



דף ב.

כיצד העני עומד בחוץ ובעל הבית בפנים

1] • The penalty for deliberately violating one of the *מלאכות* - ל"ט - thirty-nine forbidden forms of labor on Shabbos - is *kares* (excision).

• If the sin was committed in the presence of two witnesses after having been warned (of the sin and its consequences), the sinner is subject to the capital punishment of *סקילה* - stoning.

• If the sin was committed *בשוגג* - inadvertently - the violator is obligated to offer a *korbon chattos* to atone for his inadvertent sin.

The first *melacha* (forbidden labor) discussed by the Mishna is *הוצאה* - carrying/transferring.¹ The *melacha* of *hotza'ah* involves carrying an item from a *רשות היחיד* - private domain - to a *רשות הרבים* - public domain (or vice versa, *הכנסה*), or carrying an item in a *reshus horabbim* a distance of four *amos* (four ells, which is 6-8 feet).

• The *melacha* of *hotza'ah* consists of two parts: (a) *עקירה* - lifting - the item from its original place, and (b) *הנחה* - setting the item down - in another domain (or at a distance of four *amos* in the *reshus horabbim*). If a person takes an item from the *reshus hayachid* and carries it into the *reshus horabbim* where his friend takes the item from his hand, the person has not violated the biblical *issur* of *hotza'ah* and he is not subject to any Torah penalty since he did not perform the *הנחה* (i.e., he did not set the item down, rather his friend took it from him).

The Mishna illustrates this *halacha* with an example of an *עני* - a poor man - who comes begging for food with a basket. The Mishna says if either the poor man, or the *baal habayis* (the householder), performs the entire act of *hotza'ah* (with either the basket or the food), he is *חייב* - subject to a penalty (which means he is obligated to bring a *chattos* if he committed the sin *בשוגג* - inadvertently). If, however, one of them performs the *עקירה* while the other performs the *הנחה*, neither one incurs a *chattos* liability.

The Meiri and the Rav M'bartenura explain the reason the Mishna illustrated this *halacha* with a case of a beggar collecting alms, is to teach that even though giving food to a poor man is a *mitzvah* of *tzedakah*, the *mitzvah* does not justify or mitigate the sin of *chillul Shabbos*.

2] • R' Yosi (Succah 41b) asserts that if a person was in the process of taking his *lulav* on Shabbos to fulfill the *mitzvah* of *lulav*, and he mistakenly carried it into the street, he is exempt from having to offer a *chattos* since he was a *טועה בדבר מצוה* (erred while preoccupied with the performance of a *mitzvah*). [When the first day of Succos fell on Shabbos in the times of the Bais Hamikdash, the *lulav* was taken even on Shabbos (Succah 42b).]

The Tosfos Yom Tov asks why the *baal habayis* in our Mishna is not exempt from a *chattos* under R' Yosi's exemption of *טועה בדבר מצוה* since he violated the *issur* of *פסור*

hotza'ah while he was preoccupied with the mitzvah of *tzedakah*.²

The Aruch LaNer (Succah 41b) answers that the Tanna of our Mishna disagrees with R' Yosi and is of the opinion טעה בדבר מצוה חייב (see 137a). He is of the opinion that even if one was preoccupied with a mitzvah when he inadvertently committed a sin, he is liable to a *chattos*.

The Aruch LaNer notes that the Rambam,³ in codifying the halacha of the Mishna, speaks of a person standing in one domain who hands an item to a person in another domain and does not mention the case of a poor man collecting alms. The reason he does not cite the case of the Mishna,⁴ explains the Aruch Laner, is that the Rambam rules in accordance with R' Yosi that פטור טעה בדבר מצוה, and therefore he is of the opinion that if a *baal habayis* mistakenly handed food to a poor person on Shabbos he is indeed exempt from a *chattos* since he was preoccupied with the mitzvah of *tzedakah* at the time.

The Rashash, citing Tosfos in Yevamos 34a (ד"ה טעה), answers that the exemption of טעה בדבר מצוה applies only to situations in which the mitzvah at hand is pressing, because the basis for the exemption is that a sin violated under the duress of performing an urgent mitzvah is considered as an אונס (an unpreventable accident). This exemption, says the Rashash does not apply to *tzedakah* because a person giving charity does not feel such a great degree of urgency and he cannot be considered an אונס.⁵

Alternatively, the Chasam Sofer answers that even if the *baal habayis* feels a sense of urgency in feeding the poor man, the exemption of טעה בדבר מצוה does not apply because there is no mitzvah to give charity to a poor person who collects alms on Shabbos. He explains that it is inappropriate to collect alms on Shabbos (especially while carrying a basket) since this will almost certainly lead to a Shabbos violation. A householder is not obligated to give *tzedakah* to a beggar who displays a disregard for the laws of Shabbos. Since giving *tzedakah* under such circumstances is not a mitzvah, the exemption

of טעה בדבר מצוה does not apply if Shabbos is violated in the process.⁶

דף ג.

בבא דרישא פטור ומותר

In the first case addressed in the Mishna (2a) the poor man is standing outside in the *reshus horabbim* and places a basket into the hands of the *baal habayis* inside the house. The Mishna says that the poor man is liable to a *chattos* (because he performed an עקירה and הנחה) and the *baal habayis* is פטור - exempt [from a *chattos*] - because he did not perform any part of *hotza'ah*; neither עקירה nor הנחה.

The Gemara (3a) says that whenever the Mishna uses a term פטור (exempt) as opposed to מותר (permissible), it usually implies פטור - אבל אסור - [that one who performs the act is] exempt from a *chattos* but the act is nonetheless rabbinically forbidden. However, in this instance the *baal habayis* is not only exempt from a *chattos* but the act is actually מותר - entirely permissible (even on a rabbinic level) - because he did not participate in any part of the *melacha*; he performed neither the עקירה nor the הנחה.

Tosfos (ד"ה בבא) comments that the action of the *baal habayis* is permissible only if the poor person is a non-Jew who is not obligated to observe Shabbos. However, if the poor person is a Yisrael, then the *baal habayis* is prohibited from assisting the poor man in his desecration of Shabbos (by allowing him to deposit the basket, or to take the bread from his hand) because of the *issur* of לפני עור.

- The posuk לא תתן מכשול לפני עור (lit., do not place a stumbling block before a blind person) is taken as a prohibition against causing (or helping) someone to violate an *issur*. If the sinner was able to commit the sin without assistance, the Gemara in Avodah Zorah (6b) says that the *issur* of לפני עור does not apply. For example, a person who hands a sinner non-Kosher food is not in violation of לפני עור if the food was already accessible to the sinner without anyone's assistance (לא קאי בתרי עברי) (דנהר).

- Tosfos (3a, ד"ה בבא) submits that even when the forbidden item was already accessible to

the sinner, there is a rabbinic prohibition against assisting a sinner in the commission of a sin. [This rabbinic *issur* is called מסייע ידי עוברי עבירה - assisting sinners.] Even if the poor man was capable of depositing the object in the *reshus hayachid* without the assistance of the *baal habayis*, the *baal habayis* is rabbinically prohibited from leaving his hand open and thereby assisting the poor person in his transgression. [The Rosh explains that since the Torah obligates a person to rebuke a sinner and to try to intercede and stop one from committing a sin, certainly it is prohibited to lend assistance to a fellow Jew who is committing a sin.]⁷

The Shach⁸ maintains that the *issur* of מסייע ידי עוברי עבירה only applies to assisting Yisraelim in a transgression, but not to assisting idolaters (even in sins that are applicable to them). For example, the Shach permits selling an idolater an item which he plans to use it for idol worship. He argues that since the Rosh links the *issur* of מסייע to the mitzvah of giving תוכחה (rebuke), and a Yisrael has no obligation to rebuke an idolater, there is no *issur* to offer the idolater assistance in the commission of a sin. [Note: This discussion is limited to cases in which the idolater is able to commit the sin even without the Yisrael's assistance (e.g., he could buy the item elsewhere). However, if the idolater has no access to the forbidden item without the Yisrael's assistance, then it is prohibited to sell him the forbidden item because this involves the Torah *issur* of לפני עור which applies even to one who assists idolaters (" שלא יושיט אבר מן " החי לבני נח", Avodah Zorah 6a,b).]

The K'sav Sofer⁹ maintains that the *issur* of מסייע only applies if assistance is offered directly for the sinful act, such as in the case of the Mishna where the poor man's act of הנחה is performed in the *baal habayis*'s hand. However, selling someone an item that he plans to use for a sin in the future is not considered לעוברי עבירה since the seller is not participating in the actual sin.

[Note: The Ramoh¹⁰ permits one to sell an avodah zorah item to an idolater if the item is available elsewhere, but he writes that a בעל

נפש - a scrupulous individual - should be מחמיר - conduct himself stringently - and refrain from doing so.]¹¹

דף ז.

1] וכי אומרים לאדם חטא בשביל שיזכה חבירך

- אופה - Baking is one of the thirty-nine forbidden melachos on Shabbos.
- In Talmudic times, baking bread involved attaching the dough to the walls of the oven. The act of removing bread from the walls of an oven (a process called רדיית הפת) is rabbinically prohibited on Shabbos.¹²
- One who places dough in an oven on Shabbos to bake is not liable to a penalty for the *melacha* of אופה (baking) until the bread is baked.¹³ If the bread is removed from the oven before it had a chance to bake, the individual who placed the dough in the oven is exempt from a penalty.¹⁴

The Gemara says that if one placed dough in an oven on Shabbos, he is permitted to remove the bread from the oven walls before it bakes. The sages permitted the violation of the rabbinic *issur* of רדיית הפת for the sake of preventing the Torah *issur* of אופה.

However, it is prohibited for an individual to remove his friend's bread from an oven for the sake of preventing his friend from violating the melacha of אופה, because אין אומרים לאדם חטא בשביל שיזכה חבירך - we don't advise a person to commit a sin (even if it is a minor sin) for his friend's sake (even to save his friend from a major issur).

Tosfos cites several exceptions whereby we permit an individual to commit a [minor] sin for the sake of preventing a fellow Jew from committing a [major] sin, or for the sake of fulfilling a [major] mitzvah:

(a) מצוה רבה - a great mitzvah. Sometimes we permit one to commit a minor sin for the sake of another person's important mitzvah. For example, the Gemara in Gittin 41b says that a master is permitted to free his Canaanite slave (an act that is generally forbidden) for sake of the great mitzvah of פרו ורבו (the mitzvah to marry and have children).

(b) מצוה דרבים - a small violation is permitted for the sake of מצוה דרבים (a mitzvah for many

people). See Berachos 47b (and Al Hadaf ibid.) where we learned that R' Eliezer was permitted to free his slave so that he could be counted as the tenth man to complete a minyan.¹⁵

(c) If the violator of the serious sin is not at fault (לא פשע), then others are permitted to commit a minor sin to spare him from an (inadvertent) violation of a serious sin.

2] The Rashba¹⁶ discusses whether a person is permitted to violate Shabbos (e.g., call the police or travel by car) to save his daughter from the clutches of missionaries who are attempting to lure her into embracing a foreign religion. The Rashba, based on our Gemara's rule of אין אומרים לאדם חטא בשביל שיזכה חברו, prohibits desecrating Shabbos to save the girl, because he says that a person is not permitted to violate an *issur* for the sake of saving another person from sin.

The Bais Yosef,¹⁷ however, citing Tosfos, disputes Rashba's ruling and maintains that this case falls under the category of מצוה רבה (great mitzvah) and is an exception to the above cited rule. The Bais Yosef maintains that one may even perform a *melacha* min haTorah to save the child, because violating a single Shabbos is considered a minor infraction in comparison with the prospect of the child converting and forfeiting an entire lifetime of mitzvos.¹⁸

The Mishna Berurah¹⁹ rules that if the girl decided on her own to embrace another religion, then the father is not permitted to violate a Torah *issur* in an attempt to coax her to return to the fold. He basis this on the fact that Tosfos says (according to one answer) that violating an *issur* for a friend's sake is permitted only where the friend's predicament is not a result of his own negligence (לא פשע). If someone willingly decides to reject Judaism, his friend may not transgress an *issur* (min haTorah) in an effort to coax him to return to the fold, since the sinner is at fault for his grievous predicament.²⁰

דף ה:

אמר אביי והוא שעומד לפוש

1] • As stated above, one is not obligated to bring a *chattos* for the *melacha* of הוצאה unless he performs an עקירה in one domain and an הנחה in the other (or an עקירה and a הנחה in the *reshus horabbim* at a distance of four *amos*).

• Rebbi (3a) postulates that the act of starting to walk with an item situated on one's body (e.g., shoulder or pocket) constitutes a legal act of עקירה (עקירת גופו כעקירת חפץ דמי - lifting one's body which is supporting an object is tantamount to directly lifting the object with one's hands). Likewise, the act of stopping while carrying an object is considered an act of הנחה - as though one deposited the item on the ground.

Abaya (5b) qualifies this halacha. He says that stopping is considered a הנחה only if one is עומד לפוש - stops to rest. However, if one is עומד לכתף - paused to adjust his package - it is not considered a הנחה. Thus, if one took a package from the *reshus hayachid* and walked into the *reshus horabbim* where he merely paused to adjust the package on his back, and then he walked back into the *reshus hayachid*, he is exempt from a *chattos* since he did not perform a legal act of הנחה in the *reshus horabbim*.

[Conversely, there is a case in which stopping while carrying something is grounds for an exemption: If an individual carries an object two *amos* in the *reshus horabbim* and he stops before continuing to carry it another two *amos*, he is פטור because he did not carry the item the required four-*amos* distance in one action. However, if the person [in middle of his four-*amos* walk] merely stopped לכתף (to adjust his package), then he is חייב because it is considered as one continuous four-*amos* walk.]

This *halacha* has ramifications with regard to one who mistakenly carries on Shabbos. One who is in the street on Shabbos and realizes that he is carrying an object should not impulsively drop the item, for that would constitute a הנחה in the *reshus horabbim*.

Rather, he should carry the item (without stopping) back into the *reshus hayachid* (from where it was originally taken). By doing this, one avoids a violation of *hotza'ah* since no הנחה was performed in the *reshus horabbim*.²¹

However, this recommendation is appropriate only if one has not yet stopped in the *reshus horabbim*. If one is standing still in the *reshus horabbim* when he realizes that he is carrying something, the item should be immediately set down where he is standing; carrying it back into the *reshus hayachid* would constitute a new act of *hotza'ah*.²²

According to Abaya there is an exception to this latter halacha. If one merely stopped to adjust his load, then it is not considered a הנחה. In such a case, it would be wrong for him to drop the item in the spot that he stopped, rather it would be proper for him to continue walking with the item while he returns to the *reshus hayachid*.

2] The Mishna Berurah²³ maintains that if one stops for any reason other than to adjust his package, it is classified as a situation of עומד לפרוש, and the stop constitutes a הנחה even if the person was compelled to stop (e.g., he stopped to use the restroom).²⁴

The Sefas Emes²⁵ disagrees and maintains that unless one stops voluntarily (e.g., to rest), it is considered as a case of עומד לכתף and the stop does not constitute a הנחה.²⁶

Consequently, it emerges from the Mishna Berurah that if one mistakenly carried something from his house to the *reshus horabbim* and was forced to stop at the corner because of oncoming traffic, his act of stopping is considered a הנחה and he should deposit the item at the street corner where he was forced to stop. However, according to the Sefas Emes, stopping because of a red light does not constitute a הנחה and in such a case the individual should continue carrying the item and return with it to the *reshus hayachid*.²⁷

דף ו:

כאן בזמן שישראל שרויין במדבר כאן בזה"ז

1] The Gemara (6a) cites a braysoh which describes a *reshus horabbim* as סרטיא ופלטיא

גדולה ומבואות המפולשין - a highway, a market place, or city streets which empty [at both ends] into a marketplace (or into a highway). The Gemara 99a derives from B'nai Yisrael's encampment in the midbar (wilderness) that a street must be at least sixteen *amos* wide (approx. 24-32 feet) to be considered a *reshus horabbim*.

A street which is less than sixteen *amos* wide, and a valley, are classified as a כרמליה. A "*karmelis*" is neither a *reshus hayachid* nor a *reshus horabbim*, and one who carries from it to a *reshus hayachid* or to a *reshus horabbim* (or vice versa) is not subject to a *chattos*. [There is, however, a rabbinic injunction against carrying to or from a *karmelis*.]

Tosfos (ד"ה כאן ב 6) asserts that a street is not classified as a *reshus horabbim* (min haTorah) unless it is used by 600,000 people because the criteria for *reshus horabbim* is derived from B'nai Yisrael's encampment in the midbar (see Gemara 98a and 99a).²⁸ Since the Torah states that there were six-hundred thousand people encamped in the midbar, only a street used by that number of people is considered a *reshus horabbim*.²⁹

The Ramban (Eruvin 59a) disagrees and maintains there is no such requirement.³⁰

- The Mishna in Eruvin 2a says one is permitted carry in an open alleyway on Shabbos if there is a צורת הפתח (lit., door frame, meaning, two side posts with a bar or string across the top) constructed in its entranceway.

- The halacha³¹ follows R' Yochanan who says (Eruvin 6b) that the device of *tzuras hapesach* (commonly called an *eruv*³²) is effective only in enclosing a *karmelis* (where carrying is only rabbinically prohibited), but it does not permit carrying in a *reshus horabbim* (where carrying is biblically prohibited). R' Yochanan says it is prohibited to carry in a large city even though it is enclosed by an *eruv* - unless it has gates which are closed at night.

Thus a practical ramification of the forgoing dispute between Tosfos and the Ramban is whether it is halachically acceptable to construct an *eruv* around a city

or neighborhood with wide streets whose population numbers less than 600,000 people.

According to Tosfos, such a neighborhood is not a *reshus horabbim* and hence an *eruv* could be constructed to permit carrying. However, according to the Ramban, 16-amah-wide streets are classified as a *reshus horabbim* min haTorah and they cannot be enclosed by an *eruv*.

2] The Gemara cites contradictory braysos as to whether a מדבר (desert) is considered a *reshus horabbim*. In resolution, the Gemara suggests that one braysoh is referring to a desert in today's time, whereas the other braysoh is referring to the status of a desert in biblical times when B'nai Yisrael were travelling in the desert.

Rashi explains that today a desert is not considered a *reshus horabbim* because it is not frequented by travellers, whereas in biblical times the midbar was inhabited by B'nai Yisrael and was therefore considered a *reshus horabbim*.

The Rambam appears to have understood the Gemara in an opposite manner. The Rambam³³ lists a desert among the examples of domains which are considered as *reshus horabbim*, thus indicating a desert in today's times is considered a *reshus horabbim*.

The Kesef Mishna cites Rabbeinu Avraham, the son of the Rambam, who explains that the Rambam is of the opinion that an ordinary desert today is considered a *reshus horabbim* since it is open and accessible to all people. According to the Rambam's understanding, the braysoh which indicates that a midbar is not a *reshus horabbim* is referring to the midbar in biblical times. The commentaries, however, struggle to understand why the midbar in biblical times was not considered a *reshus horabbim*.³⁴

The Mirkeves Hamishna suggests that the biblical midbar was not considered a *reshus horabbim* because B'nai Yisrael's camp was encircled by the ענני הכבוד - clouds of glory. According to the Rambam, the ענני כבוד were considered as walls and therefore B'nai

Yisrael's camp was considered as a *reshus hayachid*.³⁵

דף ז.

והוא שגבוה ג' זלא דרסי בה רבים

1] The Gemara says that a platform situated in the street which is three *tefachim* high (approx. 9-12 inches) does not have the status of a *reshus horabbim* because, due to its height, people walk around it rather than over it. Such a platform is classified as a *karmelis* and thus one who carries an item from a *reshus hayachid* and deposits it on such a platform is not obligated to bring a *korbon chattos*.

Abaya and Rava assert that if someone throws an object four *amos* in the *reshus horabbim* and it lands on an area which is overlaid with thorns, he is פטור, because such an area is classified as a *karmelis*. Since people avoid walking on thorns, that area is not considered to be part of the *reshus horabbim*, even if the thorns are less than three *tefachim* high.

The halacha, however, follows Rav Ashi who maintains that the person is חייב because even an area which is overlaid with thorns, or with manure, is considered as part of the *reshus horabbim* as long as it is less than three *tefachim* high.

There are several explanations of Rav Ashi's position:

(a) The *Shulchan Aruch*³⁶ explains that, as a rule, anything on the ground which is less than three *tefachim* high is considered as part of the ground. Thus, even though people avoid treading on the thorns and manure, these items are still considered as part of the ground, and are ascribed the same halacha as the ground (i.e., *reshus horabbim*).³⁷

(b) The *Machatzis Hashekel*³⁸ explains that Rav Ashi is of the belief that there is a (small) percentage of people who walk through such areas and who do not bother to walk around them. Therefore, such areas are not deemed distinct from the rest of the *reshus horabbim*.³⁹

(c) The *Vilna Gaon*⁴⁰ says that Rav is referring to a small area which measures less than 4 *tefachim* by 4 *tefachim*. Although

people do not step into the manure, if it covers only a small area, they will walk over it. The fact that the manure is less than three *tefachim* high coupled with the fact that people walk over it renders it as part of the *reshus horabbim*.⁴¹

2] The Massas Binyamin⁴² questions whether the yellow double line in middle of a highway has the status of the *reshus horabbim* since cars (and pedestrians) generally avoid going there.

He suggests that this question is linked to the understanding of our Gemara. According to the first explanation, the yellow dividing lines are certainly part of the *reshus horabbim* since they are less than three *tefachim* high. Even according to the second explanation the area of the yellow lines are considered part of the *reshus horabbim* since cars occasionally drive over it.

However, according to the Vilna Gaon (explanation C) it is conceivable that the yellow lines are considered separate from the *reshus horabbim* since it is not usual for people to walk on it and it is also unusual for people to cross over it (as opposed to a narrow strip of manure in the *reshus horabbim* which people frequently walk over).

דף ח:

אלא לאו בבור דלית ביה עשרה

1] Ulah (8a) says that if someone throws an item four *amos* in the *reshus horabbim* and it lands on a post nine *tefachim* high (in the *reshus horabbim*) he is חייב. Even though, as a general rule, an item in the *reshus horabbim* which is higher than three *tefachim* is not considered part of the *reshus horabbim* (as stated above), Ulah explains that a nine-*tefachim*-high post is considered part of the *reshus horabbim* because people use it to adjust their packages.

Rav Yosef applies the same halacha to a nine-*tefachim*-deep pit.⁴³ He maintains that since people sometimes store their packages there, it is considered part of the *reshus horabbim*.

Rav Yosef, in support of his position, cites a braysoh which indicates that one who is

standing in the *reshus horabbim* on Shabbos is permitted to remove an item from a nine-*tefachim*-deep pit (as long as he does not carry it four *amos*). This proves that the pit is considered part of the *reshus horabbim* because if it were considered a *karmelis* it would be prohibited *miderabbanan* to transfer something from the pit to a *reshus horabbim*. [A *karmelis* has some characteristics of a *reshus horabbim* and some of a *reshus hayachid*. Therefore, the sages ascribed to it the stringencies of both domains. They forbade carrying from a *karmelis* to a *reshus horabbim* and they also forbade carrying from a *karmelis* to a *reshus hayachid* (and vice versa).]

The Raavad maintains that even though there is no *issur min haTorah* to carry an item less than four *amos* in the *reshus horabbim*, it is prohibited *miderabbanan* (lest one mistakenly carry it four *amos* or more).

The Rashba cites Rabbeinu Yona who disputes the Raavad's position, citing proof from our Gemara. Our Gemara indicates that if a nine-*tefachim* pit would be considered as part of the *reshus horabbim* it would be permitted to carry something from the pit to the *reshus horabbim*. This clearly proves that there is no *issur miderabbanan* to carry less than a four-*amos* distance in the *reshus horabbim*. This is the ruling of the Rambam and the *Shulchan Aruch*.

2] • Even though there is no *malkus* liability unless one eats at least a *k'zayis* (olive's volume) of *chelev* (forbidden fats) or other forbidden foods, R' Yochanan (Yoma 83a) asserts that there is a biblical prohibition to eat even any amount, even less than a *k'zayis* ("חצי שיעור אסור מן התורה" - even a half measure is forbidden min haTorah).

The Chavos Yair⁴⁴ asks why carrying less than four *amos* in the *reshus horabbim* is permitted. Even though one who carries two *amos* in the *reshus horabbim* is not subject to a penalty of *kares* or *chattos*, the act should still be prohibited min haTorah because R' Yochanan says חצי שיעור אסור מן התורה.⁴⁵

In answer, the Levushei Mordechai⁴⁶ cites the Baal Hamaor⁴⁷ who explains that the logic behind the *issur* to carry four *amos* in the *reshus horabbim* is that ד' אמות של אדם קונות - the four *amos* surrounding a person are considered as his own domain (with regard to acquisition, see Bava Metzia 10a). By carrying four *amos* in the *reshus horabbim* it is considered as though one has transferred the item from one domain to another. Thus the *issur* to carry four *amos* in the *reshus horabbim* is classified as the same *issur* as carrying from a *reshus hayachid* to a *reshus horabbim*, namely, transferring an item from one domain to another.

Accordingly, the concept of חצי שיעור אסור does not apply. Carrying two *amos* is not viewed as a partial *melacha* (of carrying four *amos*) because the item is still entirely in its original domain and the *melacha* of carrying is defined as the transfer of an item from one domain to another.

דף ט:

לא ישב אדם לפני הספר סמוך למנחה

1] The Mishna says that a person may not take a haircut a half hour before the time for *mincha* lest he get delayed and forget to *daven mincha*. The Mishna also lists several other activities that one may not begin at that time.

Rashi (ד"ה ע"ד) wonders why the Tanna cites this halacha in middle of the laws of Shabbos, when in fact it applies to every day of the week (see Rashi's explanation).

The Sefas Emes suggests that although this *halacha* applies every day, the Mishna found it necessary to teach that it applies even on *Erev Shabbos*. One might have thought that on *Erev Shabbos* there is no concern that one may prolong his haircut and miss *mincha* since one must in any case take heed to complete his haircut before the onset of Shabbos.⁴⁸ Moreover, the Gemara on 35b says that there was a custom to sound several horn blasts on *Erev Shabbos* to remind people to stop working before Shabbos. The Tanna wants to teach that one may not take a haircut within a half hour of *mincha* even on *Erev Shabbos*

when there are horn blasts to remind him to stop before Shabbos.

Alternatively, the Rashash answers that there is a mitzvah for one (whose hair has grown long) to take a haircut on *Erev Shabbos* in honor of Shabbos.⁴⁹ The Mishna discusses the law of taking haircuts before *mincha* in Mesechtas Shabbos since it is common to take haircuts on *Erev Shabbos*.⁵⁰

2] אם התחילו אין מפסיקין

The Mishna says that if one began one of these activities more than a half hour before *Mincha* time, he need not interrupt (provided there is enough time to *daven* afterwards). [Tosfos says that even if one began one of these activities after the time for *Mincha*, he is not required to interrupt (even though he was wrong to begin).]

The Yerushalmi⁵¹ comments that since the Mishna exempts one from interrupting once he began, if one conducts himself stringently and interrupts his activity, he is called a הדיוט - commoner - because there is a rule, כל הפטור - whoever performs a mitzvah from which he is exempt is called a *hedyot*.

The Ramban (Kiddushin 31a) explains why women who perform מצוות עשה שהזמן גרמא - time related mitzvos (such as eating in a succah) - are permitted to recite a bracha and they are not classified as *hedyotos* even though they are exempt from such mitzvos. The Ramban maintains that one is called a *hedyot* only if one acts stringently and performs an act which is not a mitzvah. For example, the *Shulchan Aruch*⁵² says that one who eats in the *succah* during the rain is called a *hedyot* since he does not fulfill a mitzvah under those conditions. However, with regard to women eating in a *succah* or listening to *shofer*, since these acts are mitzvos with regard to men, a woman who observes those mitzvos also fulfills a mitzvah and she is not called a *hedyot*.

The Chidah⁵³ asks why according to the Ramban does the Yerushalmi term one who interrupts his haircut to *daven* *mincha* a *hedyot*

inasmuch as he certainly fulfills a mitzvah by *davening mincha* at that time.

In answer, the Chidah explains that the criteria for determining whether one who conducts himself stringently is a *hedyot* (or on the contrary, is considered a particularly scrupulous individual) is whether the mitzvah is applicable to others who are in a similar state. A woman who listens to shofer fulfills a mitzvah and is not a *hedyot* since the mitzvah is applicable to men (at that time). In contrast, one who interrupts his haircut to *daven mincha* (when there is sufficient time to *daven* afterwards) is considered a *hedyot* since all people in that predicament are exempt from interrupting their haircut.⁵⁴

דף י:

אסור לאדם שיתן שלום לחבירו בבית המרחץ

The braysoh (10a) says that one is prohibited to greet his friend with the greeting "Shalom" (i.e., Shalom Aleichem) in the inner room of a bathhouse (where people stand undressed) or in a bathroom.⁵⁵ Ulah in the name of Rav Hamnunah, citing the posuk (Shoftim 6:24) ויקרא לו ה' שלום - He called Him, "Hashem Shalom" - explains that the term Shalom (which literally means peace) is sacred because it is used as Hashem's name.

The Ritva says in the name of Tosfos that even though it is prohibited to use the greeting "Shalom" in a bathhouse, the term "Shalom" does not have the *kedusha* (sanctity) of an actual name of Hashem with regard to the laws of writing and erasing Hashem's name. He deduces from the fact that the Gemara in Shevuos 35a does not list Shalom among the שמות שאינן נמחקין (names of Hashem which may not be erased) that one is permitted to use Shalom as a greeting in a letter even though the letter will eventually be discarded.⁵⁶

Tosfos in Sotah 10a, however, indicates that Shalom is one of the שמות שאינן נמחקין - one of the names of Hashem which may not be erased. The Ran⁵⁷ likewise is of the opinion that one may not erase the name Shalom, and he therefore asserts that when greeting a friend in a letter one should not write the complete word Shalom since the letter will likely be

discarded in an inappropriate manner. The Ramoh⁵⁸ in *Shulchan Aruch* cites this view, stating that some people are careful to abbreviate the greeting Shalom in a letter's salutation (e.g., they write שלי or שלום).⁵⁹

The Radvaz,⁶⁰ while ruling in accordance with the stringent view of the Ran, writes that it is only prohibited to write Shalom in a letter when it is used in the context of a greeting because then the word Shalom signifies Hashem's name.⁶¹ However, if it is used in the context of its literal meaning (i.e., peace), or if one is referring to a person named Shalom, the word may be written in its unabridged form since it does not refer to Hashem.

The Taz⁶² permits addressing one's friend with his name Shalom in a bathhouse since the word is not being used in the context of Hashem's name.

The Magen Avraham,⁶³ however, citing the Bach, prohibits pronouncing the name Shalom in a bathroom or bathhouse for whatever reason - even if addressing a friend with that name.

The Mishna Berurah⁶⁴ writes that the halacha follows the lenient opinion of the Taz; i.e., one is permitted to pronounce the name Shalom in the bathroom. However, in deference to the stringent opinions he suggests that a ירא שמים (G-d-fearing person) should slur the name Shalom when he pronounces it in a bathroom rather than pronounce it fully (e.g., one could say "Shalon" / "שלון").⁶⁵

דף יא.

חברים מפסיקין לק"ש ואין מפסיקין לתפלה

1] The Gemara says that חברים (Torah scholars) who are involved in the study of Torah are required to interrupt their studies only to recite *shema* but not for tefillah - prayer. R' Yochanan explains that this halacha applies only to *talmidei chachamim* שתורתן אומנתן - whose sole pursuit is the study of Torah - as was the case with R' Shimon bar Yochai and his colleagues (see Berachos 35b and Al Hadaf ibid.). He says that other scholars, such as ourselves,⁶⁶ who interrupt their studies for work and for other reasons, are required to interrupt for *tefillah* as well.⁶⁷

The Rambam⁶⁸ writes that only Torah scholars who do not perform any work at all are categorized as "תורתן אומנתן" and qualify for the exemption from *tefillah*.⁶⁹

The Magen Avraham⁷⁰ indicates that a Torah scholar does not qualify as one who is *תורתו אומנתו* unless he never wastes even a moment of learning.

The Tur⁷¹ writes that today everyone is obligated to interrupt their learning to *daven* because no one today is on the lofty level of *תורתו אומנתו*.⁷²

2] The Gemara on 33b relates that when R' Shimon bar Yochai and his son fled the Romans, they hid in a cave and studied Torah uninterrupted for twelve years. In order to preserve their clothing, they removed their clothing and sat covered in sand all day, and they donned their clothing only to pray. Tosfos questions why R' Shimon interrupted his Torah study to pray. Our Gemara indicates that R' Shimon bar Yochai was the paragon of a *talmid chacham* *אומנתו* (whose sole pursuit was Torah study) and such a person is exempt from *davening*.

(a) Tosfos answers that although R' Shimon was exempt from *davening*, the Gemara on 33b means that he interrupted his learning and got dressed to recite *shema* (which everyone is required to recite).

(b) The Melech Shlomo maintains that once R' Shimon interrupted his learning in order to recite *shema* he was obligated to *daven* as well. Accordingly, the Gemara on 33b means that R' Shimon donned his clothing every morning to recite *shema* and also to *daven* *shacharis*.⁷³

(c) The Bircai Yosef⁷⁴ says that although *talmidei chachamim* whose sole pursuit is Torah study [as R' Shimon] are exempt from *tefillah*, they have the option of *davening* if they so desire. Accordingly, the Gemara on 33b which indicates that R' Shimon interrupted his Torah study to *daven* does not pose any contradiction to our Gemara, because R' Shimon was permitted to pray if he so desired.⁷⁵

3] Rabbeinu Yona (Berachos 8a) states as a matter of fact that R' Shimon bar Yochai would *daven* once a year. Rabbeinu Yona thus indicates that he agrees with Tosfos who says that R' Shimon only recited *shema* but he did not *daven* every day.

The Sefer HaEishel⁷⁶ suggests that day on which R' Shimon davened was Tisha b'Av since one is prohibited to study Torah on Tisha b'Av.⁷⁷

The Sefer Megadim Chadashim suggests, based on Rashi in Sh'vuos, that the day on which R' Shimon prayed was Yom Kippur.

- Rashi (ד"ה חברים) says the reason everyone is obligated to recite *shema* - including *talmidei chachamim* who are exempt from *tefillah* (such as R' Shimon bar Yochai) - is that the obligating to recite *shema* is *min haTorah* (of Torah origin), whereas the obligation to *daven* is only *miderabbanan*.⁷⁸

- Now Rashi in Shevuos (13a, ד"ה לא קראו) indicates that the obligation to recite the Yom Kippur *tefillah* is *min haTorah* (see Tosfos *ibid.*).

Since the obligation to *daven* on Yom Kippur is *min haTorah*, *davening* on Yom Kippur has the same stringency as *shema* and is compulsory even for *talmidei chachamim* who are *תורתן אומנתן*, such as R' Shimon bar Yochai.

דף יב.

חייב אדם למשמש בבגדיו ערב שבת עם חשיכה

1] Chananya states that one is obligated to check his garments (i.e., his pockets) on the eve of Shabbos with the onset of Shabbos - to ensure that he doesn't inadvertently carry something in his pocket on Shabbos.

The Sefas Emes contrasts this halacha with the halacha in the Mishna on 11a. The Mishna (as explained by Rava on 11b) says that a tailor may not go out with his needle **סמוך לחשיכה** - close to nightfall (which the Pri Megadim⁷⁹ suggests means a half hour before sunset) - lest he carry it on Shabbos. Chananya, on the other hand, seems to require one to check his pockets **עם חשיכה** - with the onset of Shabbos, not earlier.

The Sefas Emes explains that Chananya is referring to one who is in his house and is not

about to go out. Such a person is not required to check his pockets until the actual onset of Shabbos. The Mishna, on the other hand, refers to one who is carrying things (or to one who wishes to carry something) and the Mishna teaches that one must discontinue carrying a half hour before Shabbos.⁸⁰

The Magen Avraham⁸¹ rules that the *issur* of the Mishna (i.e., not to carry something outside before Shabbos) is not applicable today because our streets are not classified as *reshus horabbim* min haTorah since they are not inhabited by 600,000 people (see above דף י'). The Mishna Berurah,⁸² however, cites several authorities who disagree and maintain that this *halacha* applies even today.

The Levush Mordechai⁸³ limits the *issur* of carrying before Shabbos to items that a person carries without specific intent or destination, but simply to have on hand just in case it is needed, such as a tailor's needle, or one's wallet and handkerchief. He rules that one is permitted to return an item to a neighbor (if he carries the item in his hand) and to carry a *talis* to *shul* before Shabbos.⁸⁴

2] The Mishna Berurah⁸⁵ asserts that the mitzvah to check one's pockets applies not only at the beginning of Shabbos but during the entire day of Shabbos. If one typically puts things in his pocket on Shabbos, the Mishna Berurah says he is obligated to check his pockets each time he leaves his house on Shabbos.

The Sefer Haterumah,⁸⁶ in codifying Chananya's statement, explains that at the onset of Shabbos one must check his pockets and remove everything from them. Accordingly, we can deduce that one is forbidden from putting anything in his pocket on Shabbos since we find that there is an obligation to remove everything from one's pockets at the onset of Shabbos.

Indeed, the Rashba⁸⁷ states explicitly that it is prohibited to place things in one's pocket on Shabbos, and this is also the ruling of the Pri Megadim⁸⁸ and the Graz.⁸⁹

דף יג.

התינוקות הואיל ואימת רבן עליהן לא אתי לאצלו

1] The Mishna (11a) prohibits reading on Shabbos by the light of an oil lamp because of a concern that when the light dims one may inadvertently tilt the lamp to help rekindle it.

R' Shimon ben Gamliel says, however, that schoolchildren are permitted to read by the light of an oil lamp on Shabbos.

The Gemara explains that we are not concerned that the children will tilt the lamp because אימת רבן עליהם - they are frightened of their teacher. Rashi explains that schoolchildren are trained by their teacher not to touch and play with anything without permission during their lessons and therefore there is no concern that they will inadvertently tilt the lamp when reading.⁹⁰

Alternatively, Rav Nissim Gaon cites the following explanation from the Yerushalmi which he finds very appealing. Children generally are disinterested in learning and are overjoyed at the prospect of the lamp going out - so that they can be dismissed early from school. Therefore, we are confident that they will not tilt the lamp in an effort to revive its light.

2] The Chikrei Lev⁹¹ finds difficulty with the fact that the Gemara seeks reasons to permit the children to read by the light of a lamp on Shabbos.

R' Pedas (Yevamos 114a) is of the opinion that although adults may not feed a child non-kosher food, adults are not obligated to restrain a minor who decides on his own to eat non-kosher food (or to commit a different *issur*). [If the minor is הגיע לחינוך - old enough to be trained in mitzvos - his father is obligated to restrain him.⁹²] The Rashba (Yevamos 114a) is of the opinion that if the food is only rabbinically prohibited then one is even permitted to feed it to him (if the child wants for his own benefit).

Perhaps the reason R' Shimon ben Gamliel did not object to letting children read by the lamp is that one is not obligated to restrain (young) children from committing an *issur*

(and it is even permitted to tell them to do so, since it is only an *issur miderabbanan*).

In answer, the Chikrei Lev explains that allowing a child to commit an *issur* is permitted only when the child commits the *issur* on his own volition for his own benefit and pleasure. However, an adult is forbidden to ask a child to commit an *issur* on the adult's behalf. For example, one is not permitted to ask a child to carry his *talis* through the street on Shabbos.⁹³ Moreover, the Gemara below on 121a says that if a child wants to commit an *issur* for the sake of an adult, the adult must restrain him even if he did not explicitly request the child to commit the *issur* for him.⁹⁴

Since schoolchildren presumably study only because the teacher and their parents require them to do so (as above), if reading by the light of a lamp on Shabbos is a forbidden act they must be restrained from doing so - since they are not doing it for their own pleasure, but rather for their parent's or teacher's sake.⁹⁵

3] The Gemara says that one is permitted to glance at the ראשי פרשיות - beginning of the passages - (to remind himself of the rest of the passage) by the light of the lamp on Shabbos. Since this does not require much concentration we are not concerned that a person will become engrossed and inadvertently tilt the lamp.

The Shibolei Haleket⁹⁶ applies the same *heter* (permit) to reading familiar prayers, such as the Pesach Hagadah and the standard Shabbos prayers. We are not concerned that someone will tilt the lamp when reading the hagadah since one is familiar with it and its reading does not require much concentration.

The Ramoh,⁹⁷ citing the Mordechai, says that the minhag is not to recite the special festival liturgy (*piyutim*) when Yom Tov falls on Shabbos because, in contrast to the hagadah, people are not familiar with the Yom Tov *piyutim*.

The Tosfos HoRosh, however, maintains that Yom Kippur is an exception. He argues that just as schoolchildren are permitted to read by the light of a lamp because אימת רבן

עליהם - they are afraid of their teacher - so too, people are permitted to read from a Yom Kippur machzor by the light of an oil lamp (even though the prayers are not so familiar) because אימת יום כיפור עליהם - they are frightened to commit a sin on Yom Kippur.^{98 99}

דף יד:

בשעת שתקן שלמה עירובן ונט"י יצאת בת קול

The Gemara says that Shlomo Hamelech enacted the laws of *eruv* and *netilas yodayim* to safeguard the Torah laws: To prevent carrying from a *reshus hayachid* to a *reshus horabbim*, Shlomo forbade carrying objects between one *reshus hayachid* and another (e.g., from Reuven's yard to Shimon's yard) unless an עירוב חצירות is placed in one of the houses. [He ordained that placing a jointly owned loaf of bread, called an *eruv*, in one of the houses permits carrying between the houses because it is considered as though both domains are merged into one.]

Shlomo also decreed that touching *terumah* without נטילת ידיים - washing one's hands - renders it tamei.

The Gemara cites a posuk in Mishlei (23:15), בני אם חכם לבך ישמח לבי גם אני - My son, if your heart is wise, My heart shall also rejoice - which indicates that Hashem enthusiastically expresses approval of Shlomo's enactments.

Tosfos in *eruv* 21b asks why only these two enactments are mentioned when in fact Shlomo also enacted שניות לעריות (the prohibition against marrying certain relatives in addition to those relatives prohibited by the Torah). Moreover, the Chasam Sofer¹⁰⁰ asks why Hashem rejoiced specifically over Shlomo Hamelech's enactments when he was not the first one in history to enact an ordinance to safeguard a Torah law. We find that Moshe Rabbeinu had already instituted certain *issurim*¹⁰¹ and we even find that Adam HaRishon instituted an *issur* to prevent a violation of Hashem's command. Hashem commanded Adam not to eat from the עץ הדעת (tree of knowledge), and then Adam told Chava that it is even forbidden to touch the tree.¹⁰²

In answer, the Chasam Sofer explains that the institution of the *issurim* per se was not cause for rejoicing. Even though it is important to safeguard the Torah, enacting additional *issurim* has a certain drawback in that some people will invariably find the additional prohibitions too difficult to comply with (see Beitzah 16b, כיון דמקלקי ביה רבים, היינו קלקולא). Causing people to violate *issurim* dampens any cause for rejoicing.

Shlomo's enactments of *eruv* and *netilas yodayim* were different from other enactments because Shlomo provided the means of to permit these *issurim*. Shlomo did not merely order an end to all carrying between private domains on Shabbos. Rather, he said that if one wishes to carry between domains he may do so by preparing an *eruv*. Similarly, he did not simply prohibit touching *terumah* with one's bare hands (or requiring one to first immerse in the *mikveh*), he instituted *netilas yodayim* so that one who wished to touch *terumah* may do so as long as he washes his hands first. These enactments were cause for special rejoicing since Shlomo made it feasible for everyone to comply with them.

דף טו.

חייב אדם לומר בלשון רבו

A *mikveh* must have at least forty *se'ah* of water which has gathered by natural means. מים שאובין - water that was drawn in a vessel - is not valid. Moreover, if a significant amount of *mayim she'uvim* falls into a *mikveh* (before the *mikveh* was filled with forty *se'ah* of water) all the water in the *mikveh* is disqualified.

The Gemara cites a dispute from the Mishna in Eduyos 1:3 as to the amount of *mayim she'uvim* necessary to disqualify the entire *mikveh*:

Hillel says מלא הין - a *hin* (which is three *kabim*), and Shammai says nine *kabim*. The Mishna comments that Hillel chose the expression of מלא הין because this was the terminology used by his teachers, Shemayah and Avtalyon, and a person is obligated to speak in the manner of his teacher ("חייב אדם (לומר בלשון רבו").

The Ravad (Eduyos *ibid.*) explains that the term "*hin*" used by Hillel was considered odd because the Mishna generally uses the measurements of *kav* or *log*, rather than the biblical measurement of הין. In addressing this peculiarity the Mishna explains that Hillel used the term *hin* (rather than three *kabim*) because his teachers used that term. [See Ravad *ibid.* for reason why Hillel's teachers used that term.]

The Rambam¹⁰³ offers a unique explanation of this Mishna. He says that Hillel's teachers, Shemayah and Avtalyon, were גרים (converts) and they came from a nation whose citizens could not properly pronounce the letter ה (*hey*); they would pronounce the letter *hey* as an "א" (*aleph*). Thus, Shemayah and Avtalyon would pronounce the word הין as אין. Hillel, in deference to his Rebbeim would also pronounce the word as אין instead of הין because חייב אדם לומר בלשון רבו.

The Vilna Gaon¹⁰⁴ explains the Mishna similarly to the Rambam, but he rejects the notion that one is obligated to copy his rebbi's mispronunciation of words.

The Vilna Gaon explains that the Mishna is not addressing the fact that Hillel used the term הין (instead of קבין *שלשה*), but the fact that Hillel preceded the word הין with the term מלא (i.e., מלא הין - a full *hin*). By definition, הין means a full *hin* and it seems redundant for Hillel to stress הין מלא (just as Shammai states nine *kabim* without stressing that it must be a full nine *kabim*). The Mishna explains that Hillel used the term מלא הין because of his teachers. Since Shemayah and Avtalyon could not properly pronounce the word הין (as the Rambam says), they were concerned their statement would be taken to mean אין מים, שאובין וכו', - *she'uvim* water doesn't disqualify a *mikveh*. To prevent this misunderstanding they stressed מלא הין וכו' (a full *hin* of *she'uvim* water disqualifies a *mikveh*), figuring that this would clarify their intention and leave no room for mistakes.

Even though Hillel had no problem pronouncing the word הין, he did not deviate

from his teachers' terminology and he used the expression **מלא הין**.¹⁰⁵

דף טז:

המקוה את פוסלים אפילו כלי אבנים וכלי גללים

Only the type of vessels mentioned in the Torah, such as earthenware and metalware, are **מקבל טומאה** - susceptible to *tumah*. Vessels which are not mentioned in the Torah, such as those made from stone, mud, or dung are not **מקבל טומאה** - susceptible to *tumah*. [Mud vessels are dried in the sun whereas earthenware vessels are fired in a furnace.]¹⁰⁶

[Min haTorah, glassware is also not **מקבל טומאה**, however, due to its similarity to earthenware and metalware the rabbis decreed that glass is **מקבל טומאה**, Gemara 15b and 16a.]

The Mishna in Keilim 2:2 states that earthenware is **מקבל טומאה** only if it has a receptacle large enough to hold enough oil to smear a baby. An earthenware vessel which is too small to hold that amount of oil is not classified as a **כלי** (vessel) with regard to *tumah* susceptibility.

Conversely, the Mishna in Keilim 15:1 says that a wooden (or leather) vessel that is very large, too large to be moved by a single person when full of water, is also not classified as a vessel (with regard to *tumah* susceptibility) and it is not **מקבל טומאה**.

As stated above, water that is gathered in a vessel, called *mayim she'uvim*, may not be used as *mikveh* water. The Gemara (16b) cites a Mishna in Mikvaos 4:1 which states that even if water is drawn in a type of vessel which is not classified as a **כלי** with respect to *tumah* susceptibility, the water is still disqualified as *mayim she'uvim*.

The Mishna says, for example, that water that is drawn in any size vessel is classified as *mayim she'uvim*, even if the vessel is too small or too big to be **מקבל טומאה** (see Tosfos אחד כלים). Also, water that is drawn in stoneware, vessels of mud, and **כלי גללים** is classified as *mayim she'uvim* and is disqualified for use in a *mikveh* even though these vessels are not classified as vessels with regard to **קבלת טומאה**.

Rashi interprets **כלי גללים** as **כלי שיש** - marble vessels. The Rambam¹⁰⁷ asserts that **כלי גללים** cannot mean marble vessels because marble vessels are the same as stone vessels (which the Mishna already mentioned). Therefore, he claims that **כלי גללים** means vessels made from dung.

The Dibros Moshe,¹⁰⁸ in defense of Rashi, suggests that dung has the same halacha as mud and that vessels of dung which are fired in the furnace are susceptible to *tumah* - the same as earthenware. Since the Mishna enumerates types of vessels which are not susceptible to *tumah*, Rashi interprets **כלי גללים** as marble vessels. As to the Tosfos's point that marble vessels are essentially the same as stone vessels, Rav Moshe explains that one might have thought the reason stone vessels are not **מקבל טומאה** is that stone vessels are unusual (and therefore are not classified as **כלים** with regard to *tumah* susceptibility). Marble vessels, however, are more common than plain stone vessels and accordingly should be **מקבל טומאה**. The Mishna therefore lists marble vessels in addition to stone vessels to teach that despite the fact that marble vessels are common they are still not **מקבל טומאה** (because the Torah does not mention them).

דף יז:

בית שמאי אומרים אין פורסין מצודות

Bais Hillel is of the opinion that it is permissible to set an animal or bird trap before Shabbos since it is the trap, not the trapper, that performs the trapping on Shabbos.

Bais Shammai disagrees and prohibits setting a trap before Shabbos for the purpose of trapping animals on Shabbos. [See Gemara for Bais Shammai's reason.]

The Rambam¹⁰⁹ writes that if someone incites a dog to chase rabbits on Shabbos and he assists in the capturing of the rabbits by blocking their escape route, he is in violation of the *melacha* of **צידה** - trapping wildlife.

The Magen Avraham¹¹⁰ deduces from the wording of the Rambam that if the person does not assist in the rabbits' capture he is **פטור**, because by inciting the dog he only caused or

precipitated their capture and he did not directly commit the act of צידה with his hands.

Similarly, Tosfos (ד"ה אין) assumes that if one sets a trap on Shabbos he is not liable for צידה (min haTorah) when animals eventually get trapped because he did trap them with his hands, he only caused their capture.¹¹¹

Tosfos also says that Bais Shammai prohibits beginning a melacha before Shabbos only if it is a melacha that is biblically forbidden on Shabbos; he does not prohibit beginning an act before Shabbos which is only rabbinically prohibited on Shabbos.

Consequently, Tosfos asks why Bais Shammai prohibit setting traps before Shabbos since setting traps on Shabbos is not biblically forbidden.¹¹²

Tosfos answers that under certain circumstances setting a trap does involve a melacha min haTorah, such as where an animal gets trapped immediately when the trap is set. [The fact that setting a trap sometimes involves a melacha min haTorah is sufficient grounds for Bais Shammai to prohibit the setting of any trap before Shabbos.]

The commentaries disagree as to the meaning of Tosfos:

The Avnei Nezer¹¹³ maintains that the principal consideration is whether one is certain that his trap will capture an animal (on Shabbos). If one sets a mouse trap, for example, in a mice infested cellar, he is חייב for צידה (even if a mouse does not get trapped immediately) because when he set the trap he was virtually certain that it will successfully snare a mouse.¹¹⁴

The Sefas Emes on the other hand understands that Tosfos does not hold one liable for צידה unless the animal gets trapped the moment while the person is engaged in setting trap, because in such a case it is considered as though the fellow trapped the animal directly with his hands. According to the Sefas Emes, if the animal does not get trapped immediately, the person is exempt from a chatos even if we are certain that his trap will eventually capture an animal.¹¹⁵

14 ע'י מנח"ח מצוה רצ"ח שנקט הדאופה בשבת בסוף היום פטור היכא דלא נגמר האפיה עד אחר השבת, וע'י ספר שערים מצויינים בהלכה על מסכת שבת דף ג: סוף ד"ה הדביק שהביא הדפרימ"ג בסוף הפתיחה להל' שבת מסופק בה.
15 באמת ליכא ראי' משם אלא האדון מותר למכור עבדו כדי שיקיים האדון מצוה בעצמו (דרי"א בעצמו רצה להתפלל תפלה בציבור) אבל תוסי' כאן (בסופה) הוכיח מגיטין דף לח: מחזיק שפחה דכופין רבה לשחררה היכא דנהגו בה מנהג הפקר, דמוכח דכופין את רבה אע"ג דלא היה התועלת משום מצות עצמו.
16 (שו"ת ח"ו סימן רס"ז) מובא בב"י או"ח סו"י ש"י.
17 שם.
18 (המג"א שם סי"ק כ"ט כתב דאפי' אם הבת קטנה (וקי"ל דאין ב"ד מצווין להפרישו) מי"מ אמרינן מוטב שיחלל שבת אחת כדי שישמור שבתות הרבה.
19 מ"מ ששני"ב שם סי"ק נ"ו.
20 וכתב שם להקל לעבור על איסור מדרבנן דברבנן יש לסמוך על ת"י ראשון בתוס' דלא תלוי בפשיעה.
ד"ה
21 מובאר בפוסקים שיש עוד עצות כגון להניחו על מקום פטור, וכוונתו בזה אינו אלא ליעזי' מה לעשות במקום שהעצות אחרות לא שייך, דיותר טוב לחזור לרה"י שישא משום ולא לעשות הנחה ברה"י.
22 ואם עמד לפוש ברה"י ולא נזכר שיש לו משא בידו עד אחר שכבר הלך ממקום שעמד לפוש, לכא"י יש לו להחזיר לתוך ד' אמות של אותו מקום שעמד לפוש בו כדי שלא לעבור על "מעביר ד' אמות ברה"י".
23 שער הציון סימן שמי"ט כתב דעומד לפוש לאו דוקא רק לאפוקי שלא עמד לתקן, ומוכיח כן מגמ"י דף קנ"ג: דמבואר דבהמה שעמדה להטיל מי רגלים מקרי הנחה.
24 וע"ע חזו"י סימן ס"ב ריש סק"ד שנקט לפשיטות שאם עמד לדבר עם חברו שודאי מקרי הנחה ומבאר שעומד לפוש חידוש הוא דמיקרי הנחה אע"פ שעמד לצורך הוצאה (שצריך לנח קצת כדי להמשיך הלאה).
25 שפי"א דף קנ"ג: ע"ש שמחלק בין בהמה שעמדה להטיל מי רגלים לאדם.
26 ויש להקשות על דברי השפי"א דמה לי אם עמד לפוש מחמת אונס (וכגון שהרגיש שא"י לו להלך עוד בלי עמידה לפוש) ומ"ל אם עמד להטיל מי רגלים או משום אונס אחר.
27 ע"ש שגאון בנימין סימן ה' שהאר"ק בענין זה, וכתב דדברי הר"ח כאן (שכתב דעומד לפוש חשוב הנחה משום דנתכונן לעמוד) מדויק כדברי השפי"א דלא מקרי עומד לפוש אא"כ נתכונן לעמוד.
111 (28) וכן דעת רש"י בעירובין דף ו' ר"ד נ"ט. וכן דעת הרא"ש פ"ק דעירובין ומבאר דעה זו בשו"ע סימן שמי"ה סעיף ד' בשם י"א (וכן דעת עוד הרבה ראשונים מובא בב"ה"ל שם).
29 (ע'י תו"ש ערובין ו'. ד"ה כיצד שמבאר דאע"פ שהיה יותר מששים רבוא במדבר (עם הנשים וטף) מ"מ לא ילפינן אלא מאותם שהיו במנין הפקודים), ולשון השו"ע משמע דלדעה זו בעינן ששים רבוא בכל יום [כן משמע ברש"י עירובין דף נ"ט, וכן מבואר ברבינו ירוחם תנ"י י"ב חלק ד' וכן מבואר בר"ן ר"פ במה אשה (עמוד כו. בדף ה"ר"ק)], וע'י חידושי הר"ן כאן בשם הרא"ה שמבאר דלא בעינן ממש ששים רבוא, וע'י משנ"ב שם סי"ק כ"ד, וע'י אגרות משה או"ח ח"א סימן קל"ח.
30 וגם ברמב"ם לא מובא תנאי של ששים רבוא, וכן דעת הרשב"א וריטב"א ור"ן ועוד ראשונים.
31 או"ח סימן שס"ד ס"ב.
32 יש סמך לשלשן בני"א שקורין לצורה"פ "עירוב" מגמ"י עירובין דף ו': "א"ל אין מערבין
33 פ"ק ב"ד... כיצד מערבין מובאות, ודו"ק.
33 פ"ק מ"ח שבת ה"א.

ד"ה
1) תו"ס מבאר דהטעם שנקט התנא הוצאה ברישא משום דהוצאה דבר הרגיל הוא, וראיתי בספר לקוט ומאורי בשם הגר"א דנקט הוצאה ברישא כיון דכתיבי באורייתא להדיא (אל יצא איש ממקומו דילפינן מינה הוצאה, עירובין דף יו':) משא"כ שאר מלאכות דלא כתיבי בתורה (ואע"ג דכתיבי נמי הבערה בקרא י"ל דס"ל להאי תנא דהבערה ללא יצאת).
2) ותו"ס יו"ט ת"י דהפטור של טעה בדבר מצוה לא שייך אצל צדקה בשבת משום דלא ניחנה שבת לדחות אצל מצות צדקה כולל [משא"כ במילה] וע'י תו"ס רע"א שם אות ג' ובחי' תת"ס כאן שמתה עליו שהרי ר' יוסי קאמר טעה בדבר מצוה אפי' בהוצאת לולב אע"פ דלא ניתן שבת לדחות אצל לולב.
3) פרק י"ג מהל' שבת הלכה ב-ו.
4) ע'י רמב"ם בפי' המשני' כאן שמבאר הטעם דנקט תנא דמתני' עני ועשיר הוא כדי לקצר בלשוננו [כדי שלא יהא צ"ל האיך העומד בפנים והאיך העומד בחוץ] (ולפי"ז ודאי טעון ביאור דשינה הרמב"ם ביד החזקה מלשון המשנה).
5) ע'י ערוך נ"ר סוכה דף מא': ד"ה מפני שהביא ת"י זה ותמה עליו דאין לך זמנו בהול יותר ממצות צדקה כדאמרין ברי"ה דף ו' לענין בל תאחר דעובר לאלתר דהא קיימי עניים, וע"ש משי' לתרץ קושיית תו"ס יו"ט, וע"ע משי"כ האחיעזר ח"ג סימן פ"ב.
6) דהוי"ל כטעה בדבר מצוה ובלא עשה מצוה (ווי"ל דעני הזה דיוצא מבתו בשבת וכלי בידו ומסבב על הפתחים קרוב להיות מועד ומוזיז לחלל שבת...העני הזה אינו הגון ואינו מחויב להחיותו (וצ"ל) וע'י קהלת יעקב (להג' ר' יעקב מקרלין בעל משכנות יעקב, בסוף חידושים למס' שבת, מובא במגדיל חשום (כאן) שכי' דגרי' דמצות צדקה לא נהנת כלל בשבת דכתיב והכינו את אשר יביאו וגם ששים איסור הוצאה (וע"ע בתוס' ריש דף ג' שכי' דעסקתו בעני כרבי, ולפי"ז מובן למה לא הוי טעה בדבר מצוה דליכא מצות צדקה בעני (אלא דצ"ל דמתני' לצדיקים קתני כדמבואר שם במהר"ם שהרי ציור של "עני חייב" ודאי עוסק בעני ישראל).
ד"ה
7) בענין הא דנקט תו"ס והרא"ש דאיסור "מסייע" אינו אלא איסור מדרבנן ע'י שעה"צ להמ"ב סימן שמו"ז סק"ח שהקשה למה אינו אסור מדאורייתא כיון שיש חיוב להוכיח ולהפריש חברו מאיסורא מן התורה מדין תוכחה (וכן מבואר בספ"ה"מ להר"מ מצוה ר"ה ובספר החינוך מצוה רל"ט, דהוא מצוה מדין תוכחה), וכן ע'י מהר"ץ חיות כאן שהק' כן, וע"ש בשעה"צ שתירץ דעסקתו בכוונה דא"א למונעו ואע"פ יש איסור לסייעו, אולם צ"ע דאם א"א למונעו מאיסור א"כ הוי "לא שב מדיעותיו" ואינו חייב חטאת על שגגתו, ע'י ספר "מנחת אריאל" כאן.
8) יו"ד סימן קנ"א סק"ו.
9) יו"ד סימן פ"ג.
10) סימן קנ"א סוף סעיף א'.
11) ע"ע בדגול מרבבה על השי"ד שם, וע'י שו"ע או"ח סימן קס"ט סעיף א' דאסור ליתן פרוסת פת למי שאינו מבוך, וע'י שו"ת תורת חסד ח"א ס"ה שכי' דהיכא דהוי חד עיברא דנהיה [כגון שמוכרו לו והוא יכול לקנותו במקום אחר] מותר דאו לית ביה אלא משום איסור מסייע וס"ל דליכא איסור מסייע במצות דרבנן.
ד"ה
12) ע'י ר"ן דף ג': שכי' שרדיתת הפת אסור משום עובדא דחול וע'י רמב"ם פ"ב מהל' שבת ה"א.
13) ע'י תו"ס מנחות דף נו': ד"ה שמעינן שנקט דקדמו פניה מקרי אפיה (ולענין מתי חשוב קדמו פניה ע'י שו"ע או"ח סימן רנ"ד ס"ה).

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