



Parshas Ki Sisa 5771

February 18, '11
Volume X Issue 12

In the previous shiur we introduced the concept of requesting a gentile to violate the Shabbos for the sake of a mitzvah, but we did not state the relevant halacha.

What is the halacha?

The *Mechaber* writes that one may request a gentile to violate an *issur d'rabanan* for *Milah* but not *issurei d'oraissa*.¹

The *Mishna Berura* writes² that it is preferred that a gentile carry the knife through a rabbinical domain to where the baby is, than to take the baby through the rabbinical domain (where there is no *eiruv*), because one will have to return the baby to his house thereby violating the Shabbos twice, whereas the knife can remain where it is until after Shabbos.

The *Rama* however writes 'see above in *simon* 307'. In *simon* 307:5 the *Rama* writes that there are opinions who hold that one may request a gentile to violate an *issur d'oraissa* for the sake of a *mitzvah*. That opinion belongs to the *Ba'al Ha'Itur* and it is compatible with the *Ba'al Halachos* we mentioned.

The *Mishna Berura* writes³ that many *poskim Achronim*⁴ argue with the *Rama* and do not permit one to request a gentile to violate an *issur d'oraissa* for the sake of a *mitzvah*. He continues saying that when there is no other option,⁵ one has what to

rely on to request a gentile to violate an *issur d'oraissa* for the sake of a *Milah* especially if it only involves carrying the knife in the street, if the street is not a *reshus harabim d'oraissa*. B'ezras Hashem we will learn what the definition of a *reshus harabim* is.

(The purpose of these shiurim is not to *pasken*, as these issues are complicated and when the occasion arises a competent rav must be consulted with. It is our purpose to merely present the various issues involved).

With respect to requesting a gentile to violate Shabbos, is there a difference between mitzvos and a B'ris Milah.

With regards to other *mitzvos* we find a dispute amongst the *Rishonim*.

The *Rambam*⁶ writes that one may request a gentile to violate an *issur d'rabanan* for the sake of a *mitzvah*. The *Maggid Mishne* explains that the *Rambam's* source is the above-mentioned *halacha* that says that one may request a gentile to violate an *issur d'rabanan* for the sake of a *B'ris Milah*. The *Rambam* did not make a distinction between a *B'ris Milah* and other *mitzvos*.

On the other hand the *Tosefos*⁷ states that a *B'ris Milah* is unique in the sense that one may request a gentile to violate an *issur d'rabanan* and this does not apply to other *mitzvos*. The reason for the unique *beter* (permitted action) is because the actual *B'ris Milah* involves the violation of the Shabbos, albeit *b'heter*, and therefore *Chazal* permitted requesting a gentile to violate the Shabbos, but other *mitzvos* do not share this status and hence it is prohibited.

¹ We are obviously not referring to cases where the baby's life is endangered and he needs being taken to hospital. We are referring to the preparation stage such as fetching the knife, sharpening it, turning on the lights etc.

² *Simon* 331:20.

³ *Simon* 331:22.

⁴ See the *M"B* *simon* 276:24.

⁵ The *Bi'ur Halacha* writes in the name of the *K'sav Sofer* that when a knife needs to be sharpened, if one can locate another knife one may not sharpen it, even if the 2nd *mobel* refuses to lend his knife to the 1st *mobel*.

⁶ *Rambam Shabbos* 6:9-10.

⁷ *Tosefos Gittin* 8b ד"ה אע"ג, *Bava Kama* 80b ד"ה אומר, and cited in the *S'mag*.

What is the halacha?

First we will examine the *Shulchan Aruch*. The *Mechaber*⁸ cites both opinions. First the *Mechaber* cites the *Rambam* who permits it and then he cites the *Tosefos* who prohibits it. There is a known rule when learning the *Shulchan Aruch* which says that סתם ויש אומרים הלכה כסתם, which means that when the first opinion is mentioned anonymously, as if everyone agrees, and the second or following opinions are quoted as “there are those that say...” or “there is an opinion...” then *halacha* is according to the first opinion, which in this case is to be lenient. Moreover the *Shulchan Aruch* in *Hilchos Rosh Hashana*⁹ does not cite the stringent opinion at all, which proves that he *paskens* according to the *Rambam*.

Can you provide a few examples?

If the *sefer torah* was forgotten in the *gaba's* home, a gentile may be requested to bring the *sefer torah* to shul, provided that it can be brought to the shul via a *carmelis* and not via a *reshus harabim*. In other words, if the gentile can only carry it through a public domain, where carrying is a biblical prohibition, the gentile may not be requested to bring the *sefer Torah*. However if there is an alternative passage, which only involves an *issur d'rabanan*, it is permitted.

What about turning on the lights for the Shabbos meal?

Turning on the lights involves an *issur d'oraisso* and according to the *Mechaber* it is definitely prohibited.¹⁰ The *Rama*¹¹ however cites an opinion who permits it, but we mentioned that the *Mishna Berura*¹² disagrees and holds that one may not request a gentile to violate an *issur d'oraisso* for the sake of a *mitzvah*.

⁸ *Simon* 307:5.

⁹ *Simon* 586:21.

¹⁰ He only permitted it for an *issur d'rabanan*.

¹¹ *Simon* 276:2.

¹² *Simon* 276:24 in the name of the *Sh'lah* and the *ר"ש*. The *Rama* himself writes that one must not be lenient unless it is a dire necessity as many *poskim* oppose this opinion.

Is the gentile permitted to turn on the lights in shul before davening? What about the air-conditioning?

The same *halacha* as above applies to turning on the lights before davening, as it involves an *issur d'oraisso*. However, till today some shuls have a gentile turn the lights on before davening and they rely on two issues. The first is the *Rama* who as mentioned states that for the sake of a *mitzvah* one may even request a gentile to violate an *issur d'oraisso*, and since this concerns many people certain *poskim* permit it. The second is when there is already some light in the room and the gentile is merely adding light. This latter *beter* carries much more weight than the first one, but is also not agreed by all, as the *Magen Avraham* says¹³ that when one sees that a gentile is about to violate an *issur* for one's sake one must protest.

Do you have a solution that would comply with all opinions?

Nowadays it is possible to install a Shabbos clock to turn the lights on and off, which is far better than having a gentile do so. It is also a matter of *chinuch* – education, as many people (children especially) do not know that a shul might have a special *beter*, as mentioned, and they might think that a gentile is always permitted to activate the lights.

Orchos Chaim LaRosh

ולא תהיה משמש על מנת לקבל פרס בעשותך מצוותיו – **you should not perform His mitzvos to receive reward.**

The *seforim* (*Nesivos Shalom* and others) writes that our purpose in this world is **ובו תדבק** – to get close to *Hashem*, which includes emulating His ways of chessed, *rachamim* and everything else pertaining to our lives. Performing *mitzvos* to attain perfection, to give *Hashem nachas*, to emulate Him are all considered לשמה and are of a higher level than to receive reward. Nevertheless one must also do לשמה, as it says לעולם יעסוק אדם לשמה, because on a “cloudy” it is the לשמה לא that could keep us going.

¹³ *Simon* 276:14.

One may receive and distribute these weekly shiurim by calling or writing: Office 99 Rechov Bayit Vegan, Yerushalayim, Phone Numbers: U.S. and Canada 732-370-3344 Israel 972-3-616-6340 South Africa 076 187 1451 UK 44-020-8731-6666 Australia 61-296835626 Switzerland 0114143 333 0288 • e-mail: shabbosweekly@shemayisrael.com, or www.shemayisrael.com, weekly sponsorships are available as well.

If you would like to send a question to Rav Ostroff, you can write to him at shabbosweekly@shemayisrael.com.

Note: The purpose of this series is intended solely for the clarification of the topics discussed and not to render halachic decisions. It is intended to heighten everyone's awareness of important practical questions which do arise on this topic. One must consult with a proper halachic authority in order to receive p'sak.