Principles of the Prohibition of Benefitting From Melacha Performed by a Non-Jew

The Definition of “on the Jew’s Behalf”

Shiur number 2

In the previous shiur we learned about the prohibition of instructing a non-Jew to do melacha on Shabbat. In this shiur we will learn about the prohibition of benefitting from the melacha performed by a non-Jew.

Chazal forbade benefitting from melacha done by a non-Jew on a Jew’s behalf, or for his benefit, on Shabbat. There are two issues in this prohibition that must be better defined: a) What is considered performed “on the Jew’s behalf?” b) What is considered “benefitting” from the melacha? In this shiur we will deal with the former, and in the next shiur we will deal with the latter.

Regarding defining performed on the Jew’s behalf, we will raise the following questions:

1. Does familiarity, or physical proximity, affect the definition of who the melacha is being done for?
2. Are there any limits to benefitting from melacha done by a non-Jew on his own (and not on the Jew’s) behalf?
3. How do we determine on whose behalf the melacha was done when it was done for many people?
4. Are other Jews prohibited from benefitting from a melacha which was done on behalf of a particular Jew?

The Gezera and the reason it was established

תלמוד בבלי מסכת שבת דף קכב עמוד א
משנה. נכרי שהדליק את הנר - משמשו זר לזר, אם בשביל ישראל - אסור. מילא מים להשקות בהמתו - משקף עבור ישראל, אם במשלך ישראלי - אסר. עשו הכיר בכשר בדם - ורד אתרי ישראלי, אם במשלך ישראלי - אסר. עשו בכרי כיו出し, וירדו בו רבן גמליאל וזקנים. We see from the Mishna that if the non-Jew did melacha on Shabbat for himself, a Jew is allowed to benefit from it. However, if he did the melacha for a Jew, it is forbidden to benefit from it. The Mishna discusses three different examples of melachot: lighting a candle, filling water from a well, and building a ramp.

The Gemara explains why the Mishna expounded all three cases:

אמרי. חכם, זרי.EditValue, משמשו זר לזר, אם בשביל ישראל - אסר. מילא מים להשקת בהמתו - משקף עבור ישראל, אם במשלך ישראלי - אסר. עשו הכיר בכשר בדם, וירדו בו רבן גמליאל וזקנים. The light from a candle may be used by many simultaneously without affecting another’s use, as opposed to water, every drop of which may only be drawn for the use of one being. The story about Rabban Gamliel and the ramp will be analyzed later on.

In Mesechet Beitza, a parallel discussion is brought, regarding the prohibition of benefitting from melacha done for a Jew on Yom Tov. There, Rashi explains:
According to Rashi, Chazal created this prohibition in order to prevent benefitting from melacha performed on Yom Tov.

Tosafot questions this reasoning:

Ri questions Rabbi's reasoning, which states that Chazal wanted Jews to gain no benefit from melacha performed on Shabbat. By this reasoning, it should follow that benefitting from melacha performed by a non-Jew should be prohibited as well! And yet the Tanaim are not in agreement regarding that prohibition. Tosafot therefore explains the reason behind the prohibition differently:

Tosafot explains that if benefitting from melacha performed by a non-Jew were permitted, one would be tempted to expressly ask the non-Jew to perform melacha. According to Tosafot, the prohibition was instituted to prevent violating the rabbinic prohibition of instructing a non-Jew to do melacha on Shabbat.

The Rambam explains this prohibition in a similar vein:

The Rambam explains that the purpose of the gezera was to take away any motivation to instruct a non-Jew to do melacha on Shabbat.

How would Rashi deal with Tosafot’s question? The Rashba offers an explanation:

The Rashba writes that, according to Rashi, Chazal forbade benefitting from melacha done by non-Jews, since people treat it much more leniently than melacha done by Jews, and they therefore might come to expressly ask the non-Jew to do melacha. That seems to essentially be the same reason given by Tosafot and the Rambam! The Beur Halacha discusses whether to follow the opinion of Rashi or Tosafot, and in that context, he brings this point up:

בייאו ההלכה שמיטתקח

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The Makhloket is as follows: Chazal instituted a prohibition from benefiting from melacha performed by a non-Jew, since people might otherwise come to directly ask the non-Jew to do melacha, since people don’t think that asking a non-Jew to do melacha is a serious matter. This is true according to all opinions.

The Makhloket is not about the reason behind the prohibition, but rather how the reasoning may affect the finer details. According to Rashi, the definition of the prohibition is “to not benefit from melacha performed on Shabbat or Yom Tov”. According to Tosafot, the definition is based on the reason behind it “to avoid benefiting, which could lead to asking the non-Jew directly.”

(In the next pages, we will demonstrate the nafka minas between these definitions).

Back to analysis of the prohibition. The Rambam defined it as follows:

The Rambam is defining the prohibition. Let us analyze his wording carefully: "גוי שעשה מלאכה מעצמו - As was explained in the Mishna, the prohibition applies only if the melacha was done on the Jew’s behalf.

The Rambam is stressing that the prohibition against benefiting can apply even if there was no request made by the Jew.

We must properly define these last two points: what is considered being done on a Jew’s behalf; and what is considered benefiting. In this shiur, we will study the first point, and the second point will be studied in the next shiur.

Rabban Gamliel’s story

The Mishnah states -

The non-Jew erected a ramp that allowed the travelers to disembark from the ship. Rabban Gamliel and the other present rabbis used the ramp, implying that use of the non-Jew's labor is halakhically legitimate. The Gemara quotes the following Berayta, which seems to indicate otherwise –

The last sentence in the Berayta says that if the Non-Jew is acquainted with the Jew, the Jew may not use the Non-Jew’s labor. Rabban Gamliel was the “Nassi”. Was he not familiar to the Non-Jew? The Gemara raises this question:

Literally “President”, but possibly with different meaning and connotation from the modern use 1
The Gemara quotes two Amoraim who resolved the supposed contradiction:

Abaye – Rabban Gamliel was not present when the ramp was being erected.

Rava – Even had Rabban Gamliel been present, use of the ramp was permissible, since many benefitted from the non-Jew’s labor.

This story and the Amoraic explanations were foundational in defining what labor was considered as done “on the Jew’s behalf”.

We will begin with Rava’s solution. Later on we will discuss whether Abaye’s solution was accepted halakhically before discussing his explanation.

Melacha that can benefit many as well as the individual

Rashi explained Rava’s statement as follows:

A large quantity of water was warmed all together, for the benefit of any customer. If the majority of customers were Jewish, the benefit is prohibited. But according to Rava’s qualification, there should be no prohibition, since the one act benefits many!

To answer this, Rava’s qualification was redefined. If one act benefits many, the benefit will be prohibited if the majority of beneficiaries are Jews.

Therefore – if the majority of beneficiaries are non-Jews, there is no prohibition of using the benefit of the labor, even if the non-Jew was aware of the Jew’s need (such as in Rabban Gamliel’s story!).

The Poskim accepted this rule.

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Melacha performed for the non-Jew and few others

Rava’s answer was in reference to Melacha performed for the public. When one performs Melacha that is intended for public use, he obviously isn’t concerned with his private benefit from that Melacha.

Could the same be said when the beneficiaries of the Melacha are the non-Jew himself and a very limited number of others?

Was the non-Jew’s intention that Shmuel not use the light at all? If the non-Jew was aware of Shmuel’s need, why would his use make Shmuel’s use permissible? The Rashba addresses this question.

The Rashba says that generally we assume that this melacha occurred in public, and therefore probably it was not done specifically for Shmuel’s use. The Rashba deduces that when a melacha is performed for the person performing it as well as others, his private interest will always be the dominant one. Therefore, if a non-Jew performs the melacha for himself and a Jew, the Jew may benefit from it, even if Rava and Abaye’s explanations.

The Rashba brings an everyday example. A servant’s work is primarily done for his employer. According to the first explanation, this would make the benefit of the servant’s work prohibited. According to the second explanation, there is no proof that prominence affects the Halakha.

Several Rishonim were lenient in different cases based on this principle.
The Maharil commends those who refrain from use of the drink that was brought without an *eruv*, but doesn't state that it is prohibited. It seems that those who are lenient can base their approach on the first explanation, but the Maharil commends those who are more stringent.

Not all accept the Rashba’s position. In his commentary on the Mishna, the Rambam explains why the Mishna gave so many examples. The Mishna brought the example of the candle, in addition to all the others, to make it clear that the *benefit* is prohibited even if the non-Jew performed the *melacha* for his own use, too. This is a stark contradiction to the Rashba’s position. Achronim showed that the Rambam hinted this position in the *Mishne Torah* as well – רמב"ם הלכות שבת פרק ו הלכה ב.

The Beur Halakha said that it is preferable to adhere to the Rambam’s stringency – ביאור הלכה סימן רעו סעיף ב ‘ד"ה אם...

But the Shemirat Shabbat Ke’Hilkhata accepts the Rashba’s position – שומרי שבת מחתרת מתודת תש"ע פסח יל כ"ט א אורח תב ב.

Applying the Rashba’s leniency – May one *benefit* from any *Melacha* a non-Jew performs if the non-Jew *benefits* from it, as well? The Aruch Ha’Shulchan differentiates between different situations – אורח השולחן אורח חיים סימן שכה סעיף כט

Aruch Ha’Shulchan rebukes those who have their servants boil a pot of water (samovar) for them on Shabbat, justifying this with the thought that the servant will make himself a cup of coffee, too. He says this is *chutzpa*, since they are well aware that the water was primarily heated for the Jewish employer. On the other hand, Aruch Ha’Shulchan is more lenient in this case – ...
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The Jew offers the non-Jew a drink, thus encouraging the non-Jew to turn the light on. The Aruch Ha'Shulchan does not comment negatively on this practice. We find that later Poskim used this method, as well -

So what are the parameters for lenience if one uses this methodology?

If the non-Jew is performing a melacha for himself, and he really is interested in his own benefit, his knowledge that he's being "used" doesn't change the halakhic status of the outcome of his melacha. Such is the case with the beer. The non-Jew is only concerned with his beer. His knowledge that the offer was based on ulterior motives does not invalidate the heter.

But if it is done primarily for the Jew – that is, the non-Jew is only partaking of the beer because he knows that is what the Jew wants – it is prohibited for the Jew to reap the benefits. The non-Jew's choice of also using it does not validate the use. The servant who is heating up water for his master, is heating water up for his master. His making himself a cup doesn't make the use permissible.

The presence factor

Was Abaye’s answer rejected?

Previously, we saw how Abaye and Rava halakhically justified Rabban Gamliel’s use of the ramp –

Abaye’s answer is part of the Torah, and needs to be studied and analyzed as such, regardless of whether it was accepted as halakha or not. But there is also importance in knowing whether his statement was accepted as halakha or not.

As a rule, in all makhloket between Abaye and Rava, Rava’s stance is accepted Le’Halakha, unless the Gemara or Rishonim explicitly state otherwise. In our case, Rava did not necessarily say that Abaye’s explanation was not Halakhic. He offered what seemed to him to be a simpler explanation. Many Rishonim therefore concluded that there is no reason to say that Abaye’s position was rejected. An example appears is the Rashba –

Rava’s opens his response by saying “Even if it was in his presence”. This implies that Rava accepts Abaye’s answer, but proposes an answer that is less restricted, an answer that may apply in more cases.

The Rambam mentioned the familiarity, not presence –
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The Maggid Mishne proposes two reasons for this -

1. The criterion of presence, Abaye’s answer, was obvious, the Rambam didn’t think such an obvious criterion needed to be presented explicitly.
2. Abaye’s answer was rejected, since Rava refuted it.

It is interesting to note that the Maggid Mishne assumes that the simpler possibility is that Abaye’s answer was obvious, and not that it was rejected once Rava proposed his answer.

The Shulchan Aruch only mentioned familiarity -

The Taz inferred that his position is that presence is not relevant –

And Aruch Ha’Shulchan posited that all agree that Abaye’s criterion is obvious -

To get a proper understanding of this, we need to analyze the criteria – designation, acquaintance, and presence.

A criterion mentioned in the Mishna – the Melacha was designated for the Jew’s use.

The Berayta mentions – Acquainted with.

Abaye mentions – in his presence.

What is the relationship between these criteria?

The Maggid Mishne suggests –
All of these criteria are intended to define when is a *melacha* performed for the Jew’s use. All three may be indicative of who the *melacha* was meant to benefit.

Familiarity sounds reasonable in this context, but is problematic. It isn’t reasonable to think that any act anyone does is meant to benefit every single acquaintance he has!

So, the Maggid Mishne defines – even if the non-Jew is acquainted with the Jew, it isn’t reasonable to assume that it was done for the Jew’s benefit unless it was also done in his presence.

The Magen Avraham similarly defined –

The Magen Avraham adds that if we know the *melacha* was done for the Jew’s benefit, all the criteria become irrelevant, and use would be prohibited.

*Aruch Ha’Sholchan* says that it is common practice for Jews to visit their non-Jewish acquaintances on Shabbat, and use the water they boiled for themselves, since it was not done in their presence.

The Beur Halakha starts off pointing out that once the Maggid Mishne and Magen Avraham’s positions are accepted, Abaye’s answer would not affect Halakha significantly anyway –

But their position seems to be at odds with the Gemara!

Rabbi Gamliel said to Rava, ‘Whoever performs a *melacha* for the benefit of many is permitted to use it. Was Abaye’s answer rejected?

The Rashba showed that Rava did not seem to reject his answer.
The Rambam did not mention it. The Maggid Mishne debated whether this was because that Abaye's answer was obvious, or because it was rejected. Aruch Ha'Shulchan showed that the Rambam mentioned Abaye's criterion in his commentary on the Mishna, therefore concluding that it was omitted from the Mishne Torah due to its being obvious, and was not rejected from Halakha. Does this mean that a Jew can use the outcome of a melacha that was performed in his absence, even if the non-Jew may have been aware of his need? The Magen Avraham forbids such use, and Aruch Ha'Shulchan justifies the common practice of visiting non-Jews and using the water they boiled on Shabbat, despite the probability that they were aware that the Jew might come and use the water, since it was boiled in their absence.

**Is Melacha that was performed for a certain Jew prohibited for use of others?**

The Gemara concludes that the prohibition applies only to the Jew for whom the melacha was done. Rashi questions this and proposes two possible resolutions:

1. The benefits aren’t forbidden on others specifically when the prohibition transgressed is within techumin (limits on how far one may travel on Shabbat), since it is only De’raraban. 2. The underlying reason that enjoying the outcome of melacha done for one’s benefit is forbidden on others was intended to prevent the others asking the non-Jew to perform the melacha for them, too. In the context of a non-Jew bringing an item from outside the techum, specifically, there is no concern that a Jew who he does not know will ask him to bring something, there is no reason to forbid the use of the item to anyone that he doesn’t know.

Rashi presents a contradiction between the two Gemaras – the Gemara in Beitza says that the benefits of a melacha performed for a specific Jew may be enjoyed by another. But the Mishna we started from seemed to imply that melacha performed for any Jew may not be used by any other!

Rashi proposes two resolutions: 1) the benefits aren’t forbidden on others specifically when the prohibition transgressed is within techumin (limits on how far one may travel on Shabbat), since it is only De’raraban. 2) The underlying reason that enjoying the outcome of melacha done for one’s benefit is forbidden on others was intended to prevent the others asking the non-Jew to perform the melacha for them, too. In the context of a non-Jew bringing an item from outside the techum, specifically, there is no concern that a Jew who he does not know will ask him to bring something, there is no reason to forbid the use of the item to anyone that he doesn’t know.

Tosafot there quotes the Rashi’s first answer. The ramification being that if the non-Jew did a Torah level Melacha, the benefits are forbidden to all Jew’s. If the non-Jew did melacha D’Rabanan, benefitting from it is only forbidden for the person for whom the melacha was performed, and not for everyone else.

The Ramban suggests another resolution for the sugiot:

The Ramban disagrees with the distinction between a Torah and Rabbinic prohibition. The leniency in the Gemara in Beitza was limited to the prohibition of techumin. Techumin is a unique prohibition. The Torah requires every person have a specific zone to which he is confined on Shabbat, and he may only use the objects within his zone. This is unique in the
sense that the prohibition isn’t objective; an item that is out of one’s boundaries may be used by another. This is why, explains the Ramban, this prohibition specifically may accommodate this anomaly, that the benefits from the non-Jew’s actions are forbidden to the Jew for whom the items were carried. Benefits of other melacha will be prohibited to all.

We have seen three proposed resolutions:

1. The benefits of Torah melacha are prohibited to all; De’rabanan prohibitions – only for those for whom they were performed.
2. Benefit of melacha that there is realistic concern that the Jew benefitting might ask the non-Jew to repeat for his sake is forbidden; otherwise it is permissible.
3. Benefit of Melacha is permissible to others if the Melacha has a “subjective” character (as was explained in the Ramban). Benefit of melacha of an “objective” nature will be prohibited to all.

It seems from the Magen Avraham that he was unsure about which explanation to accept:

Many Poskim were inclined to follow Rashi’s first explanation, and to permit benefit from a rabbinic prohibition, as long as the non-Jew had not done it on his behalf.

Similarly, the Aruch Hashulchan (Siman 276 Sif 1) writes that the custom seems to be to follow Rashi’s opinion.

Summary

Chazal decreed that melacha that was performed by a non-Jew on Shabbat for a Jew’s benefit may not be used by the Jew. The Rambam explains that this was meant to deter Jew’s from asking the non-Jew to perform the melacha for them. The Mishna tells of Raban Gamliel, whose ship docked on Shabbat. Raban Gamliel used a ramp that a non-Jew erected to facilitate disembarkment on Shabbat. Why was this permissible? Abaye explained that Rabban Gamliel was not present when the ramp was erected. Rava said that even had he been present, use of the ramp would be permissible, since it is the kind of melacha that many can benefit from as well as the individual.

Rava’s criterion - Melacha that many can benefit from as well as the individual

Rava posited that a Jew may benefit from melacha that many can benefit from as well as the individual. The Gemara quoted the Mishna in Makhshirin which states that if a melacha was done for the public, we assume it was done for the majority of users. Therefore, if the majority of the local costumers are Jewish, Jews may not use the outcome of the melacha. If non-Jews are the majority, we assume it was done for them. The Rambam and Shulchan Aruch accept this Le’Halakha.
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**Melacha performed for the non-Jew and few others**

The Rashba writes that if the person who performed the melacha intended on using it himself, his private need will always predominate. It follows that in such cases, the melacha will not be considered to have primarily been performed for the Jew’s benefit, and therefore the Jew may benefit from it. Though the Rambam seems to disagree, and the Beur Halakha says the Rambam’s stringency may not easily be dismissed, most Poskim seem to have accepted the Rashba’s position.

The Poskim differentiated between a situation in which the non-Jew is performing a melacha for himself, and he really is interested in his own benefit, but there are also Jew’s benefitting. His knowledge that he’s being “used” doesn’t change the Halakhic status of the outcome of his melacha. This is distinct from, and Halakhically opposite to, a situation in which the melacha is done for the Jew, and the non-Jew chooses to benefit from it in order to create the Halakhic loophole and validate the use of the melacha. The non-Jew’s choice of also using it does not validate the use.

**Abaye’s answer – The presence factor**

The Gemara asked why was it permissible for Rabban Gamliel to use the ramp that was erected on Shabbat to allow the ship’s passengers to disembark.

Abaye answered – since it was erected in the Jew’s absence.

Rava said that melacha that can benefit many as it does one (ניר לאחד נר למאה) is permissible to use. Was Abaye’s answer rejected?

The Rashba showed that Rava did not seem to reject his answer.

The Rambam did not mention it. The Maggid Mishne debated whether this was because that Abaye’s answer was obvious, or because that it was rejected. Aruch Ha’Shulchan showed that the Rambam mentioned Abaye’s criterion in his commentary on the Mishna, therefore concluding that it was omitted from the Mishne Torah due to its being obvious, and was not rejected from Halakha.

Does this mean that a Jew can use the outcome of a melacha that was performed in his absence, even if the non-Jew may have been aware of his need?

The Magen Avraham forbids such use, and Aruch Ha’Shulchan justifies the common practice of visiting non-Jews and using the water they boiled on Shabbat, despite the probability that they were aware that the Jew’s might come and use the water, since it was boiled in their absence.

Is melacha that was performed for a certain Jew prohibited for use of others?

The Mishna seems to indicate that melacha done for a Jew’s benefit may not be enjoyed by any others. The Gemara in Beitza (24b) states that it is permitted for anyone besides the Jew on whose behalf the melacha was done.

The Rishonim proposed three main answers:

1) The Gemara in Beitza was discussing a rabbinically forbidden (De’Rabanan) melacha, in which the prohibition against benefiting was restricted to the person for whom it was done only.

2) Specifically regarding techumin, there is no prohibition to benefit from something brought outside of the techum on behalf of a specific Jew, since it is unlikely that the non-Jew would be willing to exert himself and bring other things from outside of the techum for Jews who he is not familiar with.

3) The prohibition of techumin does not apply to everyone equally. One person’s techum is not the same as another’s, and therefore there could be no blanket prohibition specifically for techumin.

While the Magen Avraham quoted the first and third answers, the Chayei Adam, Pri Megadim, and Aruch Hashulchan cited only the first answer. Therefore, they hold that when the non-Jew does a melacha on behalf of a Jew, it is prohibited to all Jews, but only for a Torah level prohibition.
This shiur has examined the criteria of what is considered melacha that is done “on the Jew’s behalf”. Next shiur will analyze the definitions of “benefitting” from the melacha.