

## Maaseh Shabbos

Rabbi Gershon Schaffel

Chazal<sup>1</sup> discuss the consequences of one who cooks on Shabbos – maaseh Shabbos. The Tannaim who debate this matter differentiate between one who cooked intentionally (b'maizid) and who cooked inadvertently (b'shogeg). Another distinction is made between the person who transgressed the prohibition and others. Gaonim and Rishonim debate which opinion to apply halachah l'maaseh. Although Chazal present this halachah in the context of cooking, it applies to any melachah that is performed on Shabbos<sup>2</sup>.

Shulchan Aruch<sup>3</sup> rules that one who cooks intentionally may never benefit from his melachah but others may benefit upon the conclusion of Shabbos. This is a Rabbinic penalty to prevent one from benefitting from melachah that was done on Shabbos. Mishnah Berurah<sup>4</sup> references the Magen Avrohom who rules that even the pot that was used to cook on Shabbos becomes assur and must be kashered before its next use. If the cooking was done inadvertently, it is permitted for everyone, even the one who did the cooking, immediately after Shabbos. On Shabbos, however, no one is permitted to benefit from the cooking.

### RABBINICALLY PROHIBITED MELACHOS

Biur Halachah<sup>5</sup> presents a debate between the Pri Megadim and the Gra whether these rules apply to Rabbinically prohibited activities. Pri Megadim maintains that the consequence for maaseh Shabbos applies regardless of whether the violation was d'oraisa or d'rabanana. Even one who inadvertently did something that is Rabbinically prohibited, it is prohibited to benefit from that activity until after Shabbos. And certainly, if the activity is Biblically prohibited one may not benefit from the melachah on Shabbos.

The Gra, on the other hand, disagrees and maintains that when the activity done inadvertently is only Rabbinically prohibited, it is permitted for benefit on Shabbos, even for the one who violated the Rabbinic prohibition. Mishnah Berurah<sup>6</sup> follows Gra's position and permits benefit from a melachah that is Rabbinically prohibited and was performed inadvertently.

It is essential to note that Poskim are more stringent when it

comes to the Rabbinic prohibitions of she'hiyah and chazarah – leaving food on the fire as Shabbos begins or returning food to a fire on Shabbos. If the food was inadvertently left on an open flame or if one forgot the halachah<sup>7</sup>, if the food was minimally edible it is permitted but if the food was not even minimally edible, one may not eat that food on Shabbos<sup>8</sup>. The Rema presents the same stringency with regards to chazarah. The reason for stringency in these cases is the concern that people will violate these Rabbinic prohibitions intentionally and then claim that it was done inadvertently<sup>9</sup>.

### DEBATE WHETHER AN ACTIVITY IS PROHIBITED

If there is a debate whether an activity is prohibited or not, one need not prohibit benefitting from the melachah. The reason is that the prohibition against benefit is only Rabbinic, and we adopt a lenient position when it comes to a safek d'rabanana – uncertainty regarding a Rabbinic prohibition<sup>10</sup>.

Rav Moshe Feinstein<sup>11</sup> addresses whether one who does not open cans on Shabbos may use the contents of a can that was opened by someone who maintains that it is permitted and opened the can for his own use. Although he initially expresses uncertainty about the matter, his conclusion is that it is permitted since for the person who performed the melachah it is permitted. Rav Shlomo Zalman Auerbach rules<sup>12</sup> that it is permitted to benefit from a metal that was opened on Shabbos. His reasoning is that the contents of the bottle were accessible by poking a hole in the cap, therefore, pouring out the contents to drink, it is not considered benefitting from the melachah that was performed.

### MELACHAH PERFORMED BY A JEW VS. MELACHAH PERFORMED BY A GENTILE

Mishnah Berurah<sup>13</sup> notes an interesting contrast between the restriction against benefitting from a melachah performed by a Jew and a melachah performed by a gentile. When a gentile performs a melachah on Shabbos one may not benefit even after Shabbos until b'kdei she'yaasu – the amount of time it takes to perform the melachah after Shabbos. For example, if a gentile washed a Jew's clothing on Shabbos, the Jew may not wear that garment immediately after Shabbos. He must wait after Shabbos the amount of time it would take to wash and dry the garment before he is permitted to wear it.

In contrast, when a Jew performed a melachah on Shabbos, even intentionally, it is permitted for others immediately after Shabbos and it is unnecessary to wait b'kdei she'yaasu. It seems almost counterintuitive that we are more lenient when a melachah was performed by a Jew than when performed by a gentile.

Mishnah Berurah offers two answers to explain why we adopt a more lenient approach when the melachah was performed

by a Jew. One reason is that people have a lax attitude towards the prohibition of amirah l'akum – instructing a gentile to perform melachah on Shabbos. Therefore, if it was permitted to benefit from the melachah performed by the gentile immediately after Shabbos, one could end up instructing a gentile explicitly to perform that melachah so that it would be ready immediately after Shabbos. In contrast, when melachah was performed by a Jew, there is no concern that if it is permitted to benefit from the melachah immediately after Shabbos, one will end up asking a Jew in the future to perform a melachah since everyone knows that a Jew may not perform melachah on Shabbos. Secondly, it is always possible to find a gentile who is willing to perform a melachah on Shabbos but, if one asks a Jew to perform a melachah, he would obviously refuse and thus there is no basis to prohibit benefit from the melachah once Shabbos is over.

## MUMAR

The Pri Megadim<sup>14</sup> wonders whether Shulchan Aruch's ruling applies to a mumar, someone who intentionally violates Shabbos. On the one hand, the reasons why we are lenient when the melachah was performed by a Jew do not apply when the Jew has no hesitation to violate Shabbos. On the other hand, the Jew would not ask, even a mumar to perform a melachah for him, so perhaps the concerns to be stringent are not applicable. This question is relevant in Eretz Yisroel. If a bus driver drove his bus on Shabbos so that he could begin his route immediately after Shabbos, is it permitted to ride on that bus or is it necessary to wait b'kdei she'yaasu?

Many Poskim<sup>15</sup> maintain that the obligation to wait b'kdei she'yaasu applies to those who are not Shabbos observant and thus it is prohibited to ride on a bus until b'kdei she'yaasu transpires.

Rav Shlomo Zalman Auerbach<sup>16</sup> writes that even if we were to adopt the view that a mechalel Shabbos is not a mumar, nevertheless, one should be stringent and wait to ride on the bus until after b'kdei she'yaasu since the melachah is done publicly and degrades the sanctity of Shabbos. However, in a pressing circumstance, one can be lenient and ride the bus immediately after Shabbos. Rav Yosef Shalom Elyashiv<sup>17</sup> also maintains that in a pressing circumstance one could be lenient in accordance with Rabbeinu Tam that there is no concern regarding a mumar that it will lead one to think that it is permitted for one to ask for the melachah to be done outright.

## INADVERTENTLY TRANSPORTING AN OBJECT

The Chaye Adam<sup>18</sup> contends that the restriction against benefitting from a melachah performed by a Jew inadvertently on Shabbos is limited to melachos that physically alter the object. For example, when one cooks raw meat. The meat is transformed from something raw to something edible. However, when one transports an item from one domain to another, hotza'ah, the object does not physically change, it is merely moved from one location to another. Since following

this melachah nothing about the object changed, if the melachah was done inadvertently, it is permitted to benefit from the melachah even on Shabbos. If one transported an object intentionally, however, it is prohibited to benefit from that melachah even by others, until after Shabbos.

## BENEFITTING FROM A KEY TRANSPORTED VIA A PUBLIC DOMAIN

Rav Moshe Feinstein<sup>19</sup> was asked whether it is permitted to enter a shul if someone intentionally carried the keys to shul. Rav Moshe demonstrated from different Rishonim that it is prohibited to enter the shul even if the key was transported by a child.

Rav Shlomo Zalman Auerbach<sup>20</sup> initially ruled that one who transported his keys on Shabbos, through the public domain to unlock his house and without the keys would not have been able to enter the house, is prohibited from entering the house and using those items. However, in Shemiras Shabbos K'Hilchasa<sup>21</sup> he is quoted as ruling that it is permitted. He, therefore, explained that he thinks his lenient position is more logical. Poskim restrict benefitting from the object that was used in violation of Shabbos, e.g., the food that was cooked or the fire that was kindled. In the case of the key that application prohibits use of the key that was transported to open a door. However, entering the house, once the door was opened, is permitted since entering the house does not involve benefit from the object with which the melachah was performed. Since melachah was not necessary to enter the house, it is permitted.

1 See Tur O.C. 318 with Bais Yosef for a thorough presentation of the sugyos and the differing opinions.

2 See Rema quoting the Tur. The Baal HaTerumos maintains that R' Meir's position that food cooked inadvertently on Shabbos is permitted is limited to cooking since the raw food could be chewed. If, however, one slaughtered or performed some other melachah, such as kindling a light, where before the melachah was performed it was not possible to benefit from the object, it is prohibited on that Shabbos even though the melachah was done inadvertently.

3 O.C. 318:1. See Gra 318:1 who maintains that halachah follows R' Meir's lenient opinion that is the melachah was done inadvertently, it is permitted on Shabbos. There are times that Poskim take this into consideration, for example, see Shaar HaTziyun 339:24 to explain why it is permitted to eat the remaining food after someone inadvertently separated terumos and maasros on Shabbos.

4 318:4.

5 O.C. 318:1 d.h. Hamevashel b'Shabbos.

6 318:3.

7 M.B. 253:29.

8 O.C. 253:1, see M.B. 253:32 whether one must wait after Shabbos b'kdei she'yaasu.

9 See M.B. 254:19 based on gemara Shabbos (38a). See also M.B. 253:35.

10 M.B. 318:5.

11 Igros Moshe O.C. 4:119:5.

12 Me'or HaShabbos vol. 1 letter 18:2 and see below regarding the disagreement between Rav Moshe and Rav Shlomo Zalman concerning entering a building after keys were carried through a public domain in violation of Shabbos.

13 318:5.

14 E.A. 325:22 and MZ 276:5.

15 Shevet HaLevi 3:54:2 and Chut Shani Hilchos Shabbos 2 ch. 22 paragraph 1, pg. 45. See Minchas Yitzchok (9:39) who also prohibits riding on the bus until after b'kdei she'yaasu but in pressing circumstances is lenient based on the Maharsham (2:247) who is lenient according to the amount of time it takes to perform the melachah, which in this case is turning on the motor. It is not necessary to wait the amount of time it takes to benefit from that melachah.

16 Minchas Shlomo 2:16:4.

17 Kovetz Teshuvos 2:21.

18 Chaye Adam Hil. Shabbos Klal 9:11.

19 Igros Moshe O.C. 2:77.

20 Minchas Shlomo Tinyana 22 where he discusses his initial psak and subsequent retraction of that psak to a lenient position.

21 Shemiras Shabbos K'Hilchasa 18:[244].



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