Requesting or benefitting from *melachot* to avert financial Loss, and Additional Leniencies

Shiur number 5

As we learned in the previous Shiur, in many situations Chazal permitted benefitting from a *melacha* that was performed by a non-Jew on Shabbat, and even allowed an explicit request for such a *melacha* to be done. Would such leniency be applicable in situations in which a *melacha* is required to avert significant financial loss? This Shiur will address that question.

As we have learned in the previous Shiur, in certain situations the heter may only be applied regarding benefitting from (or requesting) a *melacha* *de’Rabanan*. We will define some of these more clearly later in the Shiur.

Finally, we will address complicated situations, such as asking a non-Jew to request the *melacha* from another non-Jew, asking a non-Jew to do a *psik reisha* (an act that is a *melacha*, but where one’s intention is not for the *melacha*), and asking a non-Jew to perform an action regarding which there’s a makhloket whether it is permissible or not.

**Requesting a *melacha* that is needed to avert significant financial loss**

למ改革委 עתה את האיסור על תשלות בעיות של מעלית יהודי ליווי מיסים שבת מותר לישראל לומר לגוי לעשותו בשבת, והוא יהיה שם מקצת חולי או יהיה צריך לדבר צורך הרבה או מפני מצוה.

The Rambam cites three situations in which one may ask a non-Jew to perform a melacha *de’Rabanan* on Shabbat – 1. Illness. 2. Dire need. 3. To facilitate a Mitzvah.

In the previous Shiur, #4, we discussed the first and third situations at length. We will now analyze the second case (underlined above) – dire need.

The Rambam referred to directly asking a non-Jew to perform a melacha *de’Rabanan* for a “great need,” without limiting the type of benefit that one may derive from the melacha. Presumably, this Mishna is referring to exactly such a case:

**The Mishna**

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The Rambam indicates three points – 1. A request may be made regarding any dire need. 2. The *melacha requested* may only be a *de’Rabanan* one. 3. The request may be made directly, with no need of hinting.

The Ramban explicitly disagrees with the Rambam –

We can learn from this Mishna and Gemara three things regarding having a non-Jew extinguish a fire on Shabbat:

1. It is forbidden to ask the non-Jew to extinguish the fire.
2. Hinting that the fire needs to be extinguished is permitted.
3. One does not need to prevent a non-Jew, who came to extinguish the fire of his own volition, from doing so.

The Rambam indicates three points – 1. A request may be made regarding any dire need. 2. The *melacha requested* may only be a *de’Rabanan* one. 3. The request may be made directly, with no need of hinting.

The Ramban explicitly disagrees with the Rambam –
The Ramban says this Mishna proves that the Rambam’s psak is incorrect. There is no greater loss than that of a house burning down. If it is not permitted to ask a non-Jew to do melacha in such a situation, even more so for other situations of loss! It must be noted – extinguishing a fire to avert damage is a melacha de'Rabanan (since it is not productive unto itself), and still the Mishna forbids requesting such a melacha in such a clear case of great financial loss.

The Ran read the Mishna as an exception to the rule, that cannot be deduced from –

A fire is such a stressful situation, that once one gets involved in the putting it out, even by requesting another to do so, he might go ahead and extinguish it himself. As the Pri Megadim says –

According to this opinion, the fire is an exceptional case with an exceptional stringency. If so, it cannot be used as proof for the general rule that applies to cases of dire need or great financial loss. The Rashba, however, said that the fire is a case with exceptional leniency, not stringency!

The Ran explains that the stress of a fire requires greater stringency, and that is why explicitly requesting the melacha is forbidden. The Rashba agrees that the situation of a house burning down is very stressful, but explains that the Rabbis were therefore lenient and permitted hinting that the melacha get done.

The Rosh quotes from the Behag that it is permitted to hint to a non-Jew to prevent any sudden loss that takes place on Shabbat. It seems that the Behag understood fundamentally, like the Rashba, that a situation of fire is treated more leniently than other losses, but the Behag understood that this special leniency is not limited to a fire, but applies to any sudden, stressful loss. How does all of this affect our discussion regarding requesting a melacha from a non-Jew to avert extreme financial loss (or similar dire need)?

The Mishna states that if a fire is burning a house down, one may say “whoever extinguishes this fire will not lose”, thus hinting for the melacha to be done. According to the Ramban, the fire is no different from any other dire need. Therefore, the rules outlined in this Mishna are applicable to all situations of dire need. According to the Rashba, the fire is a case that warranted exceptional leniency. In other words, for less stressful situations of dire need, even hinting the need for a melacha might be prohibited! According to the Ran, the fire is a case that required exceptional stringency. In other words, for less stressful situations of dire need, we may be more lenient than the rules the Mishna outlined. The Rambam seems to agree with this position, therefore decreeing that in a case of dire need, a direct request may be addressed.
The Shulkhan Aruch’s *psak* is complex. Here, he quotes the Rambam:

> שולחן ערוך אורח חיים הלכות שבת סימן ש ח
> דבר שאינוملא, ואינו אסור עלשותבעב אלאמשוךשבת, מותר לשארלולמיםלאיילעלשתבעב; זווהשוחה...ערץلدב鬈ורכרה
>
> However, here he quotes the Behag:

> שולחן ערוך אורח חיים הלכות שבת סימן ש ח
> סחורה הנפשדת בשבת ע"י גשמים או ד"א; או אתי בידקא (פי' נחל או אגם מים) דמיא ומפסיד ממונו; או שנתרועעהחבית של יין והולך לאיבוד; מותר לקרות אינו יהודי, אף עלפי שודאי יודע שהאינו יהודי ייציל הממון. וכן מותר לומר לאינו יהודי: כל המציל אינו מפסיד, כמו בדליקה להתיר לומר: כל המכבה אינו מפסיד; ויש מי שאומר שלא התירו אלא בדליקה דוקא.
>
> In *seif* 5, the Shulkhan Aruch quotes the Rambam, permitting *asking* a non-Jew outright in a situation of a great need. Why then did he quote the Behag in *seif* 19, who only permitted hinting? The Mishna Berura explains that the Rambam and Behag positions are not at odds:

> משנה ברורה סימן שז ס"ק סח
> אף על פי ג執ו לצריך לצריך לא לדרכה אדריכי... דאלא ת혀ו ממקצת עלmédia... אפליא לוחות לאל יהודא השליש
> היה כי מנהר על המבואר ליעל בפשט י”ח לא לשוחה הפוס
>
> The Rambam permits *asking* a non-Jew to do a *melacha de’Rabanan* when there is dire need. The Behag permitted hinting to a non-Jew to perform a *melacha de’Oraita* when there is a sudden, stressful situation that involves significant loss.

The Shulkhan Aruch follows both opinions. Most Poskim accept this leniency:

> לבוש אורח חיים סימן שז
> הפר מדם אשת أبرומים על שלוחן ערכיה אורח חיים הלכות שבת סימן ש ח סעייף כף
> עיון לבלוש הדומייק כסברא ראשונה לא הפסיד. וכן משמע דעת המחבר, סברא ראשונה בסתם.
>
> Some were less lenient, and only accept the leniency in extreme cases –

> מנהר אחרון סימן ש ח סעיי
> בכל דבוקות הפוס דקב דלהונר שובה עד ידע כי יגסי הכרך... אבלвалאHCI או לחקל לכל
>
> As did the Elya Raba, who said that, barring such extreme cases, the Rashba and Ramban should be heeded –

> אליא הח רב סימן של
> נמזה[...]מקיל המפש מדם בדלשהבר. אוני דברי מוכריםו, כי סמי על דחי שאנוי פיהוב נד בולות
> הرمز שוחרי האופטימי. עדת הוא ברוינאמר פורים Çünkü מימו משמע שאלי חך Shelby.

Aruch ha’Shulkhan is lenient –

> ערכו השלוחת אורח חיים סימן ש ח סעיי
> דבר צור שלך השבטים אופטימי ומקיל במדוק אפיל ומפש המצוע עב Elves כאן למדך...
> שלושה שמואל דובר ישראלי מדרובכל כלתruitment בעדו ואבלרבר העבר דובר של רוחא אזור ומיה שאנו אבכל...
> שיש דברי הפוס חרב מומחהначенשהבר.
Shiur number 5- Leniencies that allow requesting or benefitting from a *melacha*

In summary: the Shulkhan Aruch quotes the leniency of the Rambam in *seif* 5, and the leniency of the Behag in *seif* 19. The Mishna Berura explains that the Shulkhan Aruch understood that there is no contradiction between these two halakhot. The Rambam permitted asking the non-Jew to do a *melacha de’Rabanan* when there is great need, and the Behag permitted hinting to the non-Jew to do a *melacha de’Oraita* to avoid a significant loss in a sudden, stressful situation.

The Elya Raba was concerned with the stringent opinion of the Rashba, and therefore ruled it preferable to be stringent if not for the sake of a uniquely significant need, as did the Magen Avraham. The Levush writes that one may be lenient in such cases.

Practically, the Poskim bring the two leniencies, as explained by the Mishna Berura. Most contemporary Poskim accept this leniency –

Various de’Rabanans

In the previous Shiur, #4, and earlier in this Shiur, there were cases in which only a *melacha de’Rabanan* was allowed to be requested from the non-Jew. We will now define, and bring a few examples, of what de’Rabanani’s may be utilized in these cases.

The sugia of *melacha she’eina tzricha legufa* (melacha she’eina tzricha legufa) is long and complex. To understand the concept in all its complexity, fully, a series of shiurim would be required. For the sake of the current discussion, we will provide a working definition.

A *melacha she’eina tzricha legufa* is a *melacha* that is done for a purpose that is different from the purpose for which that *melacha* was done in the Mishkan.

There is a rule that “*melechet machshevet asrah Torah*” (melachot machshbeit asrah Torah).” The implication of this rule is that the intention of the person performing an action can influence the question of whether a forbidden *melacha* was done and, therefore, whether there was a violation of Shabbat (For example, a person who digs a hole, not intending on using the hole, as was done in the Mishkan, but for the use of the dirt).

Most Rishonim and Poskim rule like Rabbi Shimon, that a *melacha she’eina tzricha legufa* is only forbidden *mi’deRabanan*.

Is this *de’Rabanan* prohibition comparable to other *de’Rabanan*’s? In cases in which it is permissible to request a *melacha de’Rabanan* to be done, may one request such a *melacha*?
As we learned above, the Ramban, and permitted requesting a non-Jew to avert a great loss due to a melacha de’Rabanan. The Ran also stated that a house on fire is a case in point. The Torah prohibition of extinguishing applies only when done with the intention of creating charcoal. When a house is on fire, the purpose of extinguishing would be to save the house and its contents. Creating charcoal is not on anyone’s mind at that point. Why then should the Jew not be able to request this de’Rabanan be done by the non-Jew to save him from extreme loss?

The Ran answers that melacha she’eina tzricha legufa is not a regular de’Rabanan prohibition in this context. We must be more stringent regarding melacha she’eina tzricha legufa, since there is no evident, discernible difference between that and the melacha the Torah prohibited. The difference lies only in the person’s intent, in his mind. Therefore, melacha she’eina tzricha legufa cannot be used in cases that allow requesting other de’Rabanans be performed.

Earlier, the Ramban made the exact opposite point. He proved that the Rambam is wrong, based on cases that allow requesting other melachot. When the Mishkan was being built, the Torah prohibited extinguishing be prohibited? It is a melacha she’eina tzricha legufa. The Ran also stated that a house on fire is a case in point. The Torah prohibition of extinguishing applies only when done with the intention of creating charcoal.

It seems that, in one sense, the Ramban is more stringent than the Ran, and does not allow requesting any melacha to avert loss. On the other hand, the Ramban categorized melacha she’eina tzricha legufa as any other de’Rabanan. In cases in which melacha de’Rabanan can be requested (illness or Mitzvah, as we have learned in the previous Shiur), melacha she’eina tzricha legufa may be requested, as well.

R Akiva Eiger adhered to the Ran’s view:

Many other Poskim, though, were lenient, allowing a Jew to request that a non-Jew do a melacha she’eina tzricha legufa, in order to facilitate a mitzvah:

When the Mishkan was being built, the melacha of shearing was done in order to obtain wool. Cutting nails, which is a prohibition that is derived from this melacha, is done for the sake of removing the nails. This fits the definition of a melacha she’eina tzricha legufa. The Shakh and Magen Avraham therefore permit asking a non-Jew to cut one’s nails in order to facilitate performing a mitzvah (going to the Mikve, in this case).

The Mishna Berura (siman 440, seif katan 3) accepts the Magen Avraham’s opinion. Similarly, in siman 302, the Shulkhan Aruch forbids scratching and rubbing off mud that is stuck to one’s clothes, since this would involve transgressing due to the melacha of grinding. The Mishna Berura says:
Shiur number 5 - Leniencies that allow requesting or benefiting from a melacha

משנה ברורה סימן שב ס"ק לו

dehoe temahn - even if the melacha itself is not a melacha, it is still forbidden,

משום שנמאך שายนא ריככה גלופה עפי איסוטרא מיהא איכא לוכיש, על די אינן גוזר מותר

Shiur number 5 - Leniencies that allow requesting or benefiting from a melacha

The Magen Avraham that was quoted in the previous section implied that it is preferable to remove nails by hand, as opposed to using a tool, since using one's hands is not the usual way to do that melacha, and would therefore be prohibited only mi de'Rabanan.

The advantage of a shinui (performing a melacha in an unusual way), as opposed to a melacha she'eina tzricha legufa, is that it is observably clear, from the way that the action is being done, that the melacha is not being done in its usual way. Melacha she'eina tzricha legufa is fundamentally not a melacha at all, since it is not the melacha that was performed in the Mishkan. In other words – melacha be'shinui is the actual melacha, though looks similar but is performed differently. Melacha she'eina tzricha legufa looks exactly like the melacha, but is not a melacha at all.

The Poskim write that doing a melacha be'shinui is sufficient to consider it de'Rabanan in the context of asking a non-Jew to do it. For example:

The Pri Megadim proposes that one may ask a non-Jew to pick fruit by pulling the stem with his mouth. This would be a melacha be'shinui for the sake of the Mitzvah of enjoying Shabbat! However, he is hesitant regarding this leniency. Why? The Pri Chadash explains that there is potentially an additional problem:

Rav Shlomo Zalman Auerbach says that this leniency applies only if the shinui will affect the outcome. It is not enough that the action is performed differently. The outcome has to be different from the outcome of the melacha done in the usual manner. Rav Ovadiah Yosef disagreed, and was lenient even if the result of the melacha done with a shinui would be identical to the result of the melacha done in the usual manner:

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Meaning, fundamentally, it should be permitted for the non-Jew to do a melacha be'shinui for the sake of a mitzvah. Nevertheless, if the item were not fit for use when Shabbat began, it will remain muktza.

What transpires is that, when it is permitted to ask a non-Jew to do a melacha de'Rabanan, it would also be permitted to ask him to do a melacha de'Oraita be'shinui.

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Shiur number 5: Leniencies that allow requesting or benefiting from a melacha

The Eshel Avraham writes that it is permitted to ask a non-Jew to do a rabbinic melacha for a public need, and if the non-Jew decides to do a melacha de'Oraita, we are not responsible to stop him (this leniency is similar to leniencies that we discussed in Shiur #3). The Shemirat Shabbat Kehilchata applies this idea regarding a melacha done with a shishui:

The Beit Ephraim says that the prohibition of asking a non-Jew to do a melacha does not apply when asking him to perform a melacha indirectly (in the Halakhic context this is called a gerama). Note that previously the Poskim implemented such leniencies in various cases of dire need. The Beit Ephraim is not referring to a leniency in case of need. He is defining the scope of the original prohibition. The ramification of this is tremendous. It means that there is no prohibition at all regarding the request that a melacha be performed in a gerama.

When refrigerators came into use, the issue of the thermostat being affected by every opening of the door was a major Halakhic issue. Presumably, if opening the door makes the thermostat turn on, opening the door would be prohibited, as it would transgress the laws of gerama. While discussing this problem, Rav Shlomo Zalman Auerbach suggests applying Beit Ephraim’s leniency:

The Poskim did not accept Beit Ephraim’s definition of the prohibition. Asking a non-Jew to perform melacha in a gerama is like requesting the non-Jew to perform any other melacha in a de’Rabanan way. Therefore, as opposed to the Beit Ephraim’s leniency that allowed requesting such a melacha freely, the Poskim allowed requesting a melacha be performed in a gerama way only in the cases that other de’Rabanan Melachot may be requested (as we’ve learned in these past two Shiurim).

The previous section of the Shiur discussed melachot that are fundamentally de’Oraita, that are done in a specific way that makes the action a de’Rabanan one, and therefore potentially permitted under certain circumstances. Next, we will discuss instances that were possibly never included in the prohibition against asking a non-Jew to perform a melacha.
Requesting a non-Jew to perform a *melacha* is prohibited. May one request a non-Jew to request another non-Jew to perform the *melacha*? After all, he is not requesting the non-Jew to perform a *melacha*!

The Chavot Yair raises this question. He sent his debate to Rav Gershon Ashkenazi (the author of the Avodat Hagershuni), and asked him for his thoughts on this issue. Rav Ashkenazi’s response was included in the Chavot Yair responsum:

**The Chavot Yair rejects Rav Ashkenazi’s proof:**

The Chavot Yair argues that the Mishna in Shabbat (150) discusses the prohibition of hiring workers on Shabbat. The hiring itself is forbidden. The Jew is effectively asking the non-Jew to perform a *melacha de'Rabanan* – hiring workers on Shabbat! So this is a request for a *melacha de'Rabanan*. This has no bearing on the question of whether one can request the non-Jew to request another non-Jew.

The Chatam Sofer suggests a qualification to the above disagreement:

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The Chatam Sofer suggests that the argument only referred to a request that was made on Shabbat. If the Jew asked the non-Jew, before Shabbat, to ask another non-Jew to perform a melacha, all would agree that there is no problem with such a request.

The following Rashba seems to be in stark contrast to the Chatam Sofer’s suggestion:

This raises the fundamental question –

What is the benefit of performing a melacha for another non-Jew? The Mishne Sachir points out that if the second non-Jew thinks that the melacha is done for the non-Jew’s benefit, the Jew thinks that the melacha is being performed on behalf of the first non-Jew. In the second Shiur, we learned that a Jew may benefit from melacha that was not performed for the Jew’s benefit. The Pri Megadim says that the argument only applied to cases in which the second non-Jew is aware that the melacha is being performed on behalf of the Jew, and not if the second non-Jew thinks that the melacha is being performed directly for the Jew’s benefit.

In the second Shiur, we learned that a Jew may benefit from melacha that was not performed for the Jew’s benefit. The Mishne Sachir points out that if the second non-Jew thinks that the melacha is done for the non-Jew’s benefit, the Jew should be allowed to benefit from it! He concludes that the argument only applies to cases in which the non-Jew knows that the melacha is being performed on the Jew’s behalf. This raises the fundamental question –

If the non-Jew is wittingly performing the act on the Jew’s behalf, why is the benefit permissible? He answers:
The Mishne Sachir makes a very novel suggestion: Chazal prohibited benefit from the non-Jew’s melacha, lest he be tempted to request the melacha outright. By prohibiting the benefit, the Jew will be aware that requesting is prohibited, too. Another way of displaying and exacerbating this awareness is by requesting in a complex manner. Such complexity can also achieve the same purpose. When the Jew asks the non-Jew to ask another non-Jew, he is acting carefully and deliberately to avoid transgressing this prohibition. Therefore, there is no concern that he will violate the prohibition. The Mishna Berura’s psak is that such a request is prohibited, though one may use this method in dire need:

The Mishna Berura cites Sefer Ha’Chaim, which permits asking a non-Jew to ask another non-Jew in a case of significant loss. This would put such a request in the same category as asking a non-Jew to do a melacha de’Rabanan. To reiterate, requesting a non-Jew to request a melacha from another non-Jew may be halakhically defined in one of three ways—

1. The Jew is not requesting a melacha, so this is not included in the prohibition at all. This is the Chavot Yair’s position.

2. The second non-Jew is performing a melacha for the Jew, so this is prohibited just as any other request is. This is Rav Ashkenazi’s position.

3. Requesting a melacha to be done by a non-Jew is a melacha de’Rabanan. The Jew is asking the non-Jew to ask another non-Jew to perform a melacha. Therefore, he is requesting the first non-Jew to perform a melacha de’Rabanan. This is the same as asking the non-Jew to perform any other melacha de’Rabanan, which is generally prohibited, but is allowed in the situations we have discussed in the last two Shiurim. This is the Sefer Ha’Chaim’s position, as well as the Mishna Berura’s.

Shiur number 5- Leniencies that allow requesting or benefitting from a melacha

Rav Ovadia discusses a situation in which there is a doubt whether asking the non-Jew should be permitted based on the usual rule of asking a non-Jew to do a Rabbinic prohibition for a great need. He prefers instructing the non-Jew to request the melacha from another. In this way, if the situation is one that justifies requesting a melacha de’Rabanan, that Heter is implemented in this way. If it is not, still according to the Chavot Yair, such a request is allowed.

To summarize the issue of asking a non-Jew to request the melacha from another non-Jew: Such a request may be halakhically defined in one of three ways:

1. The Jew is not requesting a melacha, so this is not included in the prohibition at all. This is the Chavot Yair’s position.

2. The second non-Jew is performing a melacha for the Jew, so this is prohibited just as any other request is. This is Rav Ashkenazi’s position.
Shiur number 5- Leniencies that allow requesting or benefitting from a melacha

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In cases in which it is not clear whether the situation justifies requesting a melacha de’Rabanan, R. Ovadia preferred asking a non-Jew to request the melacha from a non-Jew. In this way, if requesting a melacha de’Rabanan was justifiable, such a request would be in line with the Sefer Ha’Chaim and Mishna Berura’s ruling. If it was not justified, such a request would be permissible according to the Chavot Yair.

According to those who are stringent, would requesting before Shabbat allow for more leniency? The Chatam Sofer says that indeed it would.

The Biur Halakha cites the Rashba, who writes that it is forbidden to ask a non-Jew to hire workers, even if he asked the non-Jew before Shabbat. He cites this as proof that Rav Gershon Ashkenazi (who proved his position from that Mishnah) would forbid requesting a non-Jew to request a melacha from another even if the first non-Jew were asked before Shabbat.

Does the second non-Jew’s awareness of who would benefit from the melacha, affect this ruling? This question was posed to the Mishne Sachir. In the question, it was suggested that the Chavot Yair was lenient only when the second non-Jew thinks that he is performing the melacha on behalf of the other non-Jew. However, if he understands that he is doing it for the Jew, then it is prohibited, as it is prohibited to benefit from melacha that a non-Jew does for a Jew on his own!

The Pri Megadim, on the other hand, explained the argument the other way around; Rav Gershon Ashkenazi was stringent only if the second non-Jew understands that he is doing the melacha on the Jew’s behalf. If he performs the melacha intending on the other non-Jew’s benefit, there would be no reason for stringency – as benefit from a melacha performed by a non-Jew for a non-Jew is not prohibited! This raises the Mishne Sachir’s question: it is forbidden to benefit from melacha done for a Jew even if the non-Jew does it of his own volition, so how could it be permitted to benefit from melacha performed by the second non-Jew if he is doing it on the Jew’s behalf? How does asking the non-Jew to request it from the other non-Jew create this leniency?

The Mishne Sachir explains this leniency. The prohibition against benefiting from melacha performed by a non-Jew was established in order to prevent the Jew from asking the non-Jew to do melacha. When a Jew asks a non-Jew to ask another non-Jew, this roundabout manner of request serves to remind and maintain awareness of the importance of avoiding requesting the melacha directly. Therefore, there is more room for leniency in this case than in a case in which the non-Jew acts of his own volition.

Earlier, we discussed the principle “melechet machsheveth asrah Torah.” Psik reisha is a situation in which someone does an action with the intention of achieving a specific result, but his action will necessarily lead to an additional result that is a melacha (The original example of this idea is the rhetorical question, “פיסקך יירא או לא יירא הגה?” Meaning, can one cut the head off a chicken and claim that he only intended to use its head, but not kill it?) Performing melacha with a psik reisha is prohibited. The Terumat Hadeshen says that one may benefit from an action done by a non-Jew, as long as his intention was not for a melacha, even though his action will cause a melacha through psik reisha.
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The Rema cites his opinion:

However, there were those who found this leniency questionable. In the context of eating foods cooked by a non-Jew (bishul akum), the Tur ruled as follows:

A non-Jew lit a fire in the oven to heat the room, or for a different purpose, but not for the purpose of cooking the meat. The Tur rules that, even so, as long as he was aware there was meat in the oven, eating it would be prohibited, since there is that chance that he intended to cook it. Clearly, cooking the meat was not the non-Jew’s original motive, and yet we are stringent, since the thought of the meat also cooking may have crossed his mind.

The Taz answers – all the more so! If we are so stringent in the context of bishul akum, we should be all the more stringent in the context of Shabbat!

The Pri Megadim explains the reason for the stringency:

The definitive factor that affects the prohibition is whether the non-Jew intended for the Jew to benefit from his melacha, or not. If there was such an intention, benefit is prohibited. The additional benefit the non-Jew reaps is irrelevant.

The Magen Avraham applied the same reasoning, and reached the opposite conclusion:

Since the oven was lit to heat the house, the non-Jew was not interested in the Jew’s benefit. Therefore, benefit is permissible.

The Shemirat Shabbat Ke’hilchata (chapter 31 seif 7) brought the Terumat Hadeshen’s ruling. He writes that if the non-Jew was asked to light the fire for permissible use, one may request that the non-Jew perform bishul akum primarily for the permitted need. Likewise, R Ovadia accepted this ruling:

If a family forgot to turn the light off in its refrigerator before Shabbat, what may the family request the non-Jew to do? Presumably they would be interested in two things: 1) opening the refrigerator to take items out; and 2) turning the light off altogether.
Rav Feinstein explains that when the non-Jew opens the refrigerator, clearly his primary intention is to open it. The light turning on is, at best, a secondary benefit. It is a psik reisha, and the Terumat Ha'Deshen's leniency may be applied. Turning the light off, however, is an independent, intentional act, and is prohibited, unless there are extenuating circumstances.

R Shlomo Zalman disagreed about the scope of psik reisha to which R Feinstein alludes. Turning the light on in the refrigerator is an intentional part of the refrigerator's system, and not a separate by-product of the action. Therefore, it is part of the act itself, and not a psik Reisha.

R Shlomo Zalman’s conclusion is that one may be lenient, since there are other ways of circumventing turning the light on. If it isn’t an unavoidable outcome, it is no more than a psik reisha.

The Magen Avraham says that benefit from the by-products of an act depend on whether the non-Jew’s primary intention is for the permissible outcome, or not. If the circuit breaker of an electric box went out on Shabbat, may a non-Jew be asked to turn it back on? Various needs would halakhically justify such a request: young children who need the heat, adding light to existing light, etc. However, when the non-Jew will flip on the switch, and thereby turn on the heat, many other things will switch on, as well. Is it permitted to benefit from those secondary results?

The Magen Avraham’s parameters must be applied. If the non-Jew’s intention is to create the permissible benefits, the other, secondary, results may be used as well. If his intention is to create the forbidden benefits, all benefits would be prohibited.

The complexity of this halakha is beyond the scope of the current Shiur (a separate Shiur will address this subject). We are currently focusing on the Sma”k’s innovation: since there are Rishonim who allow it, one may rely on the lenient opinions to permit asking a non-Jew to perform the melacha. The Shulkhan Aruch accepts this ruling:
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However, the Maharshal disagrees:

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The Maharshal writes that the definition of the prohibition is as follows: whatever a Jew is forbidden from doing on Shabbat, he may not ask a non-Jew to do for him. If we are prohibited from doing the action ourselves, this means that we do not hold like the lenient opinion. In that case, why should we be allowed to apply the lenient opinions to request the forbidden melacha from a non-Jew?

The standard halakha is that it is forbidden to heat up liquids on Shabbat, even if they were heated before Shabbat. The Birkei Yosef suggests that since there are Poskim who hold that that there is no prohibition to reheat any food, including liquids, one may rely on this lenient opinion and request the food be heated by the non-Jew. The Biur Halakha is uncertain whether this ruling should be implemented. However, Rav Ovadia accepts the Birkei Yosef’s opinion:

Rav Ovadia answers the Maharshal’s question. The Maharshal asked: if we are stringent and rule against the possible leniency, why should it be permitted to ask a non-Jew to do the forbidden action? Rav Ovadia explains that from the perspective of the Jew deliberating whether to do the act: there is a doubt about a Torah-level prohibition, and we must therefore be stringent. However, requesting that the melacha be done by a non-Jew, and benefitting from it, is a de’Rabanan-level prohibition. In the context of an isur de’Rabanan, we rely on the lenient opinion.

Summary

Requesting a melacha that is required to avert significant financial loss

The Mishna states that if a fire is burning a house down, one may say “whoever extinguishes this fire will not lose”, thus hinting for the melacha to be done.

According to the Ramban, such a fire is no different from any other dire need. Therefore, the rules outlined in this Mishna are applicable to all dire needs.

According to the Rashba, such a fire is a case that warranted exceptional leniency. In other, less stressful situations of dire need, even hinting the need of a melacha might be prohibited!

According to the Ran, such a fire is a case that required exceptional stringency. In other, less stressful situations of dire need we may be more lenient than the rules the Mishna outlined.

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The Rambam seems to agree with this position, therefore decreeing that in a case of dire need, a direct request may be addressed.

The Shulkhan Aruch quotes the leniency of the Rambam in seif 5, and the leniency of the Behag in seif 19. The Mishna Berura explains that the Shulkhan Aruch understood that there is no contradiction between these two halakhot. The Rambam permitted asking the non-Jew to do a melacha de’Rabanan when there is great need, and the Behag permitted hinting to the non-Jew to do a melacha de’Oraita in order to avoid a significant loss in a sudden stressful situation.

The Eliya Raba was concerned with the stringent opinion of the Rashba, and therefore ruled it preferable to be stringent even in a case of uniquely significant need, as did the Magen Avraham. The Levush writes that one may be lenient in such cases.

Practically, the Poskim bring the two leniencies, as explained by the Mishna Berura.

Different categories of Rabbinic melachot

a. Melacha she’eina tzricha legufa

The Ran writes that a melacha she’eina tzricha legufa is a worse violation than other Rabbinic prohibitions. The reason for this is that the act itself is identical to the Torah violation. Based on this, Rabbi Akiva Eiger writes that, as opposed to other Rabbinic melachot, one may not request a melacha she’eina Tzricha le’gufa from a non-Jew, even in cases in which requesting other de’Rabanan actions is permissible.

However, it seems that those who disagree with the Ran regarding being lenient in a case of significant loss, would also disagree with his stringency regarding a melacha she’eina tzricha legufa. Therefore, the Magen Avraham and Mishna Berura rule that one may instruct a non-Jew to do a melacha she’eina tzricha legufa to facilitate doing a mitzvah. (In the harchavot, we brought the Taz, who disagrees, but for other reasons).

b. Shinui

The Magen Avraham and Mishna Berurah, quoted above, write that it is preferable to ask the non-Jew to do the melacha with a shinui. The Pri Megadim also allows asking a non-Jew to do a melacha with a shinui for the sake of a bride and groom. The Pri Chadash and Pri Megadim were similarly theoretically lenient, allowing the request of a non-Jew to perform a melacha with a shinui to facilitate doing a mitzvah. In their case, though, there was a different problem. Since the non-Jew took something that was not usable when Shabbat began and made it usable, it remains muktza.

The Poskim disagreed as to the relevant definition of shinui in this context. Rav Shlomo Zalman Auerbach writes that it is considered a shinui only if the result of the melacha is visibly different from the melacha performed without a shinui. Rav Ovadia holds that that is not necessary.

c. Gerama

The Beit Ephraim implies that it is not prohibited to ask a non-Jew to do a melacha with a gerama, while the consensus of the Poskim is that it would still be considered a Rabbinic violation, and would only be permitted in cases of significant need.

Types of instructions that were possibly never included in the original prohibition: Asking a non-Jew to request the melacha from another non-Jew:

Such a request may be Halakhically defined in one of three ways –

1. The Jew is not requesting a melacha, so this is not included in the prohibition at all. This is the Chavot Yair’s position.
2. The second non-Jew is performing a melacha for the Jew, so this is prohibited just as any other request is. This is Rav Ashkenazi’s position.
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3. Requesting a melacha be done by a non-Jew is a melacha de’Rabanan. The Jew is asking the non-Jew to ask another non-Jew to perform a melacha. Therefore, he is requesting the first non-Jew to perform a melacha de’Rabanan. This is the same as asking the non-Jew to perform any other melacha de’Rabanan, which is generally prohibited, but is allowed in the situations we’ve discussed in the last two Shiurim. This is the Sefer Ha’Chaim’s position, as well as the Mishna Berura’s.

In cases in which it is not clear whether the situation justifies requesting a melacha de’Rabanan, R Ovadia preferred asking a non-Jew to request the melacha from a non-Jew. In this way, if requesting a melacha de’Rabanan were justifiable, such a request would be in line with the Sefer Ha’Chaim and Mishna Berura’s ruling. If it were not justified, such a request would be permissible according to the Chavot Yair.

According to those who are stringent, would making the request before Shabbat allow for more leniency?
The Chatam Sofer says that, indeed, it would.
The Biur Halakha cites the Rashba, who writes that it is forbidden to ask a non-Jew to hire workers, even if he asked the non-Jew before Shabbat. He cites this as proof that Rav Gershon Ashkenazi (who proved his position from that Mishnah) would forbid requesting a non-Jew to request a melacha from another non-Jew even if the first non-Jew were asked before Shabbat.

Does the second non-Jew’s awareness of whom the melacha was meant to benefit, affect this ruling? This question was posed to the Mishne Sachir. In the question, it was suggested that the Chavot Yair was lenient only when the second non-Jew thinks that he is performing the melacha on behalf of the other non-Jew. However, if he understands that he is doing it for the Jew, then it is prohibited, as it is prohibited to benefit from melacha that a non-Jew does for a Jew on his own!
The Pri Megadim, on the other hand, explained the argument the other way around; Rav Gershon Ashkenazi was stringent only if the second non-Jew understands that he is doing the melacha on the Jew’s behalf. If he performs the melacha intending on the other non-Jew’s benefit, there would be no reason for stringency because there is prohibition to benefit from a melacha performed by a non-Jew for a non-Jew! This raises the Mishne Sachir’s question: it is forbidden to benefit from melacha done for a Jew even if the non-Jew does it of his own volition, so how could it be permitted to benefit from melacha performed by the second non-Jew if he is doing it on the Jew’s behalf? How does asking the non-Jew to request it from the other non-Jew create this leniency?
The Mishne Sachir explains this leniency. The prohibition against benefitting from melacha performed by a non-Jew was established to prevent the Jew from asking the non-Jew to do melacha. When a Jew asks a non-Jew to ask another non-Jew, this roundabout manner of request serves to remind and maintain awareness of the importance of avoiding requesting the melacha directly. Therefore, there is more room for leniency in this case than in a case in which the non-Jew acts of his own volition.

Psik reisha

The Terumat Hadeshen writes that one may request an action from a non-Jew, even if the action will inadvertently entail transgression of a melacha. Such an action is called psik reisha, and is generally prohibited. The Rema cites the Terumat Hadeshen’s ruling as Halakha. The Magen Avraham writes that whether there is a prohibition or not, depends on what benefit the non-Jew intended on giving the Jew. Since a psik reisha is, by definition unintentional, these results do not fit the definition of the prohibition.

Rav Moshe Feinstein writes that the psik reisha leniency is relevant when opening a refrigerator and forgetting that the light would turn on. In that situation, the non-Jew’s primary intention is to open the door, and not to turn on the light.
The Orchot Shabbat applies the same parameters if the main electricity circuit breaker flipped off on Shabbat, and the family would like to request that the non-Jew turn it back on. If there is a halakhically
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Justifiable need for the non-Jew to turn it on (heat for the children, for example), such a request may be made. Though it must be emphasized that the request is for the non-Jew to turn the heat on. Otherwise he might focus on other needs, that do not justify his intervention. However, if no such need exists, turning the switch is prohibited.

**Requesting a melacha regarding which there is a Makhloket**

The Sma”k writes that, if there is a disagreement regarding whether something is permitted for a Jew to do – even if the *psak* is stringent, he may ask a non-Jew to rely on the minority opinion and do it. The Maharshal writes that this is strange. If our ruling states that such conduct is not permissible, how may it be permitted to ask a non-Jew to do it? Despite this, the Shulkhan Aruch and Tifferet Israel rule like the Sma”k.

The Birkei Yosef permitted asking a non-Jew to heat up previously cooked liquid on Shabbat, since there are Rishonim that hold that such heating is permissible. The Biur Halakha did not want to rely on the Birkei Yosef. Rav Ovadia accepts his opinion, and explains that there is a difference between the Jew being stringent for himself, and being stringent regarding asking a non-Jew. Since the prohibition of asking a non-Jew to perform *melacha* is only Rabbinic, when there is a doubt whether it is forbidden at all, one may be lenient.