

# 4. *Amira L'Nachri*

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**A**n important aspect of the relationship between Jews and non-Jews is the roles and boundaries that define how non-Jews can assist Jews in fulfilling ritual responsibilities. In some other articles we have explored the ethical implications in the interaction between Jews and non-Jews. In this piece, we will explore the halachic implications, through the sugya of *Amira l'Nachri*, telling a non-Jew to perform melacha on Shabbat.

**May one ask a non-Jew to carry food from the house to the *Sukkah* on *Shabbat* if the *eruv* falls down?**

For the sake of a mitzvah, one may instruct a non-Jew to do something that is Rabbinically proscribed for a Jew.<sup>1</sup> An *eruv* is effective only in an area in which one may carry by Torah law. If the *eruv* falls down, a Jew is only prohibited to carry by Rabbinic law. As such, he may instruct a non-Jew to carry, so as to enable the mitzvah of eating in a *Sukkah* to be fulfilled.<sup>2</sup>

This leniency requires explanation. One may not tell a non-Jew to do a *melacha*, a Torah prohibition, even for the purpose of doing a mitzvah.<sup>3</sup> If no mitzvah is involved, one may not instruct a non-Jew to perform even an act that is only prohibited Rabbinically. Why is it that if the prohibition is Rabbinic and a mitzvah is involved, a non-Jew may be instructed to perform some act?

The *Gemara* questions whether the Rabbinic injunction against instructing a non-Jew applies to Torah laws other than *Shabbat*, such as muzzling an ox that is threshing, for example.<sup>4</sup> Perhaps this question depends upon the nature of the injunction. Do we consider the non-Jew an agent of the Jew who instructs him? If so, the injunction applies to all prohibitions, since an agent is bound to the same laws as the principal who empowered him.<sup>5</sup>

The *Gemara* implies that the source of the injunction is the following phrase.<sup>6</sup>

## 1.

If thou turn away thy foot because of the Sabbath, from pursuing thy business on My holy day; and call the Sabbath a delight, and the holy of the LORD honourable; and shalt honour it, not doing thy wonted ways, nor pursuing thy business, nor speaking thereof;

אם-תשב משבת רגנן, עשות  
חפץ ביום קדשי; וקראת לשבת  
ענג, לקדוש יהוה מקדש, וככבודו  
מעשות דרכין, ממוצה חפץ ודבר  
דבר.

**ישעיהו (נח:יג)**

*Isaiah 58:13*

In particular, the *Gemara* points to the latter part of the *passuk* "nor pursuing thy business, nor speaking thereof". One may not discuss a *melacha* that he, or anyone else, plans to perform.<sup>7</sup> Instructing a non-Jew to do a *melacha* necessarily includes mentioning that *melacha*, which is forbidden. If this problem of mentioning a *melacha* is the only reason for the injunction against instructing a non-Jew, it is limited to *Shabbat* and does not apply to other Torah laws.

The potential dual nature of the injunction affects *Shabbat* as well. One may not tell a non-Jew to do a *melacha* after *Shabbat*. The instruction on *Shabbat* constitutes 'discussing the forbidden'.<sup>8</sup> However, if one tells a non-Jew on Friday to do *melacha* on *Shabbat*, no forbidden discussion takes place. Since the non-Jew can still be considered an agent of the Jew, and as we mentioned above, an agent is bound to the same laws as the principal, we may still have a problem. Indeed, this stricter view is accepted, indicating that we are concerned about agency as well.<sup>9</sup>

The *Gemara* ultimately rules that only "seeking your needs" is prohibited.<sup>10</sup> It is permissible to seek the "needs of Heaven", which presumably includes discussion of the mitzvah needs also. This addresses the first component of our case. The source of prohibition for discussing *melacha* only rules out discussing *melachot* that are not related to doing a mitzvah. Speaking about the *melacha* in question to a non-Jew may appear permitted. The question remains whether asking him to perform is still a problem, based on our understanding of agency law.

The *Gemara* does not resolve the question of agency, giving us no determination as to whether the non-Jew is an agent, and thus bound to the same laws as the Jewish principal.<sup>11</sup> Our general rule is that unresolved questions that relate to Torah prohibitions require stringency. Even though the entire concept of agency in this context is only a Rabbinic *chumra*, nevertheless, since the *melacha* itself is a Torah law we adopt the strict view. The end result, as mentioned earlier, is that we may not tell a non-Jew on Friday to do *melacha* on *Shabbat*. When, however, the act that the non-Jew is instructed to perform is only a Rabbinic violation, we may adopt a lenient position with respect to the unresolved question of agency in the *Gemara*. The non-Jew could then be considered

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an independent actor, not an agent of a Jew, and a Jew could instruct him to perform an act that is a Rabbinic violation of *Shabbat*. This is the plain reading of the *Rif* in the context of a *milah* on *Shabbat*.<sup>12</sup>

Elsewhere, the *Gemara* prohibits telling a non-Jew to do a Rabbinically forbidden act, seemingly contradicting the *Rif*.<sup>13,14</sup> To resolve this contradiction, we learn that the *Rif's* ruling is limited to *milah* and other “needs of Heaven,” which may be discussed. The *Gemara's* ruling applies to all other situations, including asking a non-Jew to violate a Rabbinic prohibition that is not for the purpose of a *mitzvah*.

The result of the preceding discussion is that telling a non-Jew to perform a Rabbinically prohibited act (*Shvus D'Shvus*) is a forbidden discussion. Instructing a non-Jew to do a *melacha* (that is, a violation of *Shabbat m'deoraisa*) for a *mitzvah* is prohibited since the non-Jew is considered the Jew's agent. Yet a *shvus d'shvus* for the sake of a *mitzvah*, like telling a non-Jew to perform a Rabbinically prohibited act on *Shabbat*, is allowed. The *mitzvah* eliminates the problem of forbidden discussion. The fact that the act is prohibited Rabbinically enables us to rely on the lenient position that the non-Jew is not an agent of the Jew.

Returning to our opening question, if the *eruv* fell down one may ask a non-Jew to carry food to the *Sukkah* on *Shabbat*? First, let's answer the foundational question: May one ask a non-Jew on Friday to perform a Rabbinically prohibited act on *Shabbat*? According to our analysis, it should be permitted. There is no forbidden discussion, and no agency since one may rely on the lenient position regarding Rabbinic violations. Indeed, the *Mishna L'Melech* (6:9) cites such an opinion. But this is not the actual ruling – the leniency should in fact be avoided. We rely on the rule that an unresolved Rabbinic question may be resolved leniently (*safek derabanan l'kula*) only in a case of need. We do not enter into such a situation unless it is unavoidable. Therefore, under ordinary circumstances, we may not tell a non-Jew on Friday to perform a Rabbinically prohibited act on *Shabbat*, even though it is technically permitted.

Similarly, the dispensation of *shvus d'shvus* for a *mitzvah*, which is based on the decision rule of *safek derabanan l'kula*, may be relied upon when necessary. The answer to our question then is that a Jew may ask a non-Jew to bring food to the *Sukkah* on *Shabbat* if the *eruv* has fallen down during *Shabbat*. However, in a place that has no *eruv* to begin with, every effort must be made to reach a different arrangement before *Shabbat*. Only when there is no alternative may a non-Jew be told to perform a Rabbinically prohibited act for the sake of a *mitzvah*.

<sup>1</sup> *Rambam Shabbat* 6:9, *Shulchan Aruch* OC 307:5

<sup>8</sup> See *ibid.* 307:22

<sup>2</sup> See *Beur Halacha* 364:2

<sup>9</sup> *Rambam* 6:1, See *Magid Mishna* and *Hagohos Maimoniyos*, and see *Shulchan Aruch* 307:2

<sup>3</sup> *Mishna Berurah* 307:19, 24

<sup>10</sup> *Shabbat ibid.*

<sup>4</sup> *Bava Metzia* 90a

<sup>11</sup> *Bava Metzia ibid.*

<sup>5</sup> In agency law, the person who dispatches an agent to serve as his representative is referred to as the principal.

<sup>12</sup> See *Rif* on *Shabbat* 56a

<sup>6</sup> *Shabbat* 150a

<sup>13</sup> *Shabbat* 122a, 150a

<sup>7</sup> *Shulchan Aruch* 307:1

<sup>14</sup> *Sefer Hamachira* #57