

## L'CHATCHILA AND B'DIAVAD IN HILCHOT SHABBAT – Jeremy Conway

When learning Hilchot Shabbat, it is important to distinguish clearly between what is mutar l'chatchila (permitted at the outset) and what is mutar b'diavad (permitted after the event). The ramifications are important when considering whether or not hana'ah (benefit) may be derived on Shabbat.

The starting point for this discussion is the machloket (argument) between Rabbi Meir, Rabbi Yehudah and Rabbi Yochanan HaSandlar in the Gemara in Chullin and elsewhere. The view of Rabbi Yochanan HaSandlar is not relevant for the purposes of this discussion. Rabbi Yehudah holds that if an issur (a forbidden action) is performed on Shabbat b'meizid (i.e. knowing that it is Shabbat and that the action is forbidden on Shabbat), the perpetrator cannot ever derive benefit, but others may derive benefit immediately after Shabbat. In the case of an issur b'shogeig (a forbidden action performed accidentally, i.e. without knowing that the action was forbidden on Shabbat or without knowing that it was Shabbat), Rabbi Yehudah holds that everyone, including the perpetrator, may derive benefit immediately after Shabbat. Rabbi Meir, however, holds that in the case of an issur b'meizid, everyone may derive benefit immediately after Shabbat and that in the case of an issur b'shogeig, everyone may derive benefit on Shabbat itself.

The Shulchan Aruch in Siman 318:1 rules in accordance with the view of Rabbi Yehudah in the case of bishul (cooking), and the Rama adds that the same applies in the case of any other melachot (biblically prohibited categories of work). The Pri Megadim takes the view that we also rule in accordance with Rabbi Yehudah in the case of issurei d'rabbanan (matters which are rabbinically prohibited on Shabbat), but the Vilna Gaon proves from the Rambam that the halacha follows Rabbi Meir in the case of issurei d'rabbanan b'shogeig. The Chafetz Chaim agrees with the Vilna Gaon - see in particular the Biur Halacha at the beginning of Siman 318 on the word "ham'vasheil".

The position at this point is that although an action is assur l'chatchila (forbidden at the outset) on Shabbat, benefit may be derived by everyone on Shabbat itself b'diavad (after the event, i.e. once the action has been performed. For an example of the use of the term b'diavad in this sense, see Mishna Berura Siman 318 seif katan 3.) if the action is rabbinically prohibited and is performed b'shogeig.

But there may be room to permit benefit b'diavad even in the case of issurei d'oraita b'shogeig in certain circumstances. One example of this is given in the Biur Halacha at the beginning of Siman 318 on the words "achat mish'ar melachot". The Chayyei Adam is cited there as authority for the proposition that there might be a distinction between a melacha which transforms the nature of the object (e.g. bishul - cooking) and a melacha which does not transform the nature of the object (e.g. hotza'ah - carrying.) In the former case, benefit is prohibited on Shabbat, but in the latter case, there may be grounds for permitting benefit on Shabbat provided that the melacha was performed b'shogeig. The conclusion there is that for all practical purposes, the only material distinction is between issurei d'oraita and issurei d'rabbanan, but nevertheless, in my humble opinion, there may be room to allow benefit to be derived b'diavad where Torah literature has been inadvertently carried by a Jew on Shabbos.

Taking it further, we will now consider the case where an *issur d'oraita* has been performed *b'shogeig* according to the accepted understanding of *halacha*, but there are rabbinical authorities (normally *Rishonim* - early halachic authorities) who would have permitted the action to be performed at the outset. The position of the *Mishna Berura*, as set out in *Siman 318 seif katan 2*, is that in such a case, although the action itself is *assur l'chatchila*, benefit may be derived *b'diavad* because although we rule stringently in relation to the biblically prohibited action itself, the prohibition of deriving benefit is rabbinical, and we rule leniently (i.e. permissively) in the case of rabbinical prohibitions. So, for example, if food has been cooked *b'shogeig* on *Shabbat* but it was already cooked *k'ma'achal ben Derosai* (i.e. one half cooked according to the *Rambam*, or one third cooked according to *Rashi*. But see the *Piskei Teshuvot* at the beginning of *Siman 253* on the question of how to determine whether food is one half or one third cooked), the food may be eaten on *Shabbat b'diavad* because there is a substantial body of *Rishonic* opinion which holds that there is no *issur bishul* (prohibition of further cooking) once the food has been cooked *k'ma'achal ben Derosai*. See further *Siman 318:4* and the *Mishna Berura* (*seif katan 26 and 27*) and the *Biur Halacha* on the words "*afilu b'odo roteiach*".

Furthermore, even if the action is *assur l'chatchila* (forbidden at the outset) according to everyone, there are cases where benefit may be permitted on *Shabbat b'diavad*. The *Mishna Berura Siman 318 seif katan 7* points out that the *Vilna Gaon*, relying on *Tosafot* and others, rules in accordance with the view of *Rabbi Meir* even in the case of an *issur d'oraita*. The *Mishna Berura* says that in the case of *bishul b'shogeig* (and we can assume that this also applies to other *melachot*, having regard to the *Rama* at the beginning of *Siman 318:1*), benefit may be derived by everyone on *Shabbat* itself in a case of need. A note of caution must be sounded here. *Rabbi Shlomo Zalman Auerbach* holds that this heter (permissive ruling) must not be taken lightly, and in the case of *bishul*, it only applies where there is no other cooked food available or where the food which has been cooked on *Shabbat* in error is **necessary** for one's enjoyment of *Shabbat*.

Thus far, we have assumed that *b'diavad* always refers to deriving benefit after a forbidden action has been performed. This is true in most cases, including the case of *sh'hiya* (allowing a pot of food to remain on the cooker once *Shabbat* has started) according to the *Biur Halacha's* understanding of the *Rama* to *Siman 253:1* (*Biur Halacha* on *Siman 253:1* on the words "*v'nahagu l'hakeil kis'vara acharona*", but contrast this with *Shulchan Aruch HaRav 253:13* and the *Chazon Ish*).

In the case of *chazara* (returning a pot of food to the *blech*), however, there are two levels of *b'diavad*. The first is where the pot of food can be returned to the *blech b'diavad* even though not all the conditions of *chazara* have been satisfied, and the second is where the food can be eaten on *Shabbat b'diavad* even though the pot of food should not have been returned to the *blech*, even *b'diavad*. In order to understand this, we need to be familiar with the conditions which need to be satisfied in order for a pot of food to be returned to the *blech l'chatchila*. (Note that the differences in *halacha* in this respect between *Sephardim* and *Ashkenazim* are summarised well by the *Yalkut Yosef*.) Those conditions are as follows:

1. The heat source must be covered by a *blech*. For this purpose, a hotplate or warming tray is equivalent to a *blech*. (A treatment of the different opinions relating to hotplates and warming trays is beyond the scope of this article!)
2. The food must be fully cooked at the time it is removed from the *blech*.

3. The food must still be warm when it is returned to the blech. According to the Shulchan Aruch, the food must be piping hot, but according to the Rama and many other halachic authorities, it is sufficient if the food is still warm enough to be eaten as a warm food.
4. The pot of food must be continuously held in one's hand. The pot can be placed on a counter whilst it is still being held. This condition is not mentioned in the Shulchan Aruch. The Shulchan Aruch simply states that the pot must not be placed on the ground.
5. When the pot was removed from the blech, the person removing it must have had the intention to return it. This condition is not mentioned in the Shulchan Aruch.
6. According to the Magen Avraham and Shulchan Aruch HaRav, the food must not be transferred into another, previously empty, pot. It would then seem as if the food was being placed on the fire for the first time.

For Ashkenazim, all the above conditions (with the possible exception of condition 6) must be satisfied to enable the pot of food to be returned to the blech l'chatchila. But if either condition 4 or 5 is not satisfied, i.e. the pot was continuously held but there was no intention to return it **or** the pot was released but the person removing it did have the intention to return it, the pot may be returned b'diavad.

There are rabbinical authorities who hold that if conditions 1, 2 and 3 are satisfied, the pot may be returned b'diavad in a case of need. In my very humble opinion, however, having regard to the Mishna Berura, I would respectfully suggest that the better view is that the food should not be returned b'diavad but may be eaten b'diavad if it was returned in error. I would go further, based on the Biur Halacha to Siman 318:4 on the words "afilu b'odo roteiach", and suggest that if food which is only cooked k'ma'achal ben Derosai (one half or one third cooked - see above) is returned to the blech in error when the food is still warm enough to be eaten as a warm food, then it may be eaten b'diavad.