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

Defining ‘Benefit’

Shiur number 3

As we learned in the previous Shiur, Chazal forbade benefitting from Melacha performed by a non-Jew, on behalf of a Jew, on Shabbat. This definition of the prohibition excludes the following two circumstances: a) Melacha the non-Jew has not performed on a Jew’s behalf, and b) the Jew does not benefit from the Melacha.

In the previous Shiur we defined when Melacha is halakhically considered “on the Jew’s behalf”. In this Shiur we will define what is halakhically considered “benefit” from a Melacha.

Before that, we will ask the following question: if a non-Jew performs a Melacha that will benefit the Jew, to what extent is the Jew required to avoid this benefit? On the other hand, may a Jew sit idly while the non-Jew creates such benefits for him?

Next, we will analyze the concept of ‘benefit’, by considering the following situations:

a) The non-Jew performs Melacha that increases the Jew’s benefit in a situation where the Jew would have otherwise been able to attain the same benefit to a lesser degree himself, or with more discomfort and difficulty.

b) The non-Jew could have done the same action without violating a Melacha, but he chooses to do it with a Melacha (for example, he could have washed dishes by hand, but chose to use the dishwasher instead).

c) The Melacha the non-Jew performs merely adds to an existing condition (for example, there was some light in the room, and he lit additional lights).

d) The Melacha performed by the non-Jew merely removes something that is bothersome (such as turning off a light when one would prefer darkness anyway, or turning off the air conditioner when it is too cold).

In the previous shiur, we discussed the following Mishna:

The Yerushalmi quotes an important statement of Rabbi Yonah:

Rabbi Yonah states that although it is forbidden to benefit from Melacha performed by a non-Jew on Shabbat, if the non-Jew lights a light in a Jew’s house, we would not force the Jew to leave. The Tur quotes this:
Rabbi Yonah's ruling is based on the idea that the prohibition against benefitting from a non-Jew's *Melacha* does not apply when the implications are so severe. Does this mean that the Jew may freely benefit from the *Melacha* of a non-Jew in such a situation? The Colbo writes:

The Colbo’s statement was accepted as Halakha by the Shulchan Aruch, the Rema, and commentaries:

The Pri Megadim adds an important condition:

The Pri Megadim points out that so far, the discussion has focused on whether one must leave his home in order to avoid enjoying the benefit of the light. This in no way permits him to actively use or benefit from the light!

The Shmirat Shabbat Ke’Hilkhata sums the Halakha up:

In summary:

As we saw in the previous Shiur, the Mishına rules that a Jew may not benefit from *Melacha* performed by a non-Jew for the Jew’s benefit.

Rabbi Yonah in the Yerushalmi says that this does not mean that a Jew must leave his home in order to avoid enjoying those benefits. The Tur quotes this as Halakha.

The Colbo explains that the idea behind this leniency is that it cannot be that a person will be obligated to leave his home when he cannot prevent the non-Jew’s actions. This, in turn, implies that the Jew may not passively allow the non-Jew to perform the *Melacha* – rather, if possible, he is required to insist that the non-Jew does not perform the *Melacha*.

The Shemirat Shabbat Ke’Hilkhata sums this up, differentiating between three situations:

1. If the Jew requested the *Melacha* to be performed, he may not benefit from the *Melacha*, to the extent that he may have to leave his home to avoid that benefit.
2. If the non-Jew performs the *Melacha* for the Jew of his own volition, the Jew is required to protest the act. If he remained passive, he is not required to leave his home, but he may not actively benefit from the *Melacha*.

3. If the Jew protested the non-Jew’s actions but the non-Jew performed the *Melacha* despite this protest, the Jew may use and benefit from the *Melacha*.

**Rabben Tam’s stipulation – if the benefit is attainable without the non-Jew’s *Melacha***

The Mishna says that the Jew’s cattle may not drink water drawn by a non-Jew on Shabbat (if drawing the water required a *Melacha*). Why did the Tanna choose the example of water for cattle, rather than for people? Rabben Tam points out a possible difference between water for animals and for people:

Drinking water directly from a well is rather inconvenient, but it is theoretically possible. The Jew could have theoretically drunk the water without the non-Jew’s help, so this help does not make this water prohibited when drawn by a non-Jew. In contrast, if the Jew wants to give water to animals who are physically unable to climb in to the well, and the water cannot be drawn without violating a *Melacha*, the Jew may not give them water drawn by a non-Jew for the animals’ use. Rabben Tam shows that the Tanna’s example teaches us an important principle: the prohibition of benefitting from a *Melacha* performed by a non-Jew only applies if the Jew has no physical or Halakhic method of attaining that specific benefit (even if that method would be less convenient and more difficult).

**Qualifying Rabben Tam’s *Kula* – only if the exact benefit may be achieved**

The Rosh questions Rabben Tam’s principle:

The Rosh says that a Jew may not benefit from light lit by the non-Jew. According to Rabben Tam’s principle, if there is any light the Jew can use, would he be permitted to use any other light that was lit?

We can ask further – according to Rabben Tam, if a Jew has water that he could give to his animals instead, may he then benefit from the water that the non-Jew draws for the Jew’s animals?

The Olat Shabbat concludes from the Rosh that the Rosh and others understand Rabben Tam’s principle’s thus: if one has a permissible way of accessing water to give to one’s animals, then he may use the water drawn by the non-Jew. The Magen Avraham disagrees with this understanding of the Rosh:
The Magen Avraham explains that the Rosh does not mean to say that Rabbenu Tam is lenient whenever there is a permissible way to receive the same benefit, but rather, he holds that the Rosh is questioning the following principle: if you are willing to permit benefiting from drawn water because other permissible water is available, then does this logic stop applying? Isn’t there always other water available, or more light in a different place, etc. etc.? If this holds true, then why would it ever be forbidden to benefit, given that almost always has an alternative way of benefitting?

It appears that the Poskim interpret the Rosh’s words “לא מסתבר” differently. Does the Rosh mean – this is what Rabbenu Tam meant and it is not reasonable, OR, that this is an ad absurdum argument against Rabbenu Tam?

Most Poskim define the principle more narrowly –

The Pri Megadim understands that Rabbenu Tam’s principle only permits use of the water if the exact same water is accessible without Melacha. However, access to other water won’t permit use of the water brought by the non-Jew. Similarly, regard light, if one could have read in the room, then one may benefit from the additional light lit by a non-Jew in the same room. However, if there was no light in the room before the non-Jew lit the light, then one may not benefit from the light in this room, even though there was light in a different room.

**The opposing opinion**

Most of the Rishonim disagree with Rabbenu Tam. As we saw, the Rosh (according to the Magen Avraham) writes that his position is unreasonable. Ri suggests a different reason for the Tanna’s choice of example, rejecting Rabbenu Tam’s proof from the Mishna about drawing water for one’s animal:

Rabbenu Tam argues that the Tanna uses the example of water drawn for animals (rather than for people) to teach us the principle that the water can only be used if it can be attained through other, halakhic means. Ri disagrees and explains that this example is used for a different reason: that because animals drink more, the non-Jew may choose to bring larger amounts of water, and this teaches us a leniency: that we do not need to be concerned that the non-Jew will bring additional water.

This alternative explanation for the Tanna’s choice means that Rabben Tam cannot prove his principle from the Mishna. There is no proof that a Jew may benefit from Melacha performed by a non-Jew on his behalf when he could have received the same benefit in a permissible way.

**The Poskim’s ruling regarding Rabben Tam’s principle**

The Shulchan Aruch rules that if the water was drawn for the Jew’s cattle, it may not be used by any Jew for any purpose. This implies that a Jew may not drink the water even if he has the theoretical ability to climb down the well and drink the water there. This seems to be negating Rabben Tam’s principle. The Rema quotes Rabben Tam’s principle as an alternative opinion (“יesh mekilim” - there are those who are lenient).
The Mishna Berura rules like the majority of Poskim, Ri and the Rosh, and only employ Rabbenu Tam’s principle in extenuating circumstances.

The Rema’s conclusion is surprising: he says that a certain opinion not only permits use of the water drawn by the non-Jew, but permits asking the non-Jew to draw water! What is the basis of this leniency?

In order to understand this leniency quoted by the Rema, we must understand another aspect of the definition of “benefit”:

The Raavyah rules that not only may one benefit from the Melacha in such a situation, but it is even permissible to request the action to be performed! The Magen Avraham rejects this leniency, and writes that such a situation is obviously forbidden:

However, the Maharam also writes like the Raavyah:

According to the Maharam, since there is a permissible way for the Jew to carry the candle, he may benefit from the non-Jew’s carrying, despite the non-Jew’s choice of carrying it in a forbidden way. He may even ask the non-Jew to carry the candle, despite the likelihood of the non-Jew’s choice of carrying it in the usual fashion, which is forbidden on Shabbat.

The Rema accepts these opinions as Halakha:

The Magen Avraham writes that the Rema is quoting the Maharam in this ruling, but does not dispute it. The previous quote from the Magen Avraham (from סימן שז ס”ק יב) seemed to reject the Raavyah’s leniency! The Pri Megadim explains this apparent contradiction:
The Pri Megadim explains that the Magen Avraham differentiates between a theoretically permissible way of achieving a certain goal, and an actual, practical way of achieving the same goal. The Magen Avraham accepts the leniency only in the latter case, in which the desired goal can practically, and not only theoretically, be met.

What is the underlying principle of this leniency? It seems that since there are ways of achieving the goal without the transgression, the non-Jew’s choice to achieve the goal by prohibited means is not considered a benefit for the Jew, but for the non-Jew! The non-Jew’s choice is motivated by his own convenience, and is therefore not considered a transgression done on the Jew’s behalf.

The Taz applies this concept in other cases:

The Taz says that a Jew may tell the non-Jew to wash the dishes, despite the likelihood that the non-Jew will turn on the light to do so. The Jew is only concerned with the dishes getting cleaned. In this respect, it can be stated that the non-Jew turns on the light for his own benefit, not for the Jew. The Jew does not benefit from the melacha itself; he may therefore request that the non-Jew wash the dishes, and then use the clean dishes.

Similarly, if one asks a non-Jew to wash dishes, and they could be washed in cold water, but the non-Jew chooses to wash them in hot water (heated in prohibited ways), then the Jew may still ask the non-Jew to clean the dishes as the use of hot water benefits the non-Jew, not the Jew. The Jew is only interested in the end result – which could have been achieved in a permissible way – rather than in the means of achieving the result.

The non-Jew might even choose to use the dishwasher; this too is permissible as the Jew is only concerned with the end result, not the means.

Use of the elevator where there are stairs

Another application of the Taz’s principle –

The Taz holds that a Jew may request that his food be brought up to a high floor. The non-Jew will probably use the elevator, but, as the Taz holds, the use of the elevator is intended for the non-Jew’s convenience, and has no bearing on the Jew’s request. (In contrast, may a Jew ask a non-Jew to wash his clothing for him? One might think that the choice of the non-Jew’s use of the washing machine is for his own convenience. But this is a mistake; there is no permissible method of washing clothing on Shabbat without transgressing melaberth.). Therefore, the request itself is not allowed.)
In summary, we have discussed three views:

1. **Rabbenu Tam’s principle**: if there is any Halakhic way for the Jew to enjoy what the non-Jew’s *Melacha* provided, the Jew may benefit from it, despite the inefficiency of the method the Jew would have to adopt in order to achieve that benefit.

   Most Poskim reject this leniency, and only employ it in extenuating circumstances.

2. **Raavyah and Maharam write** that the Jew may request an outcome that can be achieved in a permissible manner, despite the likelihood that the non-Jew will choose a more convenient method that does transgress a *Melacha*.

   The Magen Avraham limits this leniency to cases in which achieving the outcome is feasible. If there is a theoretical way, but it is entirely impractical, then benefitting from the outcome will be prohibiting.

   The underlying principle behind this leniency is that the choice of performing *Melacha* is for the non-Jew’s convenience, not the Jew’s. This idea is expanded in the following principle:

   3. **The Taz says** that a Jew can request an outcome that can be achieved in a permissible way, despite the probability that the non-Jew will choose to do a *Melacha* in order to help him achieve the desired goal, since his choice is not intended for the Jew’s benefit, but for his own. Therefore, not only may the Jew benefit from the outcome, he may even request it directly.

   As we have seen, this principle may be further extended to the use of hot water, a dishwasher, or an elevator. As long as the non-Jew’s choice is for his own convenience, and does not affect the Jew’s requested outcome, the Jew may ask the non-Jew for this outcome.

**Back to the Rema**

The disagreement between the Shulchan Aruch and the Rema regarding whether Rabbenu Tam’s principle may be utilized, was quoted earlier:

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**Back to the Rema**

The disagreement between the Shulchan Aruch and the Rema regarding whether Rabbenu Tam’s principle may be utilized, was quoted earlier:

The Rema concludes with the Colbo’s opinion, who says that not only may one benefit from the water brought by the non-Jew, but one may even ask the non-Jew to bring water through the *Reshut HaRabim*. The Poskim write that this leniency is questionable, and, furthermore, its source is not clear:

The Aruch HaShulchan therefore writes that the idea behind this leniency is Maharam’s leniency, not Rabbenu Tam’s!
The Aruch HaShulchan explains that the basis for the Rema’s leniency is the fact that the Jew could have achieved the same result without violating any prohibition. The non-Jew’s choice of violating a Melacha is his own choice, and therefore use of the outcome is permitted.

Additional light

This quote from Sefer HaTerumah extends our definition of ‘benefit’ (as it applies to this Halakha). If the room is duly lit, then additional light is not considered a new benefit, but rather an extension of the current light. His opinion is accepted by all the Poskim:

Since the Jew had light to begin with, the light the non-Jew added didn’t create a new benefit, despite adding to it and making it more convenient for use. Therefore, it follows that the Jew may only use the light as long as the original light is on. Once the original light no longer lights the room, there is no longer any justification to permit benefitting from the Melacha performed by the non-Jew.

The Jew is allowed to benefit from the additional light. But is he required to try to stop a non-Jew before lighting the light?

The obligation of protesting the non-Jew’s Melacha does not apply if the Melacha only enhances the existing use. The Poskim apply this definition of ‘benefit’ in many cases -

Refining the wick

The Pri Megadim says that if the wick requires refinement in order to burn better, one may hint that this is required, but only if the current light is sufficient for minimal reading.

Heating up warm food
The Or Zarua recounts a practice that was common in his time. People allowed non-Jews to warm up food that had not yet completely cooled off, even though the Jews benefitted from the additional heat. The justification for this leniency was that, since the food was warm enough to eat, heating it further merely improves the existing situation, which is permitted.

However, The Rema rules:

The Rema rules that it is only permitted to eat the heated food if one did not ask the non-Jew to warm it up. This is similar to what we saw earlier: that one need not leave one’s house if a non-Jew lights a candle, there, unless the Jew actually asked the non-Jew to do so. If one did not ask the non-Jew to heat up the food, then it is merely considered an enhancement or improvement of an existing situation, and is therefore permitted.

Polished shoes

The Mishna Berura (Siman 327 Seif Katan 16) follows the Tifferet Yisrael’s opinion, and rules that a Jew may not wear shoes that were polished by a non-Jew on Shabbat. But the Magen Avraham limits this prohibition:

According to the Magen Avraham, as long as the shoes were wearable before Shabbat, then one may use them. Rav Ovadia defines this position:

The discussion is regarding the benefit of wearing shoes. The Mishna Berura was referring to shoes that were unwearable prior to the polishing. The polishing rendered the shoes wearable, so benefiting from that Melacha is prohibited. However, according to the Magen Avraham and Rav Ovadia, if the shoe was wearable prior to the polishing, then the polishing has only improved the current permitted use, and in such a case, the shoes may be worn.

Heat and Air conditioning

A room always has a certain temperature; the function of heating or air conditioning is to change the existing temperature. If a non-Jew turns on heating or air conditioning in a room, his Melacha does not create a new room ... it has merely made the room more comfortable. According to the criterion...
we are discussing, this should be defined as an enhancement or improvement to an existing permissible state. However, that is not the case according to the following sources:

Rav Feinstein teaches us that the benefit here is not defined as the ability to use the room, but rather the benefit of air conditioning, of feeling cool. If this benefit will not exist without the Melacha of turning on the air conditioner, it is therefore forbidden to benefit from it. Rav Shlomo Zalman Auerbach writes something similar regarding heat:

Why are the Poskim not lenient in this case? The air conditioning has two benefits: making the room more comfortable, and cooling those who enter the room from the outdoor heat. These Poskim were concerned with the latter benefit, which did not exist until the air conditioner was turned on, and is therefore prohibited. But if people are sitting in the room, and the air-conditioning only makes the room more pleasant, this would be considered improvement of a preexisting state, and would be permissible.

Rabbenu Shimshon HaZaken explains that in the case of extinguishing, the Jew does not receive any current physical benefit from the Melacha. The items were there all along at the Jew’s disposal. The non-Jew has only averted potential harm, not added a benefit that did not exist before the Melacha was performed. The Poskim applied this principle in many cases:

It is important to note that we are bringing this response of the Igro Moshe to learn the principle that he is teaching us. Regarding the specific issue of having a non-Jew turn on an air conditioner when it is very hot, there are Poskim who permit it, just like it is permitted to have a non-Jew heat up a room when it is very cold (Shulchan Aruch Siman 276 Seif 5). We will discuss this further in Shiur 4.
Shiur number 3- Defining Benefit from Melacha

The Sheraga HaMeir deduced from Tosafot that one need not object, and one may benefit, from a non-Jew who turns a light out on Shabbat, since it is not defined as ‘benefitting’.

Malkei Amoneyim Parah 3:2

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As we saw, it is forbidden to ask a non-Jew to extinguish, but since extinguishing is not considered a physical benefit, one may hint to him to do so, and benefit from his action.

Shmot Hashovat Habalakta Torah Parah 3:2

As we saw, it is forbidden to ask a non-Jew to extinguish, but since extinguishing is not considered a physical benefit, one may hint to him to do so, and benefit from his action.

Here, one does not want the non-Jew to do something on his behalf in a positive sense. He wishes to be able to open the refrigerator again, without ‘benefitting’ from the light. In order to achieve this benefit, he needs the light to be removed.

Since the non-Jew will merely be removing an impediment, hinting is permitted.

Summary

Not obligated to vacate, but obligated to object

The Mishna rules that a Jew may not benefit from Melacha performed by a non-Jew for his benefit. Rabbi Yonah in the Yerushalmi says that this does not mean that a Jew is required to vacate his home in order to avoid enjoying the benefits of the Melacha. The Tur quotes this as Halakha.

The Colbo explains that the idea behind this leniency is that it cannot be that a person will be obligated to vacate his home when he was unable to prevent the non-Jew’s actions. The implication of this explanation is that the Jew may not passively allow the non-Jew to perform the Melacha. If he can, he must insist that the non-Jew does not perform the Melacha.

The Shemirat Shabbat Ke’Hilkhata sums this up, differentiating among three situations –

1. If the Jew requested the Melacha to be performed, he may not benefit from the Melacha, to the extent that he may have to leave his home to avoid that benefit.
2. If the non-Jew is performing the Melacha for the Jew of his own volition, the Jew is required to protest the act. If he remained passive, he is not required to leave his home, but he may not actively benefit from the Melacha.
3. If the Jew protested the non-Jew’s actions, and the non-Jew performed the Melacha despite this protest, then the Jew may use and benefit from the Melacha.

A benefit that is otherwise attainable

Rabbenu Tam’s principle: if there was any Halakhic way for the Jew to benefit from what the non-Jew’s Melacha provided, then the Jew may benefit from it, despite the inefficiency of the method the Jew would have to adopt in order to achieve that benefit.

Most Poskim reject this leniency, and only employ it in extenuating circumstances.

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The Magen Avraham limits this leniency to cases in which achieving the outcome through halachic means is feasible. If there is a theoretical way, but it is entirely impractical, then this leniency does not apply.

The underlying principle behind this leniency is that the choice of performing Melacha is for the non-Jew’s convenience, not the Jew’s. This idea is expanded in the following example: The Taz applies The Raavyah’s concept, allowing the request of dishes being washed, despite the washroom being dark, since the light was lit by the non-Jew at his own volition.

Additional Benefit

The Shulchan Aruch rules like the Sefer HaTeruma, who permits benefitting from Melacha of a non-Jew that merely increases an existing benefit. The Poskim (Mishna Berura, Shulchan Aruch HaRav) learn from here that whenever the non-Jew’s Melacha merely increases an existing benefit (such as when he lights additional lights, or heats up food that was already warm enough to eat, etc.), then it is permitted to benefit from it.

In the last three Shiurim we defined and examined the scope of the prohibition of asking a non-Jew to do Melacha, and whether we could benefit from his Melacha. So far, the leniencies stemmed from the nature of the prohibition, and understanding what is and what is not considered “benefit” in this context. In the next couple of Shiurim, we will learn that Chazal made certain exceptions to these prohibitions … describing specific situations whereby instructions or benefits are seemingly prohibited, but Chazal nevertheless permitted them, for various reasons. Situations of instructing or benefitting that fit the definitions of the prohibition, and therefore should have been prohibited, but Chazal nevertheless permitted, for various reasons.

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