dated 11 Iyar 5774).

To this he added in conversation that in the case of a dangerously ill person, there is a "presumption of rescue" that necessitates violation of Shabbat; anyone who acts from that point on is acting permissibly, and there is no need to violate the minor prohibition of telephoning in order to save him from the action, as it is fully permitted. However, when it comes to an emergency call-up because of a fear of war, there is no "presumption of rescue" from the outset, and it is obvious to all that in the case of an emergency call-up, not all of the soldiers who have been called up will be needed. On the other hand, in the heat of battle, the commander is unable to determine with any kind of precision who will be needed and who will not be needed, and therefore he calls up everyone. Even if the commander's action is permitted, in reality, each individual soldier is not facing a situation of certain *pikuach nefesh*, and therefore his action includes an aspect of Shabbat desecration; consequently, it is permissible to make a telephone call in order to ascertain the necessity of the trip and prevent any unnecessary desecration of Shabbat.

**A Telephone Call to Prevent Mass Desecration of Shabbat**

The policy of the IDF rabbinate in recent years has been that a military rabbi must be available on Shabbat to speak by telephone when there is a concern that military orders will be violated and Shabbat will be desecrated not for a security need.[[3]](#footnote-3) This policy is also related to the issue of "sin, in order that your friend may gain thereby," as well as to the question of whether a military rabbi may desecrate Shabbat with the light violation of making a phone call, in order to prevent a more serious and widespread desecration of Shabbat in his unit.

The current Chief Rabbi of the IDF, Brigadier General Rabbi Eyal Krim, wrote a lengthy and detailed responsum to substantiate this ruling.[[4]](#footnote-4) He bases his position primarily on the following arguments:

As explained in the preceding section, one is permitted to transgress a lesser prohibition in order to save himself from a greater one. In this connection, Rabbi Krim writes:

The definition of the role of the military rabbi at all levels includes the enforcement of IDF regulations on religious matters, some of which involve the preservation of the character of Shabbat in the IDF. Therefore, the actions of the military rabbi in the context of the question at hand fall not only into the category of preventing others from transgressing but also preventing himself from doing so, since the keeping of Shabbat in the IDF is part of the definition of his role and is incumbent upon him. (*Responsa Kishrei Milchama*, part V, no.9).

That is to say, a substantial part of the responsibility for the implementation of IDF orders regarding Shabbat observance rests with the military rabbi. Consequently, unnecessary desecration of Shabbat in his unit is his responsibility, and therefore, making a telephone call to prevent such desecration is tantamount to saving himself.

The previous *shiur* (no. 53) opened with the extensive discussion among *Rishonim* regarding the relationship between the passage in *Shabbat* (4a) – which states that we do not say to a person: "Sin, in order that your friend may gain thereby" – and various passages throughout the Talmud which lead to the opposite conclusion. One such passage, cited by the *Tosafot* and other *Rishonim*,is in *Pesachim* (59a): the Gemara there states that a priest in the Temple is permitted to violate the positive commandment of *hashlama* (“completion” of all other sacrifices before the daily offering of the afternoon) in order to enable a *mechusar kippurim* (an individual who requires a sacrifice in order to complete his purification process) to bring his *korban pesach*. The *Tosafot* were perplexed: How can it be that a priest is permitted to transgress a prohibition just so someone else will be able to bring his *korban pesach*?!

The Ramban offers the following answer:

And they had difficulty with what is stated in *Pesachim*,that a priest may violate the positive commandment of *hashlama* and offer the sacrifice of a *mechusar kippurim* on the eve of Pesachso that his fellow not come to a prohibition whose violation is punishable by *karet.* It may be argued that the priests are different, as the Torah makes them the messengers of Israel, and the other person cannot do this on his own. (Ramban, *Shabbat* 4a, s.v., *ve-khi omerim*)

The *mechusar kippurim* cannot offer the sacrifice himself that will enable him to properly bring his Paschal offering. This task rests on the shoulders of the priest, who acts as one would act on his own behalf and transgresses the positive commandment of *hashlama* so the *mechusar kippurim* may gain the ability to bring his *korban pesach* as commanded.

On this point, Rabbi Krim comments:

A military rabbi is the community's agent regarding Shabbat observance, *kashrut*, and other religious matters in the army. In a similar vein, the Ramban discusses the issue of priests who violate the positive commandment of *hashlama* for the sake of others, and defines them as acting **on their own behalf**, because they are the agents of Israel regarding sacrifices… The priestly service is a general matter for the people of Israel… and it is as if he were acting **on his own behalf**… And even though there is still room for a logical distinction on this point, nevertheless, it seems that in any event it is fitting to join this to the lenient opinions, because ultimately, the issue under discussion here is the prevention of stumbling blocks from the community. (*Responsa Kishrei Milchama*, ibid.)

It is true that if the military rabbi does not make the phone call on Shabbat, the soldiers will not be transgressing any prohibition in obeying their commander: They are permitted to obey his erroneous order, and their status will be identical to that of those who were ordered to violate Shabbat for the sake of *pikuach nefesh*, even though it subsequently became clear that there was no danger. Nevertheless, it is the responsibility of the rabbi to violate the minor prohibition of making a phone call in order to spare them a more extensive desecration of Shabbat.

Rabbi Zilberstein added in writing:

If the rabbi surmises that it is highly probable there has been an error in judgment here, not arising from negligence regarding *halakha*, and he further surmises that if he calls the commander in an unconventional manner, he will accept his words and refrain from desecrating the Shabbat, he should do so and call him in an unconventional manner, in order to save him from sin. (Rabbi Yitzchak Zilberstein, in the letter cited above)

I too have been called upon on various occasions to speak on the telephone on Shabbat in order to prevent unnecessary desecration of Shabbat. Whenever I have been called upon to do so, I have been careful to dial or answer the phone in a manner that involves a *shinnui*, and in such a situation, where we are dealing with a *shevut de-shevut* (an action prohibited only by Rabbinic law for two reasons), regarding which we are lenient in a situation of financial loss, of a mitzva, or of illness (*Shulchan Arukh Orach Chaim* 307:5), I am indeed convinced that it is permissible to do so and to violate a minor prohibition in order to prevent a widespread desecration of Shabbat.

(Translated by David Strauss; edited By Sarah Rudolph)

1. For further arguments for the cancellation of the call on the grounds of *pikuach nefesh*, see *Ha-Tzava ka-Halakha* ibid., and *Responsa Kishrei Milchama* (part 1, no. 42), regarding the cancellation of the dispatch of a helicopter called to evacuate those who were wounded on Shabbat. This issue has also been summarized in *Torat ha-Machaneh* (chap. 36, responsum no. 4). [↑](#footnote-ref-1)
2. Thus, for example, the *Shemirat Shabbat ke-Hilkhetah* (32, 15) ruled that when the electrical main in an apartment must be turned on for the sake of a dangerously ill person, one should first make sure that all unnecessary lights are turned off, in order to minimize the extent of the prohibition. It emerges from this ruling that even if flipping the switches entails handling a *muktzeh* object, this is permitted to the person himself, who thus transgresses the minor prohibition of *muktzeh* in order to save himself from the more serious transgression of increased magnitudes of a Torah prohibition. [↑](#footnote-ref-2)
3. Of course, a military rabbi must also be available for the handling of corpses, God forbid, in those situations where this is permitted on Shabbat, as we have discussed in the past (*shiurim* nos. 38, 39, and 40). Moreover, sometimes consultation with the unit's rabbi contributes to settling the minds of the commanders, and enables them to inculcate the orders and directives among their subordinates; this, too, is a clear-cut operational task. [↑](#footnote-ref-3)
4. In the book *Ha-Tzava ka-Halakha* (chap. 32, pars. 6-8), the author is inclined to prohibit a military rabbi from using the telephone on Shabbat in order to prevent desecration of Shabbat in his unit. Nevertheless, he too concedes that a telephone call without lights is permitted for this purpose, and in a footnote there he cites the opinion of Rabbi Sh. Z. Auerbach, that in such a case there is no concern of a Torah prohibition.

As explained on several occasions, the halakhic practice (in the IDF and elsewhere) is that the use of electricity on Shabbat for medical and security purposes is considered a Rabbinic prohibition, and not a Torah prohibition. Accordingly, it would seem that one can be lenient about using either a landline or a cell phone, even according to the author of *Ha-Tzava ka-Halakha.* [↑](#footnote-ref-4)