

## Picking a Lock on Shabbat

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**QUESTION:** I was locked out of my apartment this past Shabbat. My friend, also a *frum* Jew, is a locksmith. I asked him to use his picks to pick the lock on my door on Shabbat, but now I am wondering if it was permitted. Was he allowed to do this?

**ANSWER:** There certainly is no Biblical or Rabbinic prohibition in the act of picking a lock – it is merely the manipulating of the inner mechanisms with some specialized tools. It could be argued that this is *uvda di'chol*, weekday activity, as it is the normal professional activity of this person with the use of specialized tools. This requires a more precise understanding of *uvda di'chol*, a concept that the Gemara applies to a number of cases, but which is never defined clearly in the Gemara or by many *poskim*. As one *Acharon* (כלכלה שבת, כללי ל"ט) (מלאכות ד"ה אמנם) points out, we can certainly eat on Shabbat although we eat during the week. What, then, are the activities that are by their very character “weekday-like”?

### *Defining Uvda Di'chol*

To get to a better definition of *uvda di'chol* we are required to ask about the nature of Shabbat. What beyond abstaining from the 39 *melakhot* makes Shabbat different from the weekdays? Ramban and Rambam both address this point in their discussion of the Torah terms *shvut* and *shabbaton*. In his commentary on the Torah (Vayikra 23:24), Ramban states that these terms refer to a *mitzvah* to ensure that Shabbat is a day of rest from physical exertion. Another quality of Shabbat that he refers to, although he does not underscore, is that it should be a day free from engagement in commerce and profession-oriented activities. In contrast, Rambam in Mishna Torah (Laws of Shabbat 21:1) states that the Torah's command of *tishbot* refers to abstaining from activities that could lead to doing a *melakha* or that are similar to a *melakha*. Reversing these, we have three possible definitions of *uvda di'chol*: (1) activities that require exertion; (2) activities that are connected to commerce or our professions; and (3) activities that are connected to a *melakha*.

For our purposes, it would be the second definition that would matter. If *uvda di'chol* refers to profession-oriented activities, then it may be prohibited for a locksmith to pick a lock.

Contemporary *poskim* dispute which of these definitions is the operative one. Rav Shlomo Zalman Auerbach (Shulkhan Shlomo 306:16.5, quoting from his article in Pninei HaMaor, vol. 2) rules that *uvda di'chol* are activities that are connected in some way to a *melakha* or to an otherwise prohibited Shabbat act (he also states that he does not have full clarity on this matter). This parallels the position of Rambam.

In contrast, Rav Moshe Feinstein's position parallels that of Ramban. Rav Moshe was asked whether an egg- or cheese-cutter should be forbidden on the basis of *uvda di'chol* (אג"מ או"ח ה"ד ע"ד, טוהן אות ד). He first points out the irony that a labor-saving device would be considered contrary to the spirit of Shabbat. Rav Moshe then analyzes all the cases that are defined as *uvda di'chol* and concludes that an *uvda di'chol* activity is one that is connected to professional work. However it is not a problem when the act is done עראי, in an *ad hoc* fashion to address an immediate Shabbat need<sup>1</sup>. The problem is when the act is done with close attention and on a scale that suggests weekday work, what the Gemara refers to as עושה בחול.

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This phrase – כדרך שהוא עושה בחול – appears multiple times in Tosefta Shabbat. The Tosefta (13:17; 14:4, 11, 16; 16:8; 17:6, 25) describes a number of acts that one may not perform כדרך שהוא עושה בחול. This Hebrew phrase of the Tosefta seems to parallel the category that the Gemara labels with the Aramaic phrase of *uvda d'chol*, and a better understanding of these cases will clarify the parameters of *uvda di'chol*. On the one hand, the phrase כדרך שהוא עושה בחול indicates that the entire problem is that the act is being done in a way that evokes one's weekday work and not because the act has any *melakha* association, a point already made by Rav Moshe in his teshuva. On the other hand, inspection of the cases shows that while some are more consistent with Rav Moshe's definition, others are more consistent with Rav Shlomo Zalman's<sup>2</sup>. One could reasonably conclude that both definitions are correct – both profession-related activities and *melakha*-related activities are *uvda di'chol* and contrary to the distinctive nature of the day<sup>3</sup>.

In summary, Rav Shlomo Zalman adopts the third definition we proposed: *uvda di'chol* are activities related to prohibited Shabbat acts, and Rav Moshe adopts the second definition: *uvda di'chol* are activities which are professional in nature. Activities that require exertion – the first definition – is not adopted by these *poskim* as a possible definition of *uvda di'chol*, for the simple reason that such activities are already forbidden on the basis of the more specific concept of *tircha*, acts of unnecessary exertion (See, for example, OH 324:9, and Mishneh Brurah no. 24, and 333:1 and Mishnah Brurah)<sup>4</sup>.

### *Does The Use of Professional Tools make Picking a Lock Uvda Di'chol?*

To return to our case of picking the lock, it would seem that if we follow Rav Moshe's definition this should be forbidden on the basis of it being a professional activity. I believe that this conclusion is incorrect. Remember that Rav Moshe states that when such actions are done in an *ad hoc* fashion to address an immediate Shabbat need they are permissible; they are not being done כדרך שהוא עושה בחול. In this case, the fact that it is a quick job, that the person is coming over in his Shabbat clothes and without his truck or professional uniform, all contribute to it not being כדרך שהוא עושה בחול.

The one factor that needs to be addressed is whether the use of professional tools in itself makes the act כדרך שהוא עושה בחול. On the one hand, we do find that there are certain tasks which may not be performed with professional tools. For example, Mishna Beitza (4:3) states that while one can cut firewood for same-day use on Yom Tov, he may not use an axe or a saw but only a butcher's chopper, and Rashi explains that all these forbidden tools are כלי אומן הן, professional tools. However, it would be incorrect to conclude that the problem here is *uvda di'chol* and that all professional tools are forbidden. In fact, Rashi states that these particular tools are generally used to perform a מלאכה, and the problem here is that it will look like one is doing a מלאכה, “ונראה, “כעשוהו בו מלאכה” (Rashi, Beitzah 31a, ד"ה מגל). This concern would not be relevant in the case of picking a lock.

Another important distinction is that cutting wood is a protracted and laborious activity and it can easily look like one is working in his professional capacity. Even in societies where wood chopping took place in a domestic context, it could easily look like one was engaging in serious work and not just addressing a pressing Yom Tov need. Picking a lock, on the other hand, is done quickly when done by a professional. It is more accurately described as using one's professional skills than as actually working at one's job. This distinction can be found in the Tosefta Shabbat (14:11) which focuses not on the tools being used when husking grain, but on the quantity of the grain. To use Rav Moshe's framing, if it is being done עראי, *ad hoc* to address an immediate need, it is not *uvda di'chol*<sup>5</sup>.

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The closest we get to the idea that using professional tools is a problem is in the Gemara in Beitzah 28b, which states that on Yom Tov one may slaughter animals for eating, but a *shochet* cannot have a *chacham* inspect his knife for nicks prior to using it for slaughtering. Rashi (ד"ה מהו להראות) explains that this is *uvda di'chol* since it would create a public perception that the *shochet* is planning on selling the meat in the marketplace. One could extend this problem to any professionally-oriented activity which involves other people, especially one that uses specialty tools, and claim that it should be forbidden because it will communicate the impression that one is open for business.

I do not believe that that is a concern in our case. The problem with showing one's *shechita* knives to a *chacham* is that that is a public ritual (Rashi describes it as *avsha milta*, something that becomes known to the public). In contrast, here, the locksmith is helping out an individual in a private context, even a few other people happen to be around. For example, *shechita* itself is permitted even if a few people are present.

More to the point, Shulkhan Arukh and Rema do not follow Rashi's approach. In Orah Hayyim 498:1, Shulkhan Arukh and Rema rule that the reason it is forbidden for a *shochet* to show his knife to a *chacham* is "lest there be a nick and he come to sharpen it." This reason results both in a stringency – it is forbidden for a *shochet* to even inspect his own knife (see Rema), and in a leniency- a *chacham* can show his knife to another *chacham*, since we are not concerned that he will come to sharpen it (see MB, no. 4). There is thus no concern of *uvda di'chol* in the use of professional tools which are not *melakha*-related, even when the act is done in public, and certainly when it is done in private, or in the presence of a few people.

### *Muktzah*

The one possible problem left to address is that the picks might be considered *muktzah*. However, this is not the case. They are not a *kli she'milakhto li'issur*, an instrument used primarily for an activity that is forbidden on Shabbat, since it is not forbidden to pick locks on Shabbat! Furthermore, even were it a *kli she'milakhto li'issur*, one would be permitted to use it for a permissible function, just as one can use a hammer to crack nuts (Shulkhan Arukh OH 308:3).

The category that does seem relevant is *muktzah machmat chisaron kis*, a valuable object that the owner would not use for another purpose. Objects in this category may not be moved for any reason (OH 308:1). However, something is only *muktzah machmat chisaron kis* if (a) it is valuable and (b) the owner would not allow anyone to use it for anything else, and (c) its primary function is one that cannot be performed on Shabbat or Yom Tov (see Shulkhan Arukh haRav 308:4). This is why a *shechita* knife is not *muktzah* on Yom Tov; although criteria (a) and (b) are satisfied, criterion (c) is not. This is different from a *mohel's* scalpel which is *muktzah*. Although his scalpel can be used to perform a Shabbat *brit milah*, it is not at his discretion to do so; he can only use it in this capacity when there is a Shabbat *brit* (See an extended discussion of this in the name of Rav Shlomo Zalman Auerbach in Shemirat Shabbat , 20:19, footnote 48.) A locksmith, in contrast, can use his picks whenever he chooses to, since picking locks is not forbidden on Shabbat. He does not set his picks off-limits, and they are not *muktzah machmat chisaron kis*.

**IN CONCLUSION:** There is no problem for a friend who is a locksmith to help someone who is locked out of his or her house and to pick the lock on Shabbat. Although this is a professional activity, it is not *uvda di'chol* since it is done in an *ad hoc* way to address an immediate need. The use of professional tools does not in itself

make this *uvda di'chol*. However, this is somewhat contextual; if it is a major job, or the person is coming by with his work uniform and his full tool box, there might indeed be a problem of *uvda di'chol*.

Lock picks are also not *muktzah*. They are not *kli she'milakhto li'issur* since picking locks is a permissible act. They are not *muktzah machmat chisaron kis* for the same reason - they are not set off-limits, given that one could have a reason to use them on Shabbat.

Two final points:

- (1) If the person picking the locks was not a friend and the context was more of a professional one, then it would be a concern of *uvda di'chol*. Even in such a case, if the person picking the locks was not Jewish, it may be permissible to ask him to pick the lock, since according to some *poskim* one can ask a non-Jew to do an activity that is *uvda di'chol* for a Jew (see שו"ע או"ח רנ"ב:ד במ"א ס"ק י"ד (ובפמ"ג שם, אליה רבה שם ס"ק יב ומ"ב שם ס"ק לא' ובשעה"צ שעת הדחק situations it may be relied upon.
- (2) The above discussion assumes that all that is being done is manipulating the inner mechanisms. If the lock or handle has to be removed, then it would be strictly forbidden, as we would be dealing with the possible Torah prohibitions of *boneh* and *soter*.

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#### ENDNOTES

<sup>1</sup> He also adds another definition: work that should have been done before Shabbat to prepare for Shabbat, such as cleaning and sweeping.

<sup>2</sup> The following cases are prohibited because these acts are done בחול שמושה בחול, as one does during the weekday:

- (1) Tosefta 13:7 – banging with a hammer against the back of knife (to cut cheese) - לא יכה במקבת על גבי מפסלת ולא יקדיח - בקשתנית כדרך שעושה בחול
- (2) Tosefta 14:4 – spreading out straw on a muddy yard using one's hands and a basket - חצר גדולה שירדו בה... מביא תבן בקופה - ומרדיד ובלבד שלא ירדה בידו ובקופה כדרך שעושה בחול
- (3) Tosefta 14:11 – rubbing (husking) a lot of grain with one's hands - וחכמים אומ' מולל בראשי אצבעותיו ואוכל ובלבד שלא ימלול בידו - הרבה כדרך שעושה בחול
- (4) Tosefta 14:16 - blowing the chaff away from previously husked grain with the aid of sieve - המולל מלילות מערב שבת מנפח על - יד על יד ואוכל אבל לא בקנן ולא בתמחוי המולל מלילות מערב יום טוב מנפח בקנן ובתמחוי אבל לא בטבלה ולא בנפה ולא בכברה כדרך שעושה בחול
- (5) Tosefta 16:8 - wiping (presumably one's hands after a meal) with a (cloth) napkin - מקנחין בזנב הסוס ובזנב הפרה ובזנב שועל - ובמפה של קוצין ובסיער של שועין ובלבד שלא יקנח בידו ובמפה כדרך שעושה בחול
- (6) Tosefta 17:6 – reading from a menu that is written on a (wax) tablet or in a notebook - מונה אדם את ארחיו כמה בחוץ וכמה בפנים וכמה מנות צריך להתקין להן מן הכתב שעל גבי הכותל אבל לא מן הטבלה ולא מן הפנקס כדרך שעושה בחול
- (7) Tosefta 17:25 – clapping and hopping to keep birds away from the crops - המשמר זרעים מפני עופות ומקשאות מפני חיה משמר - כדרכו בשבת ובלבד שלא יספק ולא ירקד ולא יטפח כדרך שעושה בחול

Almost all of these seem to be related to weekday, professional activity, as well as associated with some *melakha*. It is hard to see how case (5) the use of a cloth napkin and case (6) reading from a wax tablet, are connected with professional activity; these seem to reflect a concern with doing a *melakha* (laundering the napkin or erasing from or writing in the tablet). Conversely, it is not clear what *melakha* concern is connected with (7) making noise to scare away birds, or even so much (2) covering muddy ground with straw.

<sup>3</sup> The debate between Rav Moshe and Rav Shlomo Zalman can be seen to play out in regards to the category of *shvut* in Mishna Beitza (5:2), which prohibits “climbing a tree, riding on an animal, floating on the water, slapping, clapping and dancing.” The Bavli

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(Beitzah 36b) explains that these are all forbidden because one might come to do a *melakha*, in line with Rav Shlomo Zlaman's understanding of *uvda di'chol*. The simple meaning of the Mishna, however, is consistent with Rav Moshe's approach. These acts are prime examples of business-related activities – climbing trees to prune them or pick the fruit, and travelling by animal or by boat for business purposes. As to the “clapping and dancing,” the Tosefta (Shabbat 17:25) associates this with making noise to scare off birds from eating one's crops.

<sup>4</sup> And the fourth aspect that we might identify as central to the identity and character of Shabbat is a day free from hustle-and-bustle; a day of quiet reflection. This might be the basis for the Mishna (Beitzah 5:2) which prohibits “slapping, clapping and dancing” as a *shvut* and Tosefta Shabbat 13:17, which prohibits the use of baby rattles. [This is in contrast to the Gemara's explanation (Beitzah 36b) that these are prohibited in case one makes a musical instrument, and the Tosefta's indication (Shabbat 17:25) that they are prohibited because they are associated with the weekday work of tending to one's crop.] In line with this, the Gemara in Eiruvin (104a) quotes Ula as stating that all forms of noise making are prohibited on Shabbat (and he refers to one who makes noise as a person “who desecrates the Shabbat,” indicating how this seriously compromises the quality of the day; and see Yerushalmi Beitzah (5:2) for a similar statement in the name of Rabbi Meir). See also Shabbat (18a) where Rabba prohibits letting a water wheel run on Shabbat because it is *משמיע קול*. This noise is very public and is associated with weekday work and *melakha*, thus combining the other aspects of *עובדא דחול* as well (see Rashi there *ד"ה שיטחנו מבעוד יום* and *ד"ה ד"ה ומטיילת ובנח*). רש"י (נג.) ד"ה ומטיילת ובנח.) (לא תצא).

<sup>5</sup> Another example that professional tools are not a problem of *uvda di'chol* is the ruling that a *shochet* can slaughter animals on Yom Tov for the sake of using the meat for a Yom Tov meal even though that is his profession (Beitzah 2a). This might be a special case inasmuch as food preparation is permitted and widely done on Yom Tov and hence all activities associated with it might be *uvda di'Yom Tov* and not *uvda di'chol*. Nevertheless, we do find that even food-preparation activities cannot be done in too much of a weekday fashion; see Mishna Beitzah (3:7) and the discussion above regarding showing a *shechita* knife to a *chacham*.