YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #53: Notifying a Rescue Mission of Cancellation on Shabbat (1): The Fundamental Principles**

**Introduction – The Halakhic Question**

After three *shiurim* analyzing the issue of returning from a rescue operation on Shabbat and the principle of "you will cause them to stumble in the future," this *shiur* and the next will deal with a related halakhic question that has been debated by contemporary *poskim*, and here too, the decision is based to a large extent on concern about the ramifications for future actions.

It often happens that after a military force is sent out on a mission, while the force is on the way, the mission is deemed impracticable; it must be cancelled, and the force must return to its normal routine ("*chazlash*" [*chazara le-shigra*] in military jargon). In the same vein, not infrequently a doctor or ambulance is summoned to treat a patient in critical danger, but it becomes clear on the way that there is no longer any medical need for the team to arrive (because the patient recovered, or, alas, died).

The question that arises in such cases is whether it is permissible on Shabbat to telephone the rescuers to inform them that their trip is unnecessary. On the one hand, such a telephone call is essentially an "administrative" call, whose sole purpose is to cancel the summons; it is not lifesaving or essential for the purpose of *pikuach nefesh*. On the other hand, the phone call would save unnecessary travel and broad desecration of Shabbat by those who had gone to rescue but were no longer needed.

The contemporary *poskim* are divided in their halakhic rulings on this question, and the next two *shiurim* will be devoted to a discussion of the various approaches.

**"Sin, in order that your fellow may gain thereby"**

The Gemara in *Shabbat* (4a) teaches us an important principle: that we do not say to a person, "Sin, in order that your fellow may gain thereby." That is to say, we do not ask a person to commit a sin in order to prevent another person from committing another sin. On the face of it, this is precisely the case before us: we should not tell one person to desecrate Shabbat by making a phone call in order to "benefit" another person who has gone out to rescue, i.e., to prevent him from needlessly violating Shabbat. It is true that a telephone call only involves transgressing a Rabbinic prohibition, while driving may involve violation of many Torah prohibitions (igniting a fire, going outside the *techum* ["Shabbat limit"], and others). But, as stated, the Gemara asserts as a simple matter that we do not say to a person, "Sin, in order that your fellow may gain thereby."

However, the *Rishonim* all raised objections from various passages throughout the Talmud that indicate it is sometimes preferable for a person to transgress a lesser prohibition in order to save his fellow from a greater one. Thus, for example, although there is a Rabbinic prohibition against separating *terumot* and *ma'asrot* from produce that is not in close proximity with that for which it is given, the Gemara in *Eiruvin* (32b, and elsewhere) states that it is permissible to do so in certain circumstances so that an ignorant person will not come to eat untithed produce, which is a more serious transgression.

In the same vein, the Sages (Mishna *Gittin* 4:5) ruled that in the case of a person who falls into the category of "half-slave, half-free," the master is compelled to free him so that he may fulfill the mitzva of procreation. Although freeing a non-Jewish slave involves a prohibition, it is preferable to transgress this lesser prohibition in order to avoid the more serious issue of neglecting the mitzva of procreation.

The *Rishonim* went on at great length to reconcile the apparent contradiction between the passage in *Shabbat*, which states that we do not say to a person, "Sin, in order that your fellow may gain thereby," and the passages from which it appears that one should transgress a lesser prohibition in order to save another person from a greater one. We cannot enter here into a full discussion of the matter, but I will mention a few of the major explanations offered, the first three of which are stated in the *Tosafot* on *Shabbat* (4a, s.v. *ve-khi*).

a. We must differentiate between different *mitzvot*: As a general rule, it is forbidden for a person to sin in order to save someone from a more serious sin, but when he would be granting his fellow a particularly important mitzva (such as the mitzva of procreation), he is permitted to do so.

b. As a matter of principle, it is forbidden for a person to sin in order to save someone from a more serious sin. However, in a case where he was the one who caused his fellow the issue in the first place, and now his goal is to rectify the situation and save his fellow from misadventure, he is permitted to commit a lesser sin for that purpose.

c. Despite the prohibition in principle against sinning in order to save another person from a more serious transgression, it is permitted to sin for a person who was led to the transgression under duress and through no fault of his own. In the case under discussion in tractate *Shabbat*, the person deliberately committed a sin by putting bread into an oven on Shabbat. If the bread is baked, he will have transgressed the Torah prohibition of cooking on Shabbat. His friend has the option of saving him from sin by removing the bread from the oven before it is baked; however, the Sages forbade detaching bread from an oven on Shabbat, and we do not tell a person to transgress the words of the Sages in order to save his fellow – *who has deliberately sinned* – from a more serious desecration of Shabbat. This is the subject of the discussion in tractate *Shabbat*, but in situations in which one may come to transgress a prohibition unwillingly and not due to his own fault, we do indeed tell a person to transgress a lesser prohibition in order to save his fellow from a greater one.

d. Another solution, offered by the Ritva (ad loc., s.v. *ve-khi*, at the end) is that while we do not command or tell a person to commit a sin in order to save his fellow, if he himself wishes to do so, it is permitted.[[1]](#footnote-1)

The *Acharonim* discuss at length how to rule regarding this dispute. For instance, the Rashba ruled in his responsa (vol. 7, no. 267) that if a person heard that his daughter had been kidnapped and would be forced to convert, he is not permitted to desecrate Shabbat in order to save her, for we do not say to a person, "Sin, in order that your fellow may gain thereby." The *Beit Yosef* cites the Rashba's responsum but notes that according to the *Tosafot's* explanation of the passage in *Shabbat,* one should in fact permit desecration of Shabbat in this case, contrary to the opinion of the Rashba.

Now, according to the answer of “a great mitzva” [in comparison to other *mitzvot*, as in (a) above] – it is clear that there is no greater mitzva than to save her from being frightened into apostasy. And according to the answer that distinguishes between a case where he sinned and where he did not sin, here too – she did not sin. Therefore, to desecrate Shabbat for her… is permitted, and it is also a mitzva; if he does not wish to do so, we compel him. (*Beit Yosef*, *Orach Chaim* 306).

Indeed, the *Shulchan Arukh* (306:14.) rules that one should violate Shabbat, even by transgressing Torah prohibitions, in order to save his daughter from apostasy. The Gra in his commentary (ad loc., s.v., *mi she-shalchu*) emphasizes that the allowance applies only when two conditions are met – that we are dealing with a great mitzva(saving a person from apostasy), and where the daughter being saved from that great sin did not herself sin at all.

The Rema (*Orach Chaim* 328:10) cites the Rashba's responsum, that one may *not* desecrate Shabbat in order to save another person from sinning because we do not tell a person to sin in order that his fellow should gain thereby. The *Taz* (*Orach Chaim* 306, no. 5) and the Gra (ibid.) argue that there is no dispute: the *Shulchan Arukh* speaks of one who is liable to become a lifelong apostate, which is a most heinous transgression, and it is permitted to desecrate Shabbat in order to prevent it; the Rema, on the other hand, is talking about saving a person from a specific sin, in which case we do not say a person should sin in order that his fellow will gain thereby.[[2]](#footnote-2)

According to this answer, in our case of those who go out to rescue and are required to desecrate Shabbat in a specific manner, we should not tell a person to sin in order to save them from transgression. Thus, there is no allowance to desecrate Shabbat in order to inform them of the cancellation of the mission.

However, the *Elya Rabba* rules:

And all this is in a case of walking three *parsa'ot*,which involves desecration of Shabbat with the violation of a Torah prohibition. But as for desecrating Shabbat with the violation of a Rabbinic prohibition, for all transgressions, when there was no deliberate sinning on the part of the other person – we desecrate Shabbat. Even if the other person would be sinning because of circumstances beyond his control, in which case he is exempt, nevertheless, it is a benefit to him when he does not transgress. (*Elya Rabba* 306, no. 33; cited by the *Peri Megadim* ad loc.)

That is to say, when one is called to transgress a Rabbinic prohibition in order to save his fellow, he may rely on the opinion of the *Tosafot* that as long as there was no deliberate sinning on the part of the other person, we say to a person that he should sin with a Rabbinic prohibition in order to save his fellow from a more serious transgression, even if that more serious transgression is not apostasy.

From the words of the *Elya Rabba*, it would seem that it is indeed proper to make a phone call, thus violating a Rabbinic prohibition, in order to prevent those who went on the mission from desecrating Shabbat with the violation of Torah prohibitions.

**Is going out to rescue a desecration of Shabbat?**

Many contemporary *poskim* have ruled that the issue of "sin, in order that your fellow should gain thereby" is not at all relevant to our question. In the case of whether to say "sin, in order that your fellow should gain thereby," a person is committing a transgression, and the question arises as to when it is permissible to violate a lesser prohibition in order to save him from it. But in our case, the rescuers are not transgressing! On the contrary, they are fulfilling a great mitzva – the mitzva of saving lives: "That he may live by them – and not die by them" (*Yoma* 85b). Even if in certain situations we tell a person to sin in order that his fellow should gain thereby, we certainly should not tell him to commit a minor transgression to his fellow's *detriment*, preventing him from fulfilling the mitzva of saving a life!

Thus, for example, rules the *Shemirat Shabbat ke-Hilkhetah*:

If an ambulance or doctor was summoned for a dangerously ill person, and it turns out that they are no longer needed, one should not desecrate Shabbat by informing them of the cancellation by way of a Jew. As for the apparently unnecessary driving of the ambulance driver or doctor – they will be well rewarded by God, for they are driving permissibly. (*Shemirat Shabbat ke-Hilkhetah* 40:85)

This argument, which, as stated, is shared by many contemporary *poskim*, seems surprising. It is true that those who go out to rescue are intent on saving lives, but they are unaware of the fact that the information they were given is erroneous, and that in fact their actions are unnecessary. Thus, even if their intentions are laudable, their actions are not, and there seems to indeed be an issue of Shabbat desecration involved.

Nevertheless, the *Shemirat Shabbat ke-Hilkhetah* has an explicit source for this *halakha*, as we will see below.

**"They will be well rewarded by God"**

We learn in the Gemara in *Menachot*:

Rabba said: If one fig was prescribed for a sick person and ten people ran and brought back ten figs at once, they are all exempt. [This is true] even if they brought them one after the other, and even if the sick person already recovered with the first one. (*Menachot* 64a)

The Gemara exempts (from a sin-offering) one who was engaged in saving a life, even if it subsequently became clear that his actions were superfluous, as the patient did not require ten figs. The *Shulchan Arukh* codified this ruling, and added a line:

If the physicians assessed that a sick person needed one fig, and ten people ran, each bringing him a fig, they are all exempt, and they will be well rewarded by God, even if the sick person recovered with the first one. (*Shulchan Arukh*, *Orach Chaim* 328:15)

Prof. Avraham S. Avraham (author of *Nishmat Avraham*, which addresses matters of *halakha* and medicine) asked Rabbi Eliezer Waldenberg what the *Shulchan Arukh* was trying to teach us by adding that they will be well rewarded by God. Rabbi Waldenberg answered as follows:

But the *Beit Yosef* added this based on his own understanding… Since they acted with permission, and for the sake of a mitzva, they are exempt and have no sin. On the contrary, they will be well rewarded by God for their efforts. (*Responsa Tzitz Eliezer*, vol. 20, no. 18)

Thus, the *Shulchan Arukh* teaches us that someone who tries to save another person's life, even if it turns out that his actions were superfluous, is not considered a sinner at all, but is in fact well rewarded by God.[[3]](#footnote-3)

Many *poskim* concluded from this that there is no point in "saving" a person who went to save lives from unnecessary Shabbat desecration, for even if it turns out that his actions were not needed, he will still be rewarded by God. Thus, for example, we find in *Responsa Shevet ha-Levi*:

As for the question about an emergency medical organization that dispatched someone to the home of a sick person on Shabbat, and they immediately telephoned from the sick person's home that his condition had improved and he did not need any help, and it would be possible for the center to inform the rescuer that he should not go at all, and if he has already started to travel, that he should not continue to desecrate Shabbat for nothing. And the question is whether it is permissible for one to desecrate Shabbat with a phone call, on the assumption that it is forbidden only by way of a Rabbinic prohibition, in order to save his fellow from driving a car, which involves a Torah prohibition. And the uncertainty is based on whether we say that one should violate a lesser prohibition in order to save his fellow from a more serious prohibition, the matter being an old issue in *Shabbat* 4[a] and in several places in the Talmud and the *poskim*, and I have discussed the matter at length in several responsa.

It is not obvious that there is only a Rabbinic prohibition here [in making a telephone call], as it is possible that it involves a Torah prohibition.[[4]](#footnote-4) But even without that, it is simple, as you too have written, that one who drives unnecessarily does not commit any offense at all; see the Gemara in *Menachot* 64, and *Orach Chaim* 328:15, that even if the sick person recovered with the first fig, they are all exempt, and all the more so in our case… It is obvious that they should not desecrate Shabbat [by making a phone call] on his behalf. (*Responsa Shevet ha-Levi*, vol. 8, no. 193)

In light of the *Shulchan Arukh's* ruling, Rabbi Wosner clarifies that those who go out to rescue are not desecrating Shabbat, and therefore there is no reason to permit a person to speak on the telephone on Shabbat in order to "rescue" them from an action that does not involve any desecration of Shabbat at all.

This ruling of the *Shemirat Shabbat ke-Hilkhetah* and the *Shevet ha-Levi* is also that of Rabbi Sh. Z. Auerbach (as is brought in his name in *Ha-Tzava ke-Hilkhetah* , 32, 1, with note 3; and ibid. 4, with note 10) and of Rabbi Y. Sh. Elyashiv (as is brought in his name in *Torat ha-Yoledet*, chap. 21).[[5]](#footnote-5)

**“Permitted” vs. “set aside”**

In contrast to all the above-mentioned *poskim*, Rabbi Asher Weiss writes:

I am not worthy to disagree with the luminaries of the generation, but it is Torah, and I must learn… And so regarding this matter, that all the rescuers will be rewarded for their engagement in the saving of lives, even though it involves violation of Shabbat. But as for saving them from sin, there is no difference between them and all who sin unintentionally or through circumstances beyond their control… And similarly in our case, even if one errs inadvertently or through circumstances beyond his control, we say to a person: Sin, in order that your fellow will gain thereby. (*Responsa Minchat Asher*, vol. 1, no. 22)[[6]](#footnote-6)

This is also the position of Rabbi Chaim Pinchas Scheinberg, a leading rabbi in Bnei Brak, who puts forward two arguments to support it. First, he cites *Responsa Rabbi Akiva Eiger* (no. 8) as saying that even one who commits a transgression unawares, who is considered a *mit'asek* and is exempt from a sin-offering – still, a transgression has been committed by him, and it is appropriate to prevent him from it. Therefore, even though the rescuers are seen as *anusim* (acting under circumstances beyond their control), and their only intention is to do good and save lives, nevertheless, a transgression will have been performed by them, and it is proper to prevent this.

Second, Rabbi Scheinberg indicates that the entire matter hinges on the fundamental question of *pikuach nefesh*: whether the prohibitions of Shabbat are permitted (*hutra*) in a situation of *pikuach nefesh*, or only set aside (*dechuya*):

It would seem to me that one is obligated to inform… see Rema, *Orach Chaim* 328:12, that ideally, it is preferable to change [the way one performs the prohibited act] whenever possible, and the *Mishna Berura* explains: "For whenever it can be done in a permitted manner, we do not leave the permitted manner and do it in a forbidden manner." (*Torat ha-Yoledet*, chap. 21, in footnote)

Early in this series (*shiur* 11), we dealt at length with the dispute among the *Rishonim* and *poskim* regarding performing a prohibited action in an altered manner in a situation of *pikuach nefesh*. We noted then that this question depends on whether the prohibited labor is *permitted* for the sake of *pikuach nefesh* or only *set aside*. Rabbi Scheinberg understands the Rema's ruling, that one should perform the prohibited labor in an altered manner whenever possible, as teaching that a prohibited labor performed in a situation of *pikuach nefesh* is still considered a desecration of Shabbat, which should be minimized whenever possible. Consequently, those who go out to rescue are also considered Shabbat desecrators (albeit with permission!), and therefore, when it is possible to prevent them from transgression by informing them that their actions are not necessary – that is what should be done.

From the words of Rabbi Pinchas Scheinberg, it may be concluded that had we taken the position that Shabbat prohibitions are *permitted* in a situation of *pikuach nefesh*, there would have been much greater room to refrain from informing the rescuers of the cancellation of their mission, and to accept the ruling of Rabbi Sh. Z. Auerbach, Rabbi Y. Sh. Elyashiv, and the *Shevet ha-Levi.* We have here a new practical ramification, in addition to all those we have already dealt with in the past, to the question of whether in a case of *pikuach nefesh* the Shabbat prohibitions are "permitted" or "set aside."

(Translated by David Strauss; edited by Sarah Rudolph)

1. This explanation is in keeping with the idea that since all Jews are responsible for one another, each person bears responsibility for the *mitzvot* and transgressions of his fellow. See in this regard the Ritva (*Rosh Ha-shana* 29a, s.v. *tani*) on the matter of "*yatza, motzi*" regarding blessings, and *Responsa Ketav Sofer* (*Orach Chaim*, no. 62), who connected this issue to that of "sin, in order that your fellow may gain thereby." [↑](#footnote-ref-1)
2. The *Peri Megadim* (*Mishbetzot Zahav*, ibid.) mentions other ways of explaining the Rema's ruling. For a summary, see *Responsa Minchat Asher* (part I, 22, note 4). [↑](#footnote-ref-2)
3. It is obvious that one who went out for the sake of *pikuach nefesh* and succeeded in saving a life is not considered as having desecrated Shabbat at all, and will certainly be well rewarded by God. The *Or Zaru'a* (part 2, *Hilkhot Erev Shabbat*, no. 38) mentions a custom for those engaged in saving lives to fast for having been forced to desecrate Shabbat and firmly rejects the practice. He explains that if those engaged in saving lives come to feel that they are desecrating Shabbat, they will stumble in the future and refrain from such activity! Therefore, the *Or Zaru'a* rules decisively: "It seems to me that the *halakha* in practice is that even if they wish to fast for this, we should protest that they not fast, so that they not refrain the next time from extinguishing the fire." These words were codified as *halakha* by the *Acharonim*; see, for example, *Mishna Berura*, 334, no. 178. [↑](#footnote-ref-3)
4. Rabbi Wosner takes into account the position of the *Chazon Ish*, that using electricity on Shabbat, including making a telephone call, is prohibited by Torah law and not just by Rabbinic decree. [↑](#footnote-ref-4)
5. See also about this in *Orchot Shabbat* (vol. III, in the articles at the end of the book, no. 6). [↑](#footnote-ref-5)
6. Rabbi Asher Weiss repeats this in no. 23, ibid., and again in *Responsa Minchat Asher*, part II, no. 43. [↑](#footnote-ref-6)