

Modern Technology and the Sabbath: Some General Observations

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Introduction

Mishnah Berurah, in the forward to the section of his work dealing with Shabbat laws, states the obvious: an occasional review of the laws of Shabbat is valuable even to one experienced in Jewish law. This statement applies especially to modern technology and Shabbat; the impact of modern technology is frequently felt most immediately in Shabbat laws. This article will review and explore ten halachic principles all related to one situation and sharing one common motif: they all involve situations where the person doing the act on Shabbat does not directly or intentionally cause a prohibited action to occur. The principles discussed are not limited to any particular one of the categories of "work" prohibited on Shabbat; rather, they are tools of analysis used to discuss practical situations within the framework of any and all of the prohibited types of "work." It does not matter, in analyzing if a secondary action from which one derives no benefit is permissible or forbidden (*pesik resha delo nicha lei*), whether the secondary act is the prohibited action called *boneh* (building) or the prohibited act called *bishul* (cooking). It is the principle that is of interest.

While this topic is by no means a new one, but rather has clear talmudic precedent and origins, it is a topic whose

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practical importance has increased significantly in the last fifty years. While the Sages could and did envision situations where a person's permissible actions could also cause prohibited work, the frequency with which those situations were encountered has dramatically increased, as has their relevance. We live in an era of motion detectors, video security cameras, and kitchen appliances that are generally interactive with their environment in a way that was not possible even five years ago. These devices are designed to detect and react to a permissible activity; frequently the reaction involves some form of violation of Shabbat rules, such as taking a picture, adjusting a thermostat, or turning on a light.¹ This article will survey halacha's approach to actions which are permissible, but which lead (or might lead) to prohibited work. In situations where examples need to be given, such examples will be taken from cases that involve modern technology, as that is where these issues are most relevant.

There are thirty-nine particular categories of "work," (*melacha*) which are biblically prohibited on Shabbat² as

1. It will be assumed in this article that on Shabbat:

- 1) turning on incandescent lights is a biblical prohibition and turning them off is rabbinically prohibited;
- 2) turning on or off any other electrical appliance is rabbinically prohibited;
- 3) turning on or off a circuit is not a biblical violation.

While it is possible to argue with these assumption, they appear to represent the normative rules accepted by most decisors; for further explanation, see Broyde & Jachter, "The Use of Electricity on Shabbat and Yom Tov," *Journal of Halacha and Contemporary Society* 21, pp. 4-23 (1991).

References to talmudic passages without any specific tractate always refer to Tractate *Shabbat*; references to *Shulchan Aruch* or to responsa without any specific section always refer to *Orach Chaim*.

2. The thirty nine prohibited categories of work are: 1)plowing; 2)sowing; 3)reaping; 4)gathering sheaves; 5)threshing; 6)winnowing;

well as numerous rabbinically-proscribed actions, most of which are sub-prohibitions of a biblical prohibition, some of which are not.³ Neither the Torah nor the Sages *per se* forbid engaging in any activity on Shabbat which *might* lead to any prohibited work being done; rather, halacha establishes certain rules governing situations where permissible activity might lead to a prohibited action. These rules have become uniquely relevant in our modern era. Especially when one discusses modern technology and Jewish law, it is critical to realize that intended actions and unintended actions are treated differently in Shabbat law.

One caveat is needed: occasionally this article will conclude that in a certain circumstances a particular activity which is typically prohibited rabbinically is in fact permissible. The Sages did not, however, create completely uniform rules for discussing when extenuating circumstances or special types of conduct permit one to violate rabbinic prohibitions, and not all rabbinic prohibitions are of equal value. Merely because

7)separating; 8)grinding; 9)sifting; 10)kneading; 11)baking; 12)shearing; 13)bleaching; 14)combing; 15)dyeing; 16)spinning; 17-20)various steps in weaving; 21)knotting; 22)untying a knot; 23)sewing; 24)tearing; 25)trapping; 26)slaughtering; 27)skinning; 28)tanning; 29)ruling lines; 30)scraping hides; 31)cutting to size; 32)writing; 33)erasing; 34)building; 35)destroying; 36)finishing a job; 37)lighting fire; 38)extinguishing; 39)carrying. See *Shabbat* 73b and Rabbi Shimon Eider, *Halachos of Shabbos* I.D. for a more detailed discussion in English of each of them.

3. There are three categories of rabbinically prohibited work. Sometimes an activity is prohibited because it resembles a biblically prohibited activity; for example cooking by sunlight is biblically permitted but rabbinically prohibited, since it resembles cooking with a flame. Other times an activity is prohibited because it frequently leads to a biblical prohibition; for example, money lending is prohibited since it frequently leads to writing. Finally some activities are forbidden because they negate the spirit of Shabbat; for example, moving heavy boxes or lifting heavy items is prohibited.

the Sages permitted the violation of a particular rabbinic prohibition in one context, does not mean that they permitted a different rabbinic violation in what might be an analogous context.⁴

I. *Davar she'eino mitkaven: Unintended Act*

The Talmud⁵ recounts a dispute between Rabbi Yehuda and Rabbi Shimon about the following case: A person is pulling furniture along the floor on Shabbat in a manner that might or might not dig furrows in the dirt floor. (Intentionally digging furrows on Shabbat is biblically prohibited.) Is the person liable for the unintended violation his action might cause? Rabbi Yehuda states that a person is liable for the unintended and unexpected prohibited actions that he might cause. Rabbi Shimon is of the opinion that such actions are permitted. The Talmud indicates that this dispute, which was first discussed in the Mishnah, is also under dispute in the Talmud, with Rav accepting the opinion of Rabbi Yehuda, and Shemuel accepting the ruling of Rabbi Shimon.

The Talmud rules, however, that the law is codified in accordance with the position of Rabbi Shimon: a person may do action "A," which is permitted, even if it is *possible* that action "A," will cause action "B," to occur and action "B," is biblically prohibited.⁶

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5. *Beitza* 23b-24a.

6. See *Shabbat* 95a and 46b; Rambam *Shabbat* 1:5; *Shulchan*

This ruling is of great significance, particularly in the context of modern technology and Shabbat, where very frequently intended actions have unintended side effects that occasionally occur. For example, it is certainly true that occasionally the motor of a refrigerator starts immediately because one opens the door; since this does not happen all the time – even if it regularly occurs⁷ – it is not halachically significant, even if one is aware of this possibility, since unintended actions that might occur are permitted on Shabbat.⁸

Permitting unintended actions which sometimes occur might appear at first glance contrary to the general rule of halacha: in cases of biblical prohibition, one must be strict when in doubt.⁹ Why should this case be treated differently from any other case of possible prohibition? The simplest answer is that halacha treats differently the case where one intends to do an action which might be prohibited, and the case where

Aruch 337:1. *Levush* (337:1) seems to adopt the opinion that unintended acts are permitted only when they are only rabbinically prohibited, but even R. Shimon prohibits unintentionally causing biblically prohibited actions. *Levush's* approach has been rejected by all authorities after him; see *Mishnah Berurah* 337:1. It is worth noting that the position of Rabbi Yehuda, even though it is rejected in the context of the Shabbat laws, is accepted by some authorities as correct for the purposes of other areas of Jewish law; see *Sheiltot* #105; *Tosafot, Shabbat* 110b.

7. There are authorities who prohibit (or permit) the opening of the refrigerator door for other unrelated reasons; see "The Use of Electricity", *supra*, note 1 at 28-31, for a survey of this issue.

8. One authority rules that Rabbi Shimon's position is accepted only when it is obvious to an observer that the prohibited result is unintended, such as in the case of walking on the grass. See *Pnei Yehoshua, Shabbat* 41a. This ruling is not considered normative and is not quoted in any of the standard codes.

9. For example, if one is factually unsure if a particular piece of meat is kosher or not, one may not eat it.

one intends to do a permitted act which might additionally cause a prohibited act. As will be explained in section VI, Shabbat law, on a biblical level, prohibits only actions which are intended.¹⁰ Thus, even in a case where the secondary action is normally prohibited biblically, since it is not intended and might not occur, no violation ensues.¹¹

Kaf Hachaim notes an interesting application of this rule. A person who unintentionally backs into a light switch and thus turns a light on or off has, he states, committed no violation of the Shabbat laws – not even an unintentional one. The reason that no violation occurs is that turning the switch is an unintended act that might or might not occur when one bumps against the wall. Since secondary unintended acts that might or might not occur are permitted on Shabbat, no violation occurs.¹²

The Talmud records two disagreements on how to apply the rule that *davar she'eino mitkaven* is permissible.¹³ The first is when there are two possible ways¹⁴ to do permitted action "A.., only one of which might cause prohibited action "B.., and the person deliberately chooses the mechanism that might lead to "B.. While there are some early authorities who rule it prohibited to choose the manner of action that

10. See section VI.

11. Tosafot, *Shabbat* 110b; *Encyclopedia Talmudit* 6:736-743 contains a lengthy discussion of the issues raised by unintended actions outside of Shabbat law. According to this opinion, even Rabbi Yehuda who prohibits unintended acts on Shabbat would maintain that they are only rabbinically prohibited; see Tosafot *Shabbat* 41b; Meiri *Shabbat* 95a (in the name of other authorities); Rashi, *Shabbat* 121b.

12. *Orach Chaim* 277:4. One cannot of course do this intentionally, since by its very definition, it is only in situations where the secondary act is not intended that this permissive ruling is in place.

13. *Shabbat* 29b; *Pesachim* 25a.

14. To do them with ease; Tosafot, *Pesachim* 25b.

might lead to prohibition “B..”,¹⁵ most authorities disagree and accept that Rabbi Shimon’s permissive ruling is valid whether it is possible to do the permitted action in a different way or not.¹⁶ Thus, even though one could wait – without much difficulty – to open the refrigerator until the motor is already on, and thus avoid the possibility of doing a prohibited act, such is not necessary to avoid perhaps causing a secondary prohibited action.

The second question addresses the situation where the person doing the permitted action actually also intends to derive benefit from the prohibited action as well.¹⁷ For example, if one is worried that the refrigerator is not working well, and one hopes by opening the door to get food out and also to spark the engine into functioning by opening the door, one would confront this issue. It is accepted that when one actually intends to derive benefit from the secondary activity, even Rabbi Shimon would prohibit this, as the secondary conduct is no longer unintentional.¹⁸

II. *Pesik Resha*: Secondary Act

The Talmud, after establishing that it is acceptable to engage in a permitted act even though a prohibited additional

15. See *Sefer Yerayim*, ch. 274. The logic of this position is that when an alternative mechanism exists, and one declines to use it, the action closely resembles a *pesik resha*.

16. See *Shulchan Aruch* 337:1 and commentaries ad loc. For a detailed discussion of the various early authorities, see *Beit Yosef, Orach Chaim* 337.

17. *Pesachim* 25b-26a.

18. This is not explicitly codified in the *Shulchan Aruch*, although all of the early authorities accept this rule. See e.g., commentaries of Rabbenu Alfasi, Rabbenu Channanal, Rabbenu Nissim, and Rabbenu Asher on *Pesachim* 26a. It is quoted in Rambam, *Maachalot Assurot* 14:12.

result *might* occur (in harmony with the opinion of R. Shimon above), discusses situations where the prohibited action will *definitely* occur.¹⁹ The rabbinic convention refers to these cases as *pesik resha*, which literally is translated as “removing the head,„ since it is around the following case that much of the talmudic dialogue occurs. The Talmud discusses the hypothetical situation of a person who desires to cut the head off a chicken on Shabbat, but does not care if the chicken lives or dies – rather the person either desires to feed the chicken’s head to his dog, or to use the chicken’s blood or even to give a child a round ball-like object to play with.²⁰ The Talmud proposes that perhaps this person should be excused from liability for killing an animal on Shabbat since there was no affirmative intent to kill the chicken – merely that the chicken should continue to live *without its head* (literally: *pesik resha*).

The Talmud states that this reasoning is incorrect. Rather, all agree that when the unintended secondary action will happen with *absolute certainty*,²¹ it is prohibited to engage

19. *Shabbat* 41a, *Ketubot* 5b (and many other locations).

20. Rabbenu Channanel, *Shabbat* 111b; *Aruch* “*pask*;„ Rambam, *Shabbat* 1:6 (and comments of *Merkevet Hamishnah* 1:1,6 about the importance of the various examples). Some of these examples might appear to involve no benefit; that is precisely the issue raised by a *pesik resha delo nicha lei*; see section IV.

21. In order for an action to be classified as a *pesik resha*, the second act must occur with certainty. Statistical likelihood is not sufficient. As the Ritva states (*Ketubot* 5b) “any time it is possible that the prohibited action will not occur, even through an unlikely event, it is not considered a *pesik resha*.„ Similar statements can be found in Rashba, *Ketubot* 5b; *Tosafot*, *Shabbat* 101a; Rambam *Shabbat* 1:6. There are occasions where the Sages specifically prohibited actions that are statistically close to a *pesik resha*. Thus the Talmud recounts (*Shabbat* 120b) that it is prohibited to open a door when there is a candle near the door lest the candle be extinguished. As the Maharsha notes (commenting on id.) this rabbinic prohibition applies even if the

even in the permitted activity, since the permitted activity will *inevitably* lead to a prohibited activity. Most authorities accept that a biblical prohibition is violated when the secondary activity will definitely occur and is of benefit²² to the one who does the action.²³

There are two different explanations of why a permitted action which inevitably leads to a prohibited activity should be prohibited. Rashi explains that since the forbidden action

candle will not unquestionably be extinguished, but merely probably will be extinguished. Furthermore this ruling is accepted as authoritative and is quoted without dissent by the *Shulchan Aruch*, 277:1. However, merely because the Sages chose specifically to prohibit actions in one circumstance that resemble a *pesik resha* does not mean that all situations that resemble a *pesik resha* are also prohibited; see *Maharam Padua* #33 and *Yabia Omer* 4:37; for a contrary view see *Shevitat Hashabbat Klalei pesik resha* #3; Rabbi Eider *Halachos of Shabbos*, III.F.4.

It is possible that there actually is no dispute among the authorities. All agree when the prohibited act is extremely likely to occur (even if not absolutely certain), it is prohibited; when it reasonably might not occur, it is permissible; see *Rivash* #394. Thus the theoretical possibility that the light bulb in the refrigerator burnt out rather than was turned off the last time the refrigerator was closed would not rise to the level of a doubt; see also section V.

22. As explained in section IV, when the secondary act is of no benefit, some authorities permit it, although most do not; for reasons explained in section VI, in a case where the secondary action is not beneficial, only a rabbinic violation occurs; see note 67 for an explanation of the difference between a *pesik resha* and *melacha she'eino tzericha legufa*.

23. See Rambam *Shabbat* 1:6; Ramban, *Shabbat* 74b, Ritva, *Shabbat* 74b, Ran, *Shabbat* 74b; *Mishnah Berurah*, *Shaar Hatzion* 320:53; see *Yabia Omer* 4:34 for a complete listing of authorities who rule that a *pesik resha* is biblically prohibited. A number of authorities rule *pesik resha* to be only rabbinically prohibited; see *Turei Zahav* 340:2 and *Ma'amar Mordechai* 316:10, although their opinion is generally rejected; see *Shulchan Aruch Harav* 278:4 and *Mishnah Berurah id.*

will definitely occur and the person benefits from the result, it is as if it was intended by the person.²⁴ Others adopt the explanation that since the action is inevitable, halacha assumes that the person is aware that a prohibited result which is desired will occur. The fact that the person is aware that this result will occur constitutes a violation.²⁵

Thus it is biblically prohibited to engage in a permitted course of conduct which inevitably and with certainty causes a biblically prohibited activity which the actor is aware of and from which he derives some benefit. For example, opening a refrigerator door which always causes an incandescent light to go on in the refrigerator is prohibited, since the light will inevitably go on, and turning on incandescent lights is generally viewed as biblically prohibited on Shabbat.²⁶

24. Rashi, *Succah* 33b.

25. Rabbenu Channanel, *Shabbat* 133a. Just as a person who cuts off the head of another human being is not believed when he asserts as a defense that he did not intend to kill the person but only to cut off the head, so too, lack of intent of the results is not typically believable in the Shabbat rules according to this explanation.

26. A number of authorities add that the only time halacha assumes that one's intent is to also do the inevitable secondary act, is when the primary action cannot ever be done without the secondary act. Precisely because the secondary act is unavoidable, it is assumed – when beneficial – it is desired. However, when there are numerous ways to accomplish the primary action, only some of which lead to the secondary prohibited activity, these authorities rule that this is really a *davar she'eino mitkaven*, and not a *pesik resha*, since the prohibited action need not happen and one derives no benefit from it; Rashi, *Zevachim* 91b; *Merkevet Hamishnah*, *Shabbat* 1:1 (asserting this to be Rambam's position); Ravva, *Shabbat* p. 227; Rashba, *Shabbat* 107a; *Yeshuot Yaakov* 316:5. Most *Rishonim* seem not to adopt this approach (Rabbenu Channanel *Shabbat* 111b; *Aruch*, verse "pasak"; *Smag*, negative commandment 65; Mordechai, *Shabbat* #329). Many other *Rishonim* seem to reject this position inferentially; see *Encyclopedia Talmudit*, 6:654 n.284; most latter authorities also seem not to adopt

III. *Pesik resha derabbanan*

The above analysis concludes that when one's actions will definitely cause a biblical prohibition to occur, it is prohibited to engage in that activity. The Talmud does not address the question of a *pesik resha* where the secondary activity is itself only rabbinically prohibited. This occurs when one is doing permitted action "A," which will certainly lead to a rabbinic prohibition "B," occurring. For example, opening a refrigerator door when the light inside is fluorescent or neon rather than incandescent is only rabbinically prohibited.²⁷ Is it then permissible to open the refrigerator door knowing that the light inside will go on? Perhaps when the underlying prohibition is rabbinic in nature it is permissible to incidentally cause a rabbinic violation to occur?

The early authorities are divided on this issue. In a celebrated responsum, *Terumat Hadeshen*²⁸ argues, based on an *en passant* comment found in the *Mordechai*, that it is permitted to engage in an activity that causes a secondary prohibited activity – providing that the secondary activity is prohibited only rabbinically.²⁹ A significant number of early authorities

this opinion as correct; *Eliyah Rabbah* 316:6. As *Mishnah Berurah* states (*Shaar Hatzion* 316:32) "It is not the opinion of decisors to use this liberality under any circumstances..." *Mishnah Berurah* indicates that perhaps this can be used to reduce what is otherwise a biblical prohibition to a rabbinic one.

27. See "The Use of Electricity," *supra* note 1, at 10-11 for a detailed explanation of why this is so.

28. *Terumat Hadeshen* #64 & 67.

29. Other than a biblical prohibition lowered to a rabbinic one because of *melacha she'eino tzericha legufa*. See comments of Meiri in the name of most authorities, commenting on *Shabbat* 120b; See 2 *Menuchat Ahava* 1 n.20.

appear to support this position³⁰ as do a number of latter-day authorities.³¹

Magen Avraham, one of the premier commentaries on *Orach Chaim*, disagrees with *Terumat Hadeshen*, and indicates that Rabbi Karo in the *Shulchan Aruch* also disagrees.³² The overwhelming majority of modern authorities, as well as many early authorities,³³ accept the opinion of the *Magen Avraham* and rule that just as a *pesik resha* which leads to a biblical offense is biblically prohibited, so too a *pesik resha* that leads to a rabbinic violation is rabbinically prohibited.³⁴ These authorities argue that the rationale for prohibiting side effects that are beneficial is that secondarily-caused actions of benefit to a person are considered as if done directly; therefore, it should make no difference whether those beneficial actions are biblically or rabbinically prohibited.

Virtually all contemporary authorities rule that there is no practical distinction between a biblical and a rabbinic

30. See *Sefer Hashlamah*, *Shabbat* 41b (in his own name) *id.* at 65a in the name of Rosh of Luneil; Meiri, *Shabbat* 29b, 41b (and other locations). It is possible that this was the position of the *Tur* also; see *Tur* 317 (in the case of capturing flies). Rambam also appears to agree with this assertion; see Rambam *Shabbat* 25:5. R. Avraham ben HaRambam asserts this as his father's position; see *Responsa* of R. Avraham #19 (sometimes printed in introduction to *Shevitat Shabbat*); Rabbenu Tam also adopts this position; see *Sefer Hayashar* #233.

31. See *Genot Uveridim Orach Chaim* 3:16; *Mateh Yehudah* 321:1; *Maharsham* 2:229; *Shevut Yaakov* 253:14 (and other places); R. Akiva Eiger (quoted in *Chatam Sofer Y.D.* 140); For a more extensive list of those who permit *pesik resha miderabbanan*, see *Yabia Omer* 4:34.

32. *Magen Avraham* 314:5.

33. See e.g., Rashba, *Shabbat* 120b; Ritva, *Ketubot* 6b.

34. *Eliyah Rabbah* 314:2; *Tosafot Shabbat* 316:8; *Shulchan Aruch Harav* 337:1; *Gra* 314:1; *Chaye Adam Shabbat* 3:2; *Mishnah Berurah* 314:11; *Kaf Hachaim* 314:15; *Yabia Omer* 4:34.

prohibition for the purposes of the rules of *pesik resha*; both are prohibited, one biblically and the other rabbinically.³⁵ However, many authorities acknowledge that a minority position permitting *pesik resha derabbanan* exists, and use it as one factor in the halachic equation when discussing cases of doubt. For instance, when there would be a well-established dispute among the rabbinic authorities as to whether any given action is rabbinically prohibited or permissible, when that debatable action is done merely as a secondary side effect, a strong claim could be made that it is permitted, since there exists a double doubt which might normally permit at least rabbinic prohibitions.³⁶ For example, it has been reported that removing the cooking pot from a slow cooker on Shabbat will in some models cause a change in the current flow to the heating element.³⁷ A strong claim can be made that notwithstanding that fact (if true), it could be permissible to remove the pot, since even directly raising or lowering current on Shabbat according to many authorities is not prohibited,

35. Ibid.

36. *I.e.*, is the action actually prohibited and even if it is actually prohibited, maybe *pesik resha miderabbanan* would permit it. This rationale is explicitly found in *Yabia Omer* 4:34 and *Mishnah Berurah* 314:11 and this rationale is one of the factors cited which permits a *pesik resha delo nicha lei miderabbanan*; see *infra* note 50. While R. Yosef in his responsum does not permit one to rely on *pesik resha miderabbanan* alone, it has been reported in his name that he actually feels it is permissible to assume that a *pesik resha miderabbanan* is permitted in a case of great need; See 2 *Menuchat Ahava* 1 n.18.

37. The heating element in these units never glows red hot under any circumstances; if it did, that would be biblically prohibited, and this rationale would not apply. *Chazon Ish's* assertion that even raising the temperature of the heating element above *yad soledet bo* is a biblically prohibited form of cooking (*Chazon Ish* 50:9) has been generally rejected; See *Minchat Shlomo* p. 107 accepting *Chazon Ish's* stricture.

and in this case one is doing so only through a *pesik resha* on what is at most only a rabbinic prohibition.³⁸

IV. *Pesik resha delo nicha lei*: Secondary act with no benefit

Having established that a *pesik resha* is prohibited (and when it might be permitted), it is necessary to analyze the status of a *pesik resha delo nicha lei* – a secondarily-caused act in which the one who does the action does not derive benefit from the prohibited activity.

The Talmud only discusses the status of *pesik resha* when one derives benefit from the prohibited activity. The early and later authorities discuss the status of such activity when the prohibited action which occurs is of no benefit to the person who is doing it. One could argue that since one derives no benefit from the prohibited activity, it is similar to an unintended action, which according to Rabbi Shimon is permitted. This is the opinion of the *Aruch*, one of the earliest commentaries on the Talmud. Thus, for example, he permits one to drag furniture through another person's field, even if that would definitely create furrows in the ground, since that biblical prohibition is not desired and of no benefit to the one moving the furniture.³⁹

38. See text accompanying notes 52 for a discussion of raising current. In addition, a claim could be made that this action is a *pesik resha delo nicha lei* and since it involves a thermostat, a *pesik resha delo niha lei begrama*; see sections IV and X. In addition, since the item works on a cycle of powering on and off, there might be no power flowing at the time the cooker is removed; this would be a *safek pesik resha* and permissible; see section V.

39. See *Aruch*, verse "*pasek*,"; See also *Tosafot Shabbat* 103a in the name of *Aruch*. A number of authorities have asserted that this is the opinion of Rambam also; see *Chidushei R. Chaim HaLevi* on Rambam, *Shabbat* 10:17. Ravva and Rabbenu Yerucham also agree with the *Aruch*; see Ravva #194; Rabbenu Yerucham *Netiv* 12:14.

Most early authorities disagree with this ruling and instead accept the principle that no analytic distinction can be made between an unintended act that is desirable and one that is not. According to these authorities, it is the certainty of the result which makes it as if the person actually did the action directly. Even these authorities, however, admit that a *pesik resha delo nicha lei* is only a rabbinic, rather than a biblical prohibition, since an action not done for the betterment of the doer is always not a *melechet machshevet*.⁴⁰ According to these authorities, any time a person performs an action which will inevitably lead to a biblically prohibited action, even if the prohibited action is not beneficial, he violates a rabbinic prohibition.⁴¹

While a small number of contemporary authorities accept the opinion of the *Aruch* as normative,⁴² the overwhelming majority of authorities, both early and modern, accept that a *pesik resha delo nicha lei*, when the underlying prohibition is biblical, is prohibited.⁴³

Even according to this view, most authorities limit the permissive ruling to Shabbat laws only. Unintended and undesired side effects would be nonetheless be prohibited in all other areas; see Rosh, *Shabbat* 14:9.

40. Every time, however, something is *lo nicha* it is also always a *melacha she'eino tzericha legufa* and thus only rabbinically prohibited; see *infra* section VI for further explanation.

41. See Tosafot, *Shabbat* 103a; Rosh, *Shabbat* 103a; *Or Zaruah* #54; *Magid Mishnah*, *Shabbat* 12:6; *Hagahot Maymoniot*, *Shabbat* 21:10; *Mordechai*, *Shabbat* 141a.

42. *Mishpatei Uziel Orach Chaim* 19; it is commonly asserted to be the position R. Chaim Soloveitchik adopted; see Rabbi S.Z. Reiger, *Hapardes* v.3, (1934); see also R. Naphtali Tzvi Yehuda Berlin, (*Netziv*), *Haamek Sheilah* 105:5.

43. *Tur*, 320; *Shulchan Aruch* 320:18; Commentaries of *Taz* (*id.* n.1), *Magen Avraham* (*id.* n.1), *Mishnah Berurah* (*id.* n.55); *Yabia Omer* 4:34.

However, there are many halachic authorities who accept that a *pesik resha delo nicha lei* is permissible when the underlying prohibition is only rabbinic. Two distinctly different arguments support this conclusion. Some latter day authorities argue that this is a case of *s'fek s'feka lekula* (double doubt leading to a leniency). In essence, these authorities argue that a minority of authorities rule that a *pesik resha delo nicha lei* is always permissible, even when the underlying prohibition is biblical, and a larger minority of authorities accept the principle that a *pesik resha miderabbanan*, a secondary rabbinically-prohibited action, is permissible. In a case where these two permissive rulings intersect, a majority of authorities would rule permissively, albeit for two different reasons.⁴⁴

Other authorities, most significantly Tosafot,⁴⁵ advance a different analytic reason to permit a *pesik resha delo nicha lei* of a rabbinic prohibition. A *pesik resha delo nicha lei* should be prohibited only when the underlying prohibition is biblical, argue Tosafot, since that closely resembles a biblical prohibition, and one might confuse situations of *pesik resha delo nicha lei* with situations of a regular *pesik resha*. However, there is no logical reason to prohibit a *pesik resha delo nicha lei* when the underlining prohibition is only rabbinic, since even if a person were to grow confused and accidentally commit this beneficial action, only a rabbinic prohibition would be violated. It was not necessary in this case for the Sages to prohibit that which was permissible lest one err and do something which is rabbinically prohibited on the Shabbat.

Many contemporary rabbinic authorities – and nearly all

44. See *Yechave Daat* 2:46 who accepts this approach and lists others who adopt this analysis.

45. Tosafot, *Shabbat* 103a; *Be'er Yitzchok* 15; *Sho'el Umeishiv* 1:210; *Maharsham* 5:48; *Divrei Malkiel Yoreh Deah* 2:42.

Sefardic authorities⁴⁶ – accept one of these two lines of reasoning and permit a *pesik resha delo nicha lei* when the underlying prohibition is only rabbinic. According to these authorities it would be permissible to walk in front of a video camera when entering a building other than the one one lives in, since the prohibition involved in appearing on video is rabbinic,⁴⁷ and it is of no benefit to the one walking in.⁴⁸

This permissive ruling is of particular significance in the context of unintended devices designed to monitor people's presence or absence. For example, alarm systems are quite frequently connected to motion detectors. Even when not set to alert homeowners to intruders, they nonetheless monitor a room for motion; often that movement in the room will cause LED or LCD displays to turn on or off. Since both LED and LCD displays involve only rabbinic prohibitions,⁴⁹ if one accepts that a *pesik resha delo nicha lei* on a rabbinic prohibition is permissible, it is permissible to leave the alarm on in a state where it monitors people entering the room.

A number of decisors reject this rule and rule a *pesik resha*

46. 2 *Menuchat Ahava* 1:8 n.22-23; *Yabia Omer* 4:34 (citing other authorities).

47. Even deliberately allowing one's image to be captured on Shabbat on a video camera would at most be a rabbinic prohibition, as the changes in imagery involve only increase or decrease in current levels and the image is only temporary. The question left unresolved is whether the person whose picture is being taken is anything more than a *mesayei'a* (passive assister); there is, however, a dispute concerning whether an assister whose assistance is not needed violates any prohibition on Shabbat; compare *Nekudat Hakesef* Y.D. 198:20 (completely permissible) with *Taz* 328:1 (rabbinic prohibition).

48. See sources cited in notes 44 and 45. *Yabia Omer* 4:34 cites numerous other authorities who accept that a *pesik resha delo nicha lei miderabbanan* is permissible.

49. See "The Use of Electricity," *supra* note 1, at 10-11.

delo nicha lei to be prohibited even when the underlying prohibition is rabbinic. They argue that precisely because both a *pesik resha delo nicha lei* and a *pesik resha miderabbanan* are prohibited, it is illogical to permit a *pesik resha delo nicha lei miderabbanan*. These authorities are inclined to permit a *pesik resha delo necha lei* only when there are two overlapping independent rabbinic prohibitions.⁵⁰ Among the authorities who appear to adhere to this stricter position are *Magen Avraham*, *Dagul Merevavah* and *Chazon Ish*.⁵¹

Even according to those authorities who would normally prohibit a *pesik resha delo nicha lei* even when the prohibition is rabbinic, it is possible to suggest a line of reasoning that would permit walking in front of an electrical device that monitors one's presence in a manner which is of no benefit to a person. The *Shulchan Aruch* (*Orach Chaim* 320:18) records (albeit with some reservation) that it is the tradition to rely on the position of the *Aruch* that a *pesik resha delo nicha lei* even for a biblical prohibition is permissible when there is another minority opinion that permits this conduct even deliberately.

50. This is the position advocated by *Mishnah Berurah* in 316:15 and considered by *Chazon Ish* 56:4. See section IX for a detailed discussion of *kilachar yad*.

51. *Chazon Ish*, 50:5; *Dagul Merevavah* 340:3; and *Magen Avraham* 316:8; *Shevitat Shabbat Klalei pesik resha* #3, R. Eider, *Halachos of Shabbat* III.F.8. Although *Mishnah Berurah* is cited as among those who prohibit this, in fact he adopts conflicting positions on the question of whether a *pesik resha delo nicha lei miderabbanan* is permissible; see *Mishnah Berurah* 321:57 (*Shaar Hatzion* 68); *Mishnah Berurah* 340:17; *Shaar Hatzion* 337:2; and 337:10.

Even those who argue that a *pesik resha delo nicha lei miderabbanan* is prohibited might limit this ruling to a situation where it is possible to do the permissible action without also doing the prohibited action. When that option is not available, even these authorities might rule permissively. This would explain what are otherwise contradictions within the *Ramo*; compare 320:13 with 337:2.

In the context of raising or lowering current level in an electrical appliance, there are many modern authorities who maintain that no prohibition is violated.⁵² The tradition is not to rely on these authorities *ab initio* and intentionally raise or lower current; however, in combination with the *Aruch*, it would appear to be permissible to rely on these authorities to the extent that this permits one to engage in conduct which unintentionally raises current level in a manner which is of no benefit. The same reasoning should perhaps permit one to engage in activity which even turns a switch on and off unintentionally and in a manner that one derives no benefit, since there are authorities who rule that even turning on and off electrical appliances is theoretically permitted on Shabbat, providing that no incandescent lights go on.⁵³

Pesik resha delo nicha lei discusses situations where one derives no benefit from the prohibited act, but yet no harm is done either. A number of authorities posit that in a situation where the secondarily-prohibited act is actually bad for the person, all authorities would then permit this activity.⁵⁴ According to these authorities, the Sages only prohibited secondarily-caused prohibited activity when one derived benefit from the prohibited activity or one suffered no loss.⁵⁵

52. *Yabia Omer* 1:19; *Shemirat Shabbat Kehilchata* 23:52; *Be'er Moshe Kuntress Electricity* #56. For a broader survey of this topic, see "The Use of Electricity," *supra* note 1, at 35.

53. "The Use of Electricity," *supra* note 1, at 20-21.

54. Meiri, *Shabbat* 29b. For a more complete list of authorities who subscribe to this position, see *Encyclopedia Talmudit* 6:650.

55. This position is undoubtedly related to the rule that there is no biblical violation on Shabbat when one does a prohibited act in a manner that does damage to the object (called in Hebrew, *derech kilkul*); *Shabbat* 105b; Rambam *Shabbat* 1:17.

For example, a person who causes an electrical circuit to spark on Shabbat has not violated a biblical prohibition of burning since

Tosafot argue with this line of reasoning and posit that all of these situations are halachically identical to *pesik resha delo nicha lei*, which most authorities prohibit when the underlying prohibition is biblical.⁵⁶ The trend among the latter authorities is to reject the distinction between cases of no betterment and of detriment; however, some authorities will use this distinction when there are other permissive factors present.⁵⁷

One question requires attention: what is meant by the term *lo nicha lei*, "of no benefit...". Obviously when the secondary act is *actually* the one desired by the person, that is assumed to be to the person's benefit.⁵⁸ In fact, the definition of "of no benefit..." is defined more broadly than that. A number of possibilities exist. The first possibility is that the person actually doing the act must derive some benefit from the secondary act; if the particular person derives no benefit, it is

sparking by electrical appliances is always a form of damage to the appliance.

56. Tosafot, *Shabbat* 78a.

57. In combination with other concepts, this rule will frequently be used to permit unintentional side effects that are damaging, such as the sparking of a circuit; *Dagul Merevavah* 340:3 permitting an action when it is done *derech kilkul*, *pesik resha delo nicha lei* and *kilachar yad*; *Minchat Shlomo* pp. 86-87; but see *Mishnah Berurah* 340:17.

58. *Chazon Ish* (51:14) notes that even if one does not derive benefit from the prohibited action on Shabbat, but rather derives benefit at some time in the future it is considered as "of benefit...". Rabbi Auerbach disagrees and seems to limit the concept of "benefit..." to that which is currently beneficial; *Shemirat Shabbat Kehilchata* 1:39(114). In addition, nearly all decisors posit that there is no difference between *pesik resha delo nicha lei* and *pesik resha delo echpat lei* (secondary act to one's detriment and to no benefit); see *Mishnah Berurah*, *Biur Halacha* 320:18; *Encyclopedia Talmudit* 6:649-50; Rabbi Eider, *Halachos of Shabbat* III.F.3.

lo nicha lei even if others derive benefit.⁵⁹ Thus, for example, passing in front of a working video camera on Shabbat which records all those who go in and out of a building is considered a *pesik resha delo nicha lei*, since it is of no benefit to a person who does not live in the building.⁶⁰ The *Mishnah Berurah* seems to adopt this position, when he states that a *pesik resha delo nicha lei* occurs when one “derives no benefit from the action that one does with one’s hands, and it makes no difference to the person whether the action occurs or not.”⁶¹ The phrase “makes no difference to the person,” seems to indicate that the individual’s state of mind is dispositive.

A second possibility is that the particular person derive no benefit because of special circumstances operative now. For

59. This seems to be the opinion of *Beit Yosef Orach Chaim* 336 and *Magen Avraham, Orach Chaim* 336:6. A blind person who opens a refrigerator door which thus causes the light to go on has only caused a *pesik resha delo nicha lei* since this blind person derives no benefit from the light *ever*. This might be identical to a situation where the light in the kitchen is extremely bright, and thus a person derives no additional benefit from the refrigerator light.

60. A strong claim could be made, however, that it is a *pesik resha denicha lei* for a person who lives in the building, since increased security is generally beneficial to all who live in the building. Rabbi Dovid Cohen of Congregation Gevul Yavetz has noted to this author that “if the person knows that he is not a crook, then no one derives benefit by seeing him enter or leave the building.” See also notes 61 and 62.

61. *Biur Halacha*, 320:18. Rabbi Yitzchak Yosef, son of Rabbi Ovadia Yosef, asserts that turning on the motor or fan of a refrigerator through a *pesik rasha* is always *lo nicha lei* ...of no benefit... since the person who opens the door does not care, *at this moment*, if the fan or engine goes on or not. Since, even if electric flow to the refrigerator ceased completely, it would not affect the food on Shabbat. He defines *lo nicha lei* as dependent solely on what the person wants *now*; R. Yitzchok Yosef, *Yalkat Yosef* 4:253 (8).

example, a person who is aware that the light will go on in the refrigerator when the door is opened could close his eyes while opening the door, keep his eyes closed the whole time the door is open, and argue that action is *lo nicha lei* in this circumstance since no benefit actually accrues. Rabbi Auerbach (*Minchat Shlomo* pp.548-549) rejects this possibility, and argues that *lo nicha lei* is defined by whether one "normally" derives benefit from this action. Special conduct by the person doing the action on Shabbat cannot change whether the secondary act actually is *lo nicha lei*.⁶² A claim could be made that this seems contrary to the position of the *Mishnah Berurah* quoted above, as the individual who closes his eyes before opening the door in fact "derives no benefit from the [turning on of the light] . . . and it makes no difference to the person whether the action occurs or not.."

V. *Safek pesik resha*: possible secondary act

A *pesik resha* is prohibited since the prohibited action will definitely occur; *davar she'eino mitkaven* is permissible since it is factually unclear if the prohibited action will occur. The authorities disagree about the status of a situation in which at the time that the permitted action occurs one does not know if the prohibited action will or will not occur, but that doubt arises from a lack of factual information about what previously occurred, rather than from an inability to predict the future. An example of this would occur in a situation where one does not remember if he disconnected the light in

62. Rabbi Auerbach also demonstrates that generally positive actions that have negative halachic ramifications are considered of benefit according to halacha. Thus one cannot argue that a generally positive action is considered *delo nicha lei* merely because it is prohibited. In this writer's opinion, it does not necessarily follow, as Rabbi Auerbach states, that when one actually does performs an act which deprives one of the benefit, that that too should be of no halachic significance.

the refrigerator prior to Shabbat and wants to open the door on Shabbat, realizing that there is a chance that the light will go one.

Turei Zahav (*Taz* O.C. 316:3) states that this is permissible. He reasons that this is similar to the case where the prohibited action might or might not occur (*davar she'eino mitkaven*) and is thus permissible, since any situation where a prohibited secondary action might or might not occur is permissible.⁶³

One authority has indicated disagreement with this rule based on a logical argument. Rabbi Akiva Eiger⁶⁴ states that there is a conceptual difference between a permitted action that might or might not lead to a prohibited action (a *davar she'eino mitkaven*) and permitting an action that either certainly will or certainly will not lead to a prohibited action, but the person doing the action simply does not know which is factually correct. *Davar she'eino mitkaven* is only permissible because it cannot be determined if the prohibited action will or will not occur; the doubt is as to a future, rather than a past event. Such is not the case, Rabbi Eiger claims, for a *safek pesik resha*. Thus, Rabbi Eiger counsels one to be strict in this matter. According to Rabbi Eiger it is only when the prohibited act might or might not occur that halacha permits the action;

63. One authority limits *Taz's* ruling to a situation where the underlying prohibition is itself only rabbinically prohibited; see *Tosefet Shabbat Orach Chaim* 317:7; see also Eider, *Halachos of Shabbos* III.F.6 for a similar analysis.

This appears to be incorrect as *Taz* adds that factor only as an additional ground. The normative rule for reading decisors of Jewish law is when an authority states that a particular action is permitted without any qualifying language, and then later states that this rule is particularly true in the case at hand which is only rabbinically prohibited; the decisor actually maintains that the conduct is permissible even when the underlying prohibition is biblical; see *Sedei Chemed Klalei Haposkim* 16:38.

64. Commenting on *Yoreh Deah* 87:6.

when the doubt is only in our own knowledge, no halachic liberality is possible.

Most authorities, both early and later,⁶⁵ appear to agree with the position of *Taz*, and it is permissible to follow this position. However, it is not inappropriate to be strict in this matter when the underlying prohibition is biblical since the position advanced by Rabbi Eiger appears to be highly persuasive.⁶⁶

VI. *Melacha she'eino tzericha legufa*: Work done for a different reason

Normally, Jewish law prohibits one from doing a particular forbidden action regardless of the reason that one desires the act. Thus, for example, it is prohibited to eat non-kosher food for *any reason*. One who eats non-kosher food is biblically liable even if he eats the food without any desire to derive culinary benefit, such as if one were one to eat the food to win a wager. This is not completely true for the Shabbat laws. On Shabbat, any time one does a biblical prohibition for the "wrong" reason or purpose, it is a *melacha she'eino tzericha legufa* and only rabbinically prohibited.⁶⁷

65. *Shulchan Aruch Harav*, 316:4; *Mor Uketzia* 316:4; *Ben Ish Chai Varah* #6; *Mishnah Berurah* (*Biur Halacha*) 316:3. Among the early authorities who agree with this ruling are: Ramban, (*Milchamot*) *Shabbat* 41b; Meiri, *Shabbat* 41b; Rashba, *Shabbat* 41b (in the name of Tosafot); *Magid Mishnah*, *Shabbat* 12:1; Ran, *Shabbat* 41b.

66. See *Melamed Lehoil* 3:102.; 2 *Minchat Ahava* 1:8. A *safek pesik resha delo nicha lei* is always biblically permissible according to all.

67. This is disputed in the Talmud, *Shabbat* 93b. Rabbi Shimon states this is only a rabbinic violation and Rabbi Yehudah states it to be a biblical violation. Nearly all of the authorities accept the permissive opinion of Rabbi Shimon; see *Tur* 278: 316; 334; *Shulchan Aruch* 316:8; *Mishnah Berurah* 316:34. Rambam accepts the opinion of Rabbi Yehudah; see *Shabbat* 1:7, as do a number of other authorities; see e.g., *Yerayim* #274.

Tosafot adopt the explanation that the biblical prohibition to engage in the thirty-nine particular forms of work on Shabbat is limited to situations where one does those actions for the specific prohibited purposes, which are derived from how this work was done in the Tabernacle.⁶⁸ For example, digging holes is biblically prohibited on Shabbat. However, the purpose of hole-digging in the time of the Tabernacle was as part of the building process, i.e., to place items in the holes; if one were to dig a hole simply because one needed the dirt, that would be, according to Tosafot, a *melacha she'eino tzericha legufa*.⁶⁹

Rashi advances a slightly different explanation: Rashi posits that any time one does a biblical prohibition for a positive purpose, it is not a *melacha she'eino tzericha legufa*. The only time an action is a *melacha she'eino tzericha legufa* is when one desires merely to remove the object or protect oneself from a danger.⁷⁰ For example, carrying from a private domain into a public domain is biblically prohibited. However, the biblical prohibition is limited to situations where one desires to move the object from one place to another – i.e., the biblically-prohibited form of “working,” is limited to moving an object via carrying. If one were to carry an object from a private domain to a public domain not intending to move the object, but rather because the item emitted a foul odor and one wanted to remove the item from one’s residence so as to remove the odor, since the purpose of the action is different from the

The difference between a *melacha she'eino tzericha legufa* and a *pesik resha* is that a *pesik resha* involves doing a permissible act which must lead to a prohibited act which is beneficial. A *melacha she'eino tzericha legufa* involves deliberately doing a prohibited act, but with an intent that spares one from a biblical violation.

68. See Tosafot, *Shabbat* 94a.

69. *Mishnah Berurah*, *Biur Halacha* 316:8.

70. Rashi, *Shabbat* 93b.

purpose of the prohibited Shabbat "work," that is only a rabbinic violation.

A more relevant example (and one agreed on by both Rashi and Tosafot) is that a person who extinguishes a light or flame in order that there be darkness (an absence of light), rather than in order actually to benefit from extinguishing of the flame, has not violated the biblical prohibition of extinguishing, since in the Tabernacle the designated purpose of the prohibition to extinguish was to generate carbon black (ash) to use in the Tabernacle building.⁷¹ Thus, turning off incandescent lights on Shabbat is always a rabbinic prohibition.

The Sages permitted this type of rabbinic violation to occur when needed to prevent injury to the public. For example, hunting on Shabbat is normally a biblical prohibition; however, trapping or killing a wild animal that might injure many people is permitted on Shabbat, since this type of trapping or killing is not done to capture or kill the animal, but rather to prevent injury to people.⁷² It is important to realize that the Sages only allowed one to do a *melacha she'eino tzericha legufa* to prevent injury to the public; they did not permit this rabbinic violation to be suspended in the face of mere financial loss to the individual.⁷³

71. *Mishnah Berurah* 278:3. All authorities note that a *melacha she'eino tzericha legufa* is the most serious type of rabbinic prohibition on Shabbat since the same action is sometimes a biblical violation; *id.* A claim could be made that one who accidentally opened a refrigerator door forgetting that the light would go on, could, according to some authorities, close the door even though the light would thus go off, if one closed the door *kilachar yad*, since turning off the light is always only rabbinically prohibited and in this case would be *pesik resha delo nicha lei* done *kilachar yad* on a rabbinic prohibition; see *e.g.*, 1 *Menuchat Ahava* 24:21 n.62.

72. *Shulchan Aruch* 334:27

73. See comments of Ran, *Shabbat* 145a; Meiri, *Shabbat* 120b; Tur, 278; *Shulchan Aruch* 308:18.

VII. *Mitasek*: Involved

One who violates a biblical prohibition in a manner where the violator is completely unaware that a prohibition is occurring - because the person is focusing on another aspect of his action - is excused from any legal culpability on Shabbat.⁷⁴ For example, one who is walking on the street unaware that there is a motion detector that will turn a light on when he approaches, has committed no legally culpable action when his body motion turns on the light. The rationale for distinguishing this from a *pesik resha* is that a *mitasek* not only does not desire the action or does not care if the action will occur, but is completely unaware that the action will happen. A *pesik resha* occurs when the person is aware that a prohibited action will occur but the prohibited action is not the primary focus of activity; *mitasek* is when one is simply unaware that one is causing the prohibited activity. Frequently the first time one commits a *pesik resha* one is a *mitasek* since not only did one not desire the action to occur, but was even unaware that it was occurring.

There is a dispute among the later authorities over whether one who commits a permitted action completely unaware of its ramifications (i.e., *mitasek*) has committed any sort of a sin in God's eyes. Rabbi Akiva Eiger asserts that while there is no legal culpability, some sort of an unintentional violation has occurred.⁷⁵ Rabbi Yaakov of Lissa, (author of the *Netivot*) and Rabbi Joseph B. Soloveitchik, writing in the name of his father, Rabbi Moshe Soloveitchik, have both stated that

74. Tosafot, *Kreitut* 19b, Rambam *Shabbat* 1:10. Ravad and Rashi adopt the position that even if one intends to do prohibited act "A," and accidentally does prohibited act "B," one is not biblically liable; Ravad, *Shabbat* 1:10; Rashi, *Kreitut* 19b. See generally *Shevitat Shabbat* pp. 16-17 for a discussion of this issue.

75. *Responsa R. Akiva Eiger* #8.

this appears incorrect.⁷⁶ Rabbi Yaakov states “one who is completely without intention [as to his actions] is behaving permissibly... Rabbi Soloveitchik comments that the opinion of Rabbi Eiger appears to be contrary to the position taken by the Rambam and that “one who is *mitasek* is completely lacking any sinful action... While there are few later authorities who comment on this issue, a number of *Rishonim* appear to hold that *mitasek* is completely permissible.⁷⁷

If one accepts this approach, it is permissible to allow a person unintentionally to violate Shabbat through a *pesik resha* when he is completely unaware that a prohibited action will result, since there is no culpability, legal or otherwise. There would be no halachic obligation to stop a person who is about to engage in a completely unintended *pesik resha*. Thus, there would be no obligation to warn people that there is a motion detector in place, a video camera recording movements, or a tape recorder registering speech if they are unaware of it. Rabbi Auerbach (*Minchat Shlomo* p.549) posits that in a case of *pesik resha delo nicha lei* (and perhaps even simply a *pesik resha*) when in addition the person is *mitasek*, it is appropriate to rely on this analysis. On the other hand, if one accepts R. Eiger's ruling, since there is some culpability, it would be best to advise this person to avoid the route with the motion detector.⁷⁸

76. Rabbi Yaakov, *Mekor Chaim, Orach Chaim* 431:1. Rabbi Joseph Soloveitchik, *Shiurim Lezecher Avi Mori*, p.30 n. 58, quoting Rambam, *Issurei Biah* 1:12. See also R. Soloveitchik, “*Beyesod Davar She'eino Mitkaven*,” *Mesorah* 5:25-26; Rabbi Yoel Teitelbaum (Satmar Rebbe) also agrees with this analysis; *Divrei Yoel* 2:107; see also R. Chaim Ozer Grodzinski, *Achiezer* 3:57.

77. See e.g. comments of Ramban, Meiri and Rashi on *Shabbat* 72a; Rashi, *Pesachim* 33a. See also *Chaye Adam, Shabbat* 9:8; *Eglei Tal, Kotzer* 24:14; *Shevitat Shabbat* p.16.

78. It is important to realize that any liberality that flows from the status of *mitasek* is removed once one is aware that one's actions

VIII. *Melacha she'eina mekuyam*: Temporary work

The Mishnah recounts that one who does a biblically-prohibited action that normally is permanent in such a way that it cannot possibly last until Shabbat is over, has violated only a rabbinic, rather than a biblical violation.⁷⁹ Thus, the Talmud states that one who writes letters, with an ink that naturally disappears, has violated only a rabbinic prohibition.⁸⁰ It would appear to this author that writing on a computer screen on Shabbat is a modern example of a form of writing that is not intended or capable of lasting on the screen throughout Shabbat and is thus only a rabbinically prohibited form of writing.⁸¹

In addition, nearly all authorities rule that when the underlying prohibition is itself only rabbinic in nature, it is permissible (perhaps only in a case of need) to do the action in a manner that is only temporary and will not last through

are causing a secondarily prohibited act. The difference between a *pesik resha* and a *mitasek* is solely in the mental state of the one doing the action.

79. *Shabbat* 120b.

80. *Shabbat* 104b. Of the 39 prohibited types of work, at least knotting, building, weaving, writing, dyeing and sewing are only rabbinically prohibited when they are temporary; Rabbi Eider, *Halachos of Shabbos* III.F.10. There is a dispute between Rambam (*Shabbat* 9:13) and Rashi (commenting on *Shabbat*, 102b) as to whether the action actually has to last through Shabbat; see *Mishnah Berurah*, *Shaar Hatzion* 303:38.

81. There is a dispute between Rabbi Feinstein and Rabbi Auerbach as to the permissibility of doing an action that does not last at all (*eino mekuyam clal*). Rabbi Feinstein posits that if an action does not last at all, it is completely permissible on Shabbat even if done intentionally; see *Iggerot Moshe* 1:114. Rabbi Auerbach disagrees and rules anytime one intends to do the action, even if it does not last at all, it is prohibited; *Shemirat Shabbat Kehilchata* 14:58 (158).

the day (providing that the action is normally permanent).⁸² According to this ruling, in a situation where one's presence causes an electrical appliance to turn on and off in a way that can only be temporary and could not possibly last through Shabbat, if the action is only rabbinically prohibited, a strong case could be made that it is permissible to do this act.

IX. *Kilachar yad or shinui*: work done in a changed manner

One who does a biblically-prohibited action on Shabbat in a manner different from the way it is typically done during the week violates only a rabbinic, rather than a biblical prohibition.⁸³ Thus, the Talmud recounts that a right-handed person who writes with his left hand on Shabbat violates only the rabbinic, rather than the biblical prohibition.⁸⁴ In addition, this rabbinic prohibition is different from all other rabbinic prohibitions on Shabbat, since most authorities accept that the Sages permitted this type of rabbinic violation in the case of either great financial need or intense physical pain (even if not life threatening).⁸⁵

The rationale for this permissive ruling – which distinguishes a biblical prohibition done *kilachar yad* and every

82. *Mishnah Berurah Biur Halacha* 340:5 (in name of *Eliyah Rabbah* quoting Rif, Rosh and Rambam) asserts that the action is completely permissible. 2 *Minchat Ahava* 1:20:n. 65 quotes that this appears to be true only in a case of need.

83. This is recounted in many places; see e.g. *Shabbat* 92a (carrying); *Shabbat* 104b (writing); Rambam *Shabbat* 11:14; *Shulchan Aruch* 301:7 and 328:35.

84. See *supra* note 83.

85. *Shulchan Aruch* 328:17; *Beit Yosef* 334; *Mishnah Berurah* 307:21; *Chazon Ish* 56:4; *Yabia Omer* 5:33:3; but see *Shmirat Shabbat Kehilchata* 33:2 (compare n.17 with n.17*).

other biblical prohibition – is expressed by Rashba in the name of his teacher Ramban. He states:

Actions done in a manner different from the way they are normally done, even though they are prohibited by rabbinic interdiction, are different from all other rabbinically prohibited actions since the onlooker clearly sees that the action is being done in a peculiar manner [and no one will be misled and think the action is permitted]. Thus the Sages permitted this action in the case of an ill person.⁸⁶

There is however some dispute about what type of change renders an action in the category of “actions done in a manner different from the way they are normally done.” The Talmud addresses the case of a right-handed person who writes with his left hand; this change has two different components. The first is that the action is done in a different manner; the second is that the writing, when complete, looks different and less well done. Are both of these components needed to make something *kilachar yad*, or is only one needed? Rabbi Avraham Borenstein, the author of *Avnei Nezer*, in his introduction to *Eglei Tal*, states that both are needed.⁸⁷ If the action upon completion is the same as when it is done in a normal manner, that is not *kilachar yad*. According to this approach, the liberality associated with *kilachar yad* would be of no use in turning on most appliances, since, even if one turns them on in a unique manner (e.g., with one’s nose), they operate equally effectively no matter how they are started.

Nearly all authorities reject this ruling and state that it

86. Rashba, *Shabbat* 129b; also quoted by Ran, *Shabbat* 145a. Meiri expands this permissive ruling to include not only pain, but financial loss also.

87. *Eglei Tal*, Introduction #3; Rabbi Moshe Feinstein is quoted (in Rabbi Tendler and Dr. Rosner, “Dental Emergencies on *Shabbat* and *Yom Tov*,” *Journal of Halacha and Contemporary Society* 14:49, 52 (1987)) as agreeing with this position.

is sufficient for an action to be classified as *kilachar yad* merely if the action is done in a manner that is visibly different from the way the action is done, even if the end product is the same.⁸⁸ The proof that these authorities quote is found in the discussion of *kilachar yad* by the early commentaries. They note that Rashba's assertion, "since the onlooker clearly sees that the action is being done in a peculiar manner [and no one will be misled and think the action is permitted], focuses exclusively on how the action is done, and not on the result. Similar comments can be found in numerous early authorities,⁸⁹ and the law is codified in harmony with this position.⁹⁰

Thus, turning on or off electrical appliances on Shabbat in a manner other than the way they are normally turned on or off is considered *kilachar yad*. For example, one who has forgotten to remove the light from the refrigerator prior to Shabbat and who now wishes to take food out to eat on Shabbat, could, according to many authorities, simply unplug the refrigerator in a manner which is *kilachar yad* (with one's foot, for example) and then take the food out.⁹¹ So, too, it would appear that a doctor may treat a patient who is in great pain (even if not life-threatening pain) through the use of electrical appliances turned on *kilachar yad*. An ill person who is bedridden in a hospital bed that can only be raised or lowered electrically may, *kilachar yad*, raise or lower himself from the bed if that is needed to prevent physical pain or allow some other medically-necessary activity (including eating).⁹²

88. *Mishnah Berurah* 397:21; *Chazon Ish* 56:4; *Yabia Omer* 5:33; *Shevitat Shabbat, Dosh* 4:6.

89. Sources quoted above; see also *Tosafot* and *Rosh* commenting on *Bechorot* 25a.

90. *Mishnah Berurah* 397:21; *Chazon Ish* 56:4; *Yabia Omer* 5:33.

91. See e.g., 1 *Minchat Ahava* 24:20. For a list of alternative solutions to this problem, see "The Use of Electricity," *supra* note 1, at n.59.

92. See *Shemirat Shabbat Kehilchata* 33:2-4; *Mishnah Berurah* 328:49-

X. *Grama*: indirect causation

The Mishnah (*Shabbat* 120a) considers that the biblical phrase "One may not do any work,," (Deuteronomy 12:4 and Exodus 20:10) prohibits only work *directly* caused by the person; however, work done indirectly – not caused by a human being, but by itself – is biblically permitted. As an example of indirect causation, the Mishnah states that it is permitted to place barrels of water in the path of a fire with the intent that the barrels catch fire, burst, and their contents extinguish all the flames.

Most authorities rule that even though indirectly caused actions are biblically permissible, they are rabbinically prohibited unless financial loss will be caused.⁹⁴ A minority of decisors accept that biblically prohibited actions done indirectly are completely permissible on Shabbat.⁹⁵

The definition of "indirect,," for the purposes of Shabbat, however, is in dispute. Three answers are given. The first answer posits that the critical distinction is the *time delay*. In

51. This assumes that this activity, even if done for a well person, is only rabbinically prohibited; see note 1. There is some dispute over whether it is better to do for a Jew to do this act *kilachar yad* or to ask a Gentile to do the work directly; compare *Mishnah Berurah* 328:54 with *Shemirat Shabbat Kehilchata* 33:(17*).

93. The details of the talmudic dispute have been explained in greater detail elsewhere; see "The Use of Electricity," *supra* note 1, at 38-47.

94. See Tosafot, *Beitza* 22a; *Ma'amar Mordechai*, 514:10; Rashba, *Avodat Hakodesh Shaar* 3:3; Ran, *Shabbat* 120b; Meiri *Shabbat* 120b; Ramo, *Shulchan Aruch*, 334:22; *Maharam Shick* 157; *Yabia Omer* 1:21; *Chazon Ish* 38:2. Indirect causation is permitted in all categories of prohibited work, and not just extinguishing, in a case of need; see *Mishnah Berurah*, *Biur Halacha* 334:22.

95. See e.g. comments of *Magen Avraham* on *Orach Chaim* 514:3 explaining Rosh *Beitza* 22a; comments of *Karban Netanel*, *Beitza* 22b.

any situation in which, according to this definition, there is a clear time delay between the action and the effect, this would be classified as indirect causation.⁹⁶ The second position states that the critical factor is whether an additional force is needed to finish the action and whether that force is present at the time of human activity. Only when the additional force is not present at the time of human activity is the action considered indirect.⁹⁷ A third view asserts that the critical factor is whether the indirect process used is the normal process. If the indirect process is the normal one, it is prohibited on Shabbat; otherwise it is permitted.⁹⁸

Modern decisors resolve this three-way dispute in different manners. Rabbi Shlomo Zalman Auerbach (*Minchat Shlomo* p.110) states that since the halacha is unclear as to which definition of indirect causation is correct, one should avoid deliberately doing a *grama* which, if prohibited, would be a biblical violation.⁹⁹ *Minchat Ahava*, a recent work by a modern Israeli decisor, seems to adopt only the second theory as normative.¹⁰⁰ Finally, Rabbi Ovadia Yosef adopts the position that the first view is to be considered normative.¹⁰¹

96. *Kataav Sofer* 55; *Maharam Shick* 157; *Chazon Ish*, 38:2.

97. *Tephila LeMoshe* 2:23:3-4; Rabbi Hershel Schachter, "Masch Vegramah Behalacha"; *Beit Yosef Shaul* 1:70-72 (1985) quotes Rabbi Joseph B. Soloveitchik as agreeing with this analysis.

98. *Aruch Hashulchan* 316:11; *Chazon Ish* 38:1.

99. *Shemirat Shabbat Kehilchata* 13:25(94) appears to adopt a slightly different rule.

100. 1 *Minchat Ahava* 1:14.

101. *Yabia Omer* 3:18. This author's sense is that none of these authorities disagree that when the normal way to do an action is to do it indirectly, it is biblically prohibited on Shabbat.

All concede that reason three is correct; the question is whether any *other* factors are also needed. *Aruch Hashulchan* provides talmudic proof that this is true; see *Aruch Hashulchan* 316:11.

Thus, running a dishwasher on a timer on Shabbat, (where a Jew places the dishes in the dishwasher and closes the dishwasher in a way that absent this closing of the dishwasher it would not function) is normally considered rabbinically improper, unless it is a situation of financial loss, since running the dishwasher would be a causing a biblical prohibition through a *grama*.¹⁰²

Some authorities permit indirectly done work on Shabbat even absent significant financial loss if the underlying prohibition is itself only rabbinic.¹⁰³ For example, turning on or off an electrical appliance that generates no light or heat, like a fan or air conditioner, through a *grama* would normally be permitted according to these authorities.¹⁰⁴ Many authorities reject this ruling;¹⁰⁵ rather they argue that the only time indirectly-caused actions are permitted absent need is in a situation where the indirectly-caused work is also not the intended result, but only secondarily produced. This is called *pesik resha begrama*, and combines the attributes of both *pesik resha* and *grama*.¹⁰⁶

102. For a recent work that analyzes this issue (and reaches the same conclusion), see R. Yosef Yitzchak, *Mitbach Behalacha* (Microwaves and Dishwasher in Halacha), chapter 4.

103. This was first noted by *Beit Yosef, Orach Chaim* 265 (quoting from a responsum of the *Maharil* (apparently #24)). This is noted also by *Magen Avraham, Orach Chaim* 265:2 and *Machatzit Hashekel* (id.); *Yabia Omer* 3:17.

104. A dishwasher might actually be in this category also, providing the hot water used in the dishwasher can be used on Shabbat, and the dishwasher does not use a heating element to additionally boost the temperature of the water.

105. *Mishnah Berurah* 265:6; *Shulchan Aruch Harav* 265:4.

106. *Tosafot, Shabbat* 47b; *Meiri, Shabbat* 120b; R. Channanel, *Shabbat* 120b; *Rashba, Shabbat* 120b; *Ran, Shabbat* 120b; *Shulchan Aruch* 265:4; *Yabia Omer* 4:34; *Har Tzvi* 1:133, 135; *Avnei Nezer* 194; *Machazeh Eliyahu* 42:1; *Shemirat Shabbat Kehilchata* 23:(137). The rationale for

Many electrical appliances that interactively operate with their environment do so in a manner that could be classified as a *grama*. For example, many authorities rule that any form of an appliance that is controlled by a thermostat is considered to operate indirectly and thus can be manipulated indirectly on Shabbat in some circumstances.¹⁰⁷ Opening or closing a door to an air-conditioned or heated room is permissible, even if opening the door will cause hot or cold air to enter the room which will later turn the heater or air conditioner on or off prematurely.¹⁰⁸

An oven whose heating element is controlled by a thermostat may be opened or closed on Shabbat to take food out of the oven, even if that activity hastens the oven's going on or off, since the intent of the person taking out the food is not to turn the oven on or off, and the thermostat operates on a *grama*.

Four different rationales converge in this case that indicate that it is permissible to open the oven door. First, opening the door when the heating element is on is permitted by nearly all authorities, as that simply extends the time that the element will remain on, which is permissible;¹⁰⁹ second, opening the door when the element is off only unintentionally hastens the element's going on, which is a *pesik resha begrama* and normally considered permissible; third, one normally cannot tell if the element is on or off, which is a *safek pesik resha*, which is also permissible; finally, eating hot food on Shabbat

this rule is very simple. The Sages only prohibited indirect actions lest it lead to direct actions. In a situation where the indirectly prohibited work is also unintentional, it is not prohibited; see *Avnei Nezer, id.*

107. For a lengthy discussion of this issue, see *Encyclopedia Talmudit*, "Electricity," 18:662-671 and "The Use of Electricity," *supra* note 1, at 43-45.

108. *Shemirat Shabbat Kehilchata* 23:21; *Minchat Yitzchak* 3:24.

109. *Minchat Shlomo*, p. 111; *Yabia Omer* 3:18.

is a form of a mitzvah itself, which might permit a *grama* alone.¹¹⁰

Numerous authorities accept that merely removing an item which impedes a prohibited action from occurring is not considered a *grama*, but rather is as if the action were done directly. Thus, if there were a vat of dye with a cork in the bottom such that if one removed the cork the dye would flow out, removing the cork so as to allow the dye to flow onto a cloth and dye it violates the biblical prohibition of dyeing on Shabbat.¹¹¹ Some authorities rule this too is a form of indirect causation.¹¹²

On the resolution of this dispute hinges the permissibility of keeping on standby – rather than turning off – many types of alarms and detection devices on Shabbat, since these devices are designed so that the presence of a person or object merely removes an impediment to a circuit; upon removal of the impediment, the alarm is sounded. In addition, many of the devices deliberately designed to work on the *grama* principle (such as the “*grama*-telephone,” marketed to physicians)¹¹³ are halachically considered items that function

110. Ramo, *Shulchan Aruch Orach Chaim*, 257:8. Some authorities counsel doing this *kilachar yad* (1 *Menuchat Ahava* 24:25) although this seems unnecessary to this author. See also text accompanying notes 52 and 38.

This same rationale allows one to intermittently refill a hot water urn with cold water on *Yom Tov*, even though the indicator light on the urn will be switched off when the water temperature falls below a particular level; since this is a *pesik resha begrama* on a rabbinic prohibition it is permissible; see *Natei Gavriel* 13:21(36).

111. *Yabia Omer*, 4:35; *Rav Pealim* 1:25; *Ish Matzliach* 35; *Har Tzvi* 134.

112. *Chatam Sofer* Y.D. 214; *Maharsham*, vol. 3 *Hashmatot* 1:44; *Chelkat Yoav Orach Chaim* 11; Ramo, *Yoreh Deah* 339:1.

113. See e.g., “What’s Up in Israel? Elevators, Thanks to a Special Institute; Engineer-Theologians Solve Conflicts of Ancient [Jewish]

as a *grama* only according to the second opinion.

Conclusion

This article has surveyed a number of different principles used by halacha that are conceptually linked in two different ways; first, they are general principles used to understand all of the prohibitions that are part of the Shabbat laws; second, they are united by their importance to modern technological developments. The relationship between technology and halacha in Shabbat observance is a complex one that requires continuous re-analysis of the relevant facts to insure that the halacha is properly observed.

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The author wishes to dedicate this article to the memory of his grandmother Debra Last Broyde (דבורה בת מתתיהו) who passed away on February 15, 1992 (י"א אדר א' תשנ"ב).

Law and Modern Technology," *Wall Street Journal*, December 3, 1990, A1 ("On a regular phone, pressing a button creates a current [circuit] – thus the problem of using energy on the Sabbath. The Sabbath telephone, however, has a continuous stream of current that the user interrupts in order to operate and dial..")