



FROM THE VIRTUAL DESK OF THE OU VEBBE REBBE

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Melacha Done on Yom Tov Sheini in Chutz La'aretz

Question: We (Israelis) will be spending Pesach at my parents' home in *chutz la'aretz*. They keep the basics of the *chag*, especially when we are there, but do not observe *Yom Tov Sheini* (=YTS). May we benefit from forbidden *melacha* (ed. note – e.g., turning on a flame or electricity for cooking; turning on lights) they will do on YTS? (They are respectful of our *shemirat mitzvot*, but we do not want to make unnecessary issues.)

Answer: Do not encourage your parents to do *melacha*; if you know they will do so on your behalf, ask them not to, due to *lifnei iver* (not facilitating *aveirot*). It is best to discuss this in advance, after which you need not “police them.”

The main *gemarot* (see Ketubot 34a) forbidding the result of a Jew's *melacha* refer to Shabbat (*ma'aseh Shabbat*). A *gemara* (Beitza 17a) examines whether one who cooked on *Yom Tov* for Shabbat without an *eiruv*

tavshilim (=et) may eat the food. The *gemara* (ibid. 17b) deflects a proof from the *halacha* that one who cooked on Shabbat may not eat the food by saying Shabbat is different. Rashi contrasts – *chillul Shabbat* is a Torah-level, capital offense; cooking on *Yom Tov* for Shabbat without an *et* is a Rabbinic prohibition. Since *Yom Tov* has elements of each – a Torah violation but no capital offense, it makes sense that we find a *machloket* if there is a prohibition on *ma'aseh Yom Tov* (Taz, Orach Chayim 502:1) or not (simple reading of Shut Harashba V:8).

According to some (see Rav SZ Auerbach in *Yom Tov Sheini K'hilchato*, p. 369), for Torah-level violations of *Yom Tov*, *ma'aseh Yom Tov* is forbidden; for Rabbinic violations, the result is permitted. That aligns well with the Magen Avraham (538:2), who says regarding the result of forbidden work on *Chol Hamoed*, that its status depends if *melacha* on *Chol Hamoed* is forbidden from the Torah or Rabbinically. If something is forbidden on the first day of *Yom Tov*, it widely has the same status on the Rabbinic-level second day.

We can, then, claim that your parents' Torah-level violations will be forbidden and the Rabbinic ones will not. The cooking process, including burning to fuel it (including glowing filaments) should be included in *ochel nefesh* and permitted on *Yom Tov* and thus the prohibition of creating a new fire, forbidden because of *molid* (Beitza

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33b), is likely a Rabbinic prohibition (see Shevet Halevi VI:68). The Taz (ibid.) views it as a Torah prohibition and forbids not only using the resulting flame but also eating the food it cooked. However, this is not the accepted ruling (Mishna Berura 502:4). Some say a new flame has special leniency because it has no substance and/or it keeps on replacing itself (see Aruch Hashulchan, OC 502:4; Dirshu 502:3). Most of the violations you would use are likely Rabbinic on *Yom Tov*.

Does it help on *YTS* that you are Israeli? While you may not do *melacha* in a Jewish community abroad even privately (Mishna Berura 496:9), this is due to concern over discord; it is not an intrinsic violation. Therefore, for example, an Israeli may cook without an *et*, as a bystander for the cooking will not know he does not have an *et* (ibid. 13). Arguably, then, *ma'aseh Yom Tov* should only be forbidden for one for whom *melacha* is innately forbidden, especially considering it is unclear to a *ben chutz la'aretz* seeing the benefit what the history of the object is.

This claim may depend on the reason to prohibit *ma'aseh Shabbat* for people other than the violator (see Shulchan Aruch, OC 318:1). If it is considered enjoyment of a Shabbat violation, it should not apply on *YTS* to one for whom it is not intrinsically *Yom Tov*. If it is part of the penalty on the violator, it likely follows the status of the

violator, for whom *YTS* applies intrinsically. Further analysis is beyond our scope. However, since many *poskim* treat the violator's household as "him" and not "others" (Shemirat Shabbat K'hilchata, 5770 ed. 1:34), this leniency will not help here.

In conclusion, it is permitted to benefit from Rabbinic *Yom Tov* violations; regarding Torah-level ones, this would require significant need. ■

Having a dispute?



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