

Halachic Issues Commonly Encountered During a Hotel Stay on Shabbat and Yom Tov

Rabbi Joshua Flug

Community Fellow, Yeshiva University Center for the Jewish Future South Florida Initiative

The modern hotel presents a number of challenges to the Shabbat observant Jew. In this article, we will present the most common challenges and the discussions surrounding possible solutions to deal with these challenges. This article is for educational purposes and is not intended to provide any definitive halachic rulings. One should consult with one's own rabbi on all matters of halacha.

Amira L'Nochri and its Applications

Hotels outside of Israel are generally staffed by non-Jews. While the hotel staff can be very helpful in helping one circumvent the many Shabbat challenges, there is a rabbinic prohibition against asking a non-Jew to perform a prohibited activity on Shabbat. In this section, we will discuss the nature of the prohibition, its leniencies and then provide the practical applications to the hotel stay.

The source for the prohibition against *amira l'nochri* (asking a non-Jew to perform a prohibited activity) is a Mishna, *Shabbat* 121, which states that if there is a (non-dangerous) fire, one is prohibited from asking a non-Jew to extinguish the fire. The Gemara, *Shabbat* 150a, states that *amira l'nochri* is a rabbinic prohibition. Rashi (1040-1105) presents two reasons why *amira l'nochri* is prohibited. First, Rashi, *Avodah Zarah* 15a, s.v. *Keivan*, states that the prohibition against *amira l'nochri* is based on the prohibition against *v'daber davar* (*Yeshaya* 58:13), the prohibition against speaking about prohibited activities on Shabbat. If

one is prohibited to mention these activities, it is certainly prohibited to ask someone else to perform these activities. Second, Rashi, *Shabbat* 153a, s.v. *Mai*, states that the prohibition against *amira l'nochri* is based on the concept of *sh'lichut* (agency). By employing a non-Jew to perform an activity on Shabbat, the non-Jew is considered an agent of the Jew and it is considered (on a rabbinic level) as if the Jew is performing the activity himself.¹⁵

R. Ya'akov Y. Kanievski (1899-1985), *Kehilot Ya'akov, Shabbat* no. 55, explains that both of these reasons are true and either are necessary components of the prohibition against *amira l'nochri*. Ran (c. 1320-1380), *Shabbat* 64b, s.v. *Tanu*, rules that it is prohibited to ask a non-Jew on Erev Shabbat to perform a prohibited activity on Shabbat. Likewise, it is prohibited to ask a non-Jew on Shabbat to perform a prohibited activity after Shabbat. R. Yosef Karo (1488-1575), *Shulchan Aruch, OC* 307:1-2, codifies Ran's ruling. R. Kanievski notes that if someone asks a non-Jew on Erev Shabbat to perform a prohibited activity on Shabbat, he will not violate *v'daber davar*, since it is permissible to discuss prohibited activities on Erev Shabbat. However, when the activity is performed by the non-Jew on Shabbat, the non-Jew will still be considered the agent of the Jew. For this reason it is prohibited to ask a non-Jew before Shabbat to perform a prohibited activity on Shabbat. Similarly, if the non-Jew is asked on Shabbat to perform an activity after Shabbat, there is no concern that the non-Jew is considered an agent because it is permissible for the Jew himself to perform the activity after Shabbat. However, to ask the non-Jew on Shabbat to perform such an activity would violate the prohibition against *v'daber davar*.

Hinting to a Non-Jew

The two reasons for *amira l'nochri* are relevant to the discussion about hinting to a non-Jew to perform a prohibited activity. R. Yitzchak ben Moshe (c. 1200-1270), *Or Zarua, Hilchot Shabbat* no. 84, rules that just as it is prohibited to ask a non-Jew directly to perform a prohibited activity on Shabbat, it is likewise prohibited to hint to a non-Jew to perform an activity on Shabbat. *Or Zarua* does allow hinting to a non-Jew on Shabbat to perform *melacha* after Shabbat. *Or Zarua's* ruling is codified by Rama (1520-1572), *OC* 307:22.

Ostensibly, the explanation of the ruling of *Or Zarua* is based on the premise that hinting does not violate the prohibition against *v'daber davar* since there is no mention of the prohibited activity. Nevertheless, hinting to a non-Jew would establish him as an agent of the Jew and therefore, hinting is prohibited. As such, if the Jew hints to the non-Jew to perform the activity after Shabbat, there is no concern that the non-Jew is acting as an agent of the Jew and it is permissible.

R. Yisrael M. Kagan (1838-1933), *Mishna Berurah* 307:76 (based on *Magen Avraham* 307:31), states that the prohibition against hinting only applies if the hint is given in the form of a directive. The example given by *Mishna Berurah* is directing the non-Jew to wipe his nose

¹⁵ It should be noted that Rambam (1135-1204), *Hilchot Shabbat* 6:1, writes that the prohibition against *amira l'nochri* is based on a concern that the Jew who asks the non-Jew to perform the prohibited activity may treat Shabbat lightly and eventually perform the prohibited activity himself.

where he is supposed to understand that it is cold in the room. However, if the hint is not given in the form of a directive it is permissible.

Mishna Berurah's ruling can be explained based on the previous idea that the prohibition to hint to a non-Jew is based on the agency aspect of *amira l'nochri*. By directing a non-Jew to perform an activity, even if it is only through hinting, the non-Jew acts as an agent on behalf of the Jew. However, if there is no directive from the Jew, the non-Jew is not considered the agent of the Jew and there is no prohibition. It should be noted that even if there is no directive, there may be no mention of any prohibited activity by the Jew for this would violate the prohibition against *v'daber davar*.

The Prohibition against Benefiting From a Non-Jew's Activities

Mishna Berurah's allowance of hinting without a directive has limited applications. This is because the Mishna, *Shabbat* 122a, prohibits a Jew from benefiting from any prohibited activity performed by a non-Jew on behalf of a Jew, even if the non-Jew was not asked to perform the activity. Therefore, even if the hinting is performed in a way that does not violate *amira l'nochri*, there is still a prohibition to benefit from the result.

There are a few situations where there is no prohibition to benefit from the activity of a non-Jew. First, Rabbeinu Baruch (12th-13th century), *Sefer HaTerumah*, no. 252, rules that if a non-Jew lights a candle in a room that already had some light, there is no prohibition to benefit from the new light. The reason that he gives is that since it was possible to see prior to the prohibited activity, the benefit from the prohibited activity is insignificant. R. Ya'akov ben Asher (c.1269-1340), *Tur*, OC 276, adds that after the original light is extinguished, it is prohibited to benefit from the light that was lit by the non-Jew. *Shulchan Aruch*, OC 276:4, codifies the ruling of Rabbeinu Baruch and the extension of *Tur*.

Second, Tosafot, *Shabbat* 122a s.v. *V'Im*, and Rabbeinu Baruch op. cit., distinguish between direct benefit and indirect benefit regarding certain cases of *amira l'nochri*. R. Yisrael Lipschitz (1782-1860), *Kalkelet Shabbat, Dinei Amira L'Oved Kochavim*, no. 5, applies this distinction to benefiting from a prohibited activity performed by a non-Jew on behalf of a Jew. He rules that if a non-Jew opens an envelope on Shabbat, it is permissible to benefit from the contents of the envelope since this is not considered direct benefit. R. Lipschitz, *Kalkelet Shabbat, Melech Shabbat* no.1, also rules that there is no prohibition against benefiting from the absence of light caused by the extinguishing of a candle on Shabbat. *Mishna Berurah* 307:11, likewise rules that the only type of benefit that is prohibited is direct benefit.¹⁶

¹⁶ See however, R. Moshe Feinstein (1895-1986), *Igrot Moshe*, OC 2:77, who prohibits benefiting from a building where the door was opened with keys that were (prohibitively) brought from the public domain on Shabbat. It is possible that R. Feinstein will permit sleeping in a room whose light was extinguished because that is not considered a positive benefit. However, if the benefit is positive but indirect, R. Feinstein seems to take the stringent stance. R. Shlomo Z. Auerbach (1910-1995) took both sides of the argument at different points in his life. He concluded that there is no prohibition to benefit from a prohibited activity unless the benefit is positive and direct (see *Minchat Shlomo* no.5, *Shemirat Shabbat KeHilchata* ch.18, note 244, and *Minchat Shlomo Tinyana* no. 22).

Third, the Mishna, *Shabbat* 122a, states that if the non-Jew performs the prohibited activity for his own benefit, it is permissible to benefit from that activity. The Gemara, ad loc., limits this leniency to cases where there is no concern that the non-Jew will perform additional prohibited activities on behalf of a Jew. For example, if a non-Jew cuts grass for his animals and there is leftover grass, it is prohibited for a Jewish acquaintance to feed the leftover grass to his animal because there is a concern that the non-Jew may cut more grass for the Jew. Regarding a candle that was lit by a non-Jew, the candle that the non-Jew lights for himself is also sufficient for the Jew and there is no reason to suspect that he will light additional candles. This is codified by *Shulchan Aruch*, OC 325:11.

Amira L'Nochri in Order to Fulfill a Mitzvah

There are two cases in the Gemara where *amira l'nochri* is permissible for the purpose of fulfilling a mitzvah. First, the Gemara, *Gittin* 8b, states that one is permitted to ask a non-Jew to sign the closing documents on a property in *Eretz Yisrael*. The Gemara states that the reason why it is permissible is that the mitzvah of *yishuv Eretz Yisrael* (settling the Land of Israel) overrides that prohibition against *amira l'nochri*. Second, the Gemara, *Eiruvin* 67b, records an incident where Rabbah allowed someone to ask a non-Jew to carry water through a rabbinically ordained public domain (a private domain without an *eiruv chatzeirot*) in order to perform the necessary preparations for the mitzvah of *b'rit milah*.

There are three opinions presented by the Rishonim to explain the basis of both of these leniencies. First, R. Yitzchak ben Abba Mari (c. 1122-1193), *Sefer HaItur, Hilchot Milah* (49a), rules that it is permissible to ask a non-Jew to perform a prohibited activity if it is for the purpose of fulfilling a mitzvah. *Sefer HaItur* notes that it is permissible to ask a non-Jew to light the Shabbat candles on Shabbat. It is clear from *Sefer HaItur's* ruling that one may ask a non-Jew to perform a bona-fide *melacha* (such as kindling) in order to perform a mitzvah that is not biblically mandated (the mitzvah of lighting Shabbat candles). This would explain both leniencies presented by the Gemara.

Second, Rambam (1135-1204), *Hilchot Shabbat* 6:9-10, rules that it is permissible to ask a non-Jew to perform an activity that is only prohibited (for a Jew) on a rabbinic level if the motivating factor is to alleviate a mild illness, to resolve a pressing situation or to perform a mitzvah. One of the examples Rambam provides is asking a non-Jew to carry water through a rabbinically ordained public domain in order to perform the necessary preparations for the mitzvah of *b'rit milah*. Rambam then states that it is permissible to ask a non-Jew to sign the closing documents on a property in *Eretz Yisrael*. Rambam implies that the latter case is an exception to the rule. One may only ask a non-Jew to perform a bona-fide *melacha* if it is for the mitzvah of *yishuv Eretz Yisrael*.

Third, Tosafot, *Gittin* 8b, s.v. *Af Al Gav*, suggest that both cases presented by the Gemara are the exceptions to the rule. The mitzvah of *yishuv Eretz Yisrael* allows one to ask a non-Jew to perform a bona-fide *melacha*. The preparations for the *milah* are also an exception to the rule in that one is permitted to ask a non-Jew to perform an activity that would constitute a

rabbinic violation (for a Jew). Tosafot rule that one may not ask a non-Jew to perform activities that entail a rabbinic violation in order to fulfill other *mitzvot*.

Shulchan Aruch, OC 307:5, rules in accordance with the opinion of Rambam, but mentions that there is an opinion that is more stringent (i.e. the opinion of Tosafot). *Mishna Berurah* 307:23, rules that the opinion of Rambam should be considered the normative opinion. Therefore, it is permissible to ask a non-Jew to carry food through a rabbinically ordained public domain if it necessary for the Shabbat meal (see Rama, OC 325:10 and *Mishna Berurah*, ad loc.).

There is a further discussion whether Rambam's leniency extends to cases of loss of money. R. Yitzchak ben Sheshet (1326-1408) in his responsa, no. 387, and R. David ben Zimra (Radvaz d. 1573), in his responsa, no. 1005, are both of the opinion that one may not ask a non-Jew to violate a rabbinic violation in a case of loss of money. R. Avraham Gombiner (c. 1633-1683), *Magen Avraham* 307:8, is lenient in cases of great loss. *Mishna Berurah* 307:21, seems to side with *Magen Avraham's* opinion.

Rama, OC 276:2, notes the opinion of *Sefer HaItur* that it is permissible to ask a non-Jew to perform a bona-fide *melacha* in order to perform a mitzvah. Rama rules that one may rely on his opinion in an extremely pressing situation. R. Avraham Danzig, *Chayei Adam*, *Hilchot Shabbat* 62:11, states that asking a non-Jew to fix the *eiruv* strings on Shabbat is an example of an extremely pressing situation since many people will transgress Shabbat if the *eiruv* not fixed (*michshol d'rabim*). *Mishna Berurah* 276:25, codifies the ruling of *Chayei Adam*. Based on the ruling of *Chayei Adam*, R. Ovadia Yosef, *Liviat Chen*, no. 17, permits asking a non-Jew to restore the power to the lights in a synagogue in order that the congregants should be able to recite *K'riat Sh'ma* and pray using a *siddur* (*mitzvah d'rabim*). Both examples are examples that affect the public.

Is There a Need to Avoid the Leniencies of Amira L'Nochri?

There are situations where asking a non-Jew to perform a prohibited activity is warranted, but the entire situation could have been avoided. Is it permissible to create a situation where one is going to later rely on the leniencies of *amira l'nochri*?

Rambam, *Hilchot Milah* 2:9, in providing an example when one may ask a non-Jew to perform a prohibited activity, writes that if one forgot to bring a knife to the place where a circumcision is taking place, one may ask a non-Jew to carry it through a rabbinically ordained public domain. R. Avraham S.B. Sofer (1815-1871), *Ketav Sofer*, *Orach Chaim* no. 49, deduces from Rambam's comments that one may only rely on the leniency of asking a non-Jew to perform a rabbinically prohibited activity when the knife was forgotten. One may not intentionally leave the knife in other location knowing that the non-Jew will be permitted to move it on Shabbat. A similar view is expressed by *Mishna Berurah*, *Sha'ar HaTziyun* 244:35.

Asking a Non-Jew to Unlock a Door with an Electronic Key

Many hotels use electronic locks on their doors to avoid the need of collecting the keys from their guests after their stay. In almost all cases, using these keys on Shabbat would violate a

prohibition. One option for Shabbat guests is to secure all of their belongings in a safety vault or other area and leave the door unlocked the entire Shabbat.¹⁷ For many, this option is not sufficient. The other option is to ask a member of the hotel staff to open the door each time one wants to enter. Does that violate the prohibition against *amira l'nochri*?

According to many poskim, engaging an electric device that does not produce heat is only a rabbinic violation.¹⁸ As such asking a non-Jew to open the door would be tantamount to asking a non-Jew to perform a rabbinic violation, which is permissible in cases of need. Is this considered a case of need? If one left the door unlocked and the door accidentally locked, it can be considered a case of need if one needs to access the room in order to sleep or perform other important activities. However, if one is going to a hotel knowing that he will have to violate *amira l'nochri* in order to open his hotel room, the impetus for going to the hotel would have to be a case of need. Furthermore, one would have to also claim that it is a case of great loss due to the potential loss of possessions from the hotel room if one chooses not to leave the room unlocked.

Nevertheless, R. Yitzchak Zilberstein, *Melachim Omnayich*, Responsa no. 48, presents two options to allow one to ask a non-Jew to open the door on Shabbat. First, he suggests leaving a few small gifts (candy, chocolate, etc.) in the room. Every time one wants to enter the room, he can tell a member of the staff "I would love to give you a gift, but I cannot do so because I can't enter my room." When the staff member unlocks the door to redeem his gift, he is doing so for his own benefit. Second, he quotes R. Yosef S. Elyashiv who suggests telling the manager upon check-in that he can only rent the room if the room is accessible over Shabbat and that he cannot enter the room with a card. If the manager then agrees to provide some other arrangement to allow the guest to enter the room, such as providing a staff member to unlock the door, the manager is doing so for his own benefit and not for the benefit of the Jew.

Asking a non-Jew to Press a Button in the Elevator

The issues of asking the non-Jew to press the button in the elevator are similar to the issues with the electronic door lock. If the guest has difficulty walking up the stairs, pressing the buttons in the elevator would be tantamount to asking a non-Jew to perform a rabbinic violation in case of need.¹⁹ However, the same discussions regarding the electronic door lock apply here as well and before checking in to the hotel, one should ask oneself if there is a mitzvah or need to stay at a hotel where one would have difficulty walking up the stairs.

¹⁷ This can usually be accomplished by taping a card over the socket on the doorpost. One should make sure to use a tape that doesn't leave a permanent residue so as not to damage the paint on the doorpost.

¹⁸ See *Minchat Yitzchak* 3:23 and Yabia Omer, *O.C.* 7:36. According to *Chazon Ish*, *O.C.* 50:9, completing a circuit constitutes a biblical prohibition.

¹⁹ This assumes that the Jew does not violate any prohibition by entering the elevator. One can avoid this problem by entering the elevator at the same time as a non-Jew so that the door and weight sensors are triggered by a non-Jew. There is a general dispute about travelling in an elevator on Shabbat, regardless of whether buttons were pressed on one's behalf. R. Shlomo Zalman Auerbach (1910-1995), cited in *Shemirat Shabbat KeHilchata* ch. 23, note 140) rules leniently on the matter.

Issues Relating to Lighting

Based on the position of *Sefer Ha'Itur*, it is permissible to ask a non-Jew to activate the lights of a conference room for a mitzvah that relates to the needs of the public (prayer, Torah lecture, etc.) and it is permissible to benefit from the light in the room.

Sometimes a member of the cleaning crew will use the light in a guest room and forget to deactivate it. One may benefit from that light because the non-Jew activated the light for his own benefit. If one does not want the light to remain on, R. Shlomo Zalman Auerbach, *Minchat Shlomo* no. 12, rules that although activating an incandescent bulb constitutes a biblical violation, extinguishing it is only rabbinic in nature. As such, in a case of need, it is permissible to ask a non-Jew to turn off a light bulb on Shabbat.

P'sik Reishei and its Applications

When a person performs a specific action, he does so with the intent of achieving a certain result. Sometimes, an action will produce a secondary result. While the possibility of this secondary result may be known to the person at the time of performance of this action, he does not necessarily intend to achieve such a result. This potential secondary result of a permissible action is known as *davar she'aino mitkavein*.

The Concept of Davar She'aino Mitkavein

There is a dispute between R. Shimon and R. Yehuda regarding *davar she'aino mitkavein*. R. Yehuda is of the opinion that *davar she'aino mitkavein* is prohibited. R. Shimon maintains that it is permissible. One of the examples provided by the Gemara, *Beitzah* 23b, is a dispute recorded in a *Beraita* regarding dragging a bed, chair, or bench across a field on Shabbat. The intention of the action is to move the item to the other side of the field. However, dragging the item may result in creating a furrow, which is prohibited on Shabbat. R. Yehuda rules that it is prohibited to drag these items across the field. R. Shimon rules that it is permissible to drag these items as long as one does not intend to create a furrow. The Gemara, *Shabbat* 22a, rules in accordance with the opinion of R. Shimon that *davar she'aino mitkavein* is permissible.²⁰

P'sik Reishei: The Unavoidable Result

The Gemara, *Shabbat* 103a, presents a major limitation to R. Shimon's leniency regarding *davar she'aino mitkavein*. The Gemara states that R. Shimon agrees that if the *davar she'aino mitkavein* produces a result that is unavoidable, that action is prohibited. This concept is known as *p'sik reishei*. The term *p'sik reishei* is based on the rhetorical question "*p'sik reishei v'lo yamut?*" (You will cut off his head and he won't die?). Rashi, *Sukkah* 33b, *V'Ha*, explains that the classic case of *p'sik reishei* is one where a person desires to decapitate an animal on Shabbat but does not intend to kill the animal. Although the death of the animal is a secondary result of the action and it can be classified as a *davar she'aino mitkavein*, nevertheless, since the secondary result (i.e. the death of the animal) is unavoidable, it is prohibited to decapitate the

²⁰ This dispute is not limited to Shabbat. The Gemara applies this dispute to other areas of Halacha (See *Shabbat* 29b, and 133a, *Nazir* 42a, and *Keritut* 20b).

animal. The discussion of the Gemara, *Shabbat* 103a, implies that one can violate a biblical prohibition if the unavoidable secondary result entails a biblical violation.

The Gemara then distinguishes between results that are beneficial to the one who performs the action and results that are inconsequential to the one performing the action (see Rashi, *Shabbat* 103a, s.v. *B'Ara*). If the result is inconsequential it is termed "*p'sik reishai d'lo nicha lei*." *Aruch*, *Erech Pasak*, rules that an action which results in *p'sik reishai d'lo nicha lei* is permissible. Tosafot, *Shabbat* 103a, s.v. *Lo Tzricha*, disagree with *Aruch*. They maintain that an action that will result in *p'sik reishai d'lo nicha lei* is prohibited, albeit as a rabbinic violation. *Shulchan Aruch*, OC 320:18, rules in accordance with the opinion of Tosafot, but does mention the opinion of *Aruch*.

P'sik Reishai whose Result is a Rabbinic Violation

The above discussion regarding *p'sik reishai* is limited to cases where the secondary result constitutes a biblical violation of Shabbat. If the secondary result constitutes a rabbinic violation, there is a dispute between R. Yisrael Isserlin (1390-1460), *Terumat HaDeshen* 1:64, and *Magen Avraham* 314:5. *Terumat HaDeshen* maintains that there is no prohibition against performing an activity if the secondary result will constitute a rabbinic violation. *Magen Avraham* asserts that it is prohibited. *Mishna Berurah* 314:11, rules in accordance with the opinion of *Magen Avraham*.²¹

The leniency of *Terumat HaDeshen* applies even in a situation where the secondary result is beneficial to the one performing the action. It is possible that *Magen Avraham* will agree that if the result is inconsequential to the actor, the action is permissible. For this reason R. Ovadia Yosef, *Yechave Da'at* 2:46, rules that if the secondary result only constitutes a rabbinic violation and the result is inconsequential to the actor, the action is permissible. R. Yehoshua Y. Neuwirth, *Shemirat Shabbat KeHilchata, Mavo L'Hilchot Shabbat*, note 46, contends that an inconsequential *p'sik reishai* is only permissible if the resulting violation is a rabbinic violation that is twice removed (i.e. there are two independent reasons why this should only constitute a rabbinic violation).²²

Amira L'Nochri on P'sik Reishai

R. Isserlin, *Terumat HaDeshen* 1:66, rules that it is permissible to ask a non-Jew to perform a permissible action whose secondary result will constitute a violation (*p'sik reishai*). This ruling is codified by Rama, OC 253:5, and *Mishna Berurah* 253:99.

One can question Rama's codification of this ruling. As noted previously, *Terumat HaDeshen* is lenient regarding all forms of *p'sik reishai* whose result is a rabbinic violation. Asking a non-Jew to perform a prohibited activity (*amira l'nochri*) only constitutes a rabbinic violation. Therefore, it is logical that *Terumat HaDeshen* would permit asking a non-Jew to perform an action whose secondary result constitutes a violation. However, *Terumat HaDeshen's* ruling

²¹ See also, R. Yitzchak Elchanan Spector, *Be'er Yitzchak, Orach Chaim* no. 15, who rules in accordance with the opinion of *Terumat HaDeshen*.

²² See R. Mordechai Willig, *Am Mordechai, Shabbat* no. 31, for an analysis of this issue and a compromise position.

regarding *amira l'nochri* on *p'sik reishai* is codified as law, even though *Terumat HaDeshen's* ruling regarding *p'sik reishai* on other rabbinic violations is not. If so, how can one justify asking a non-Jew to perform an action whose secondary result is a biblical violation?

There are two answers to this question. First, one can suggest that asking a non-Jew to perform an action whose secondary result is a biblical violation is less severe than a Jew performing an action whose secondary result is a rabbinic violation. This is the implication of *Mishna Berurah's* comments (253:99). Second, R. Shneur Zalman of Liadi (1742-1815), *Shulchan Aruch HaRav*, OC 253:10, suggests that the reason why *p'sik reishai* is permissible regarding *amira l'nochri* is that the prohibition against *amira l'nochri* only applies when one asks a non-Jew to perform an action that entails a prohibition. In this situation, the non-Jew is asked to perform an action that is permissible. The secondary result is inconsequential to the prohibition against *amira l'nochri*.

There is a potential practical difference between the first approach and the second approach. According to the first approach, this situation is one where the prohibition against *amira l'nochri* does not apply. As such, it is likely permissible to benefit from the prohibited result. According to the second approach, such a situation may be comparable to *remizah* (hinting) where it is prohibited to benefit from the result.

The Vilna Gaon (1720-1797), *Bei'ur HaGra* to Rama, OC 253:5, disagrees fundamentally with Rama's ruling. He claims that *p'sik reishai* does not mitigate the prohibition against *amira l'nochri*. Therefore, if the *p'sik reishai* is one that is beneficial and the prohibited result is of biblical origin, one may not ask a non-Jew to perform that activity. However, if the result is not beneficial (*lo nicha lei*), one may ask a non-Jew to perform the activity.

R. Moshe Feinstein, *Igrot Moshe*, OC 2:68, rules in accordance with Rama's leniency and applies it to a situation where someone forgot to disable the light in the refrigerator prior to Shabbat. He allows one to ask a non-Jew to open the refrigerator even though the light will inevitably be activated.²³

Rashba's Leniency

Rashba (1235-1310), *Shabbat* 107a, s.v. *Ve'Af*, (based on the comments of the Talmud Yerushalmi) states that if there is a deer in one's home, it is permissible to close the door, even though it will trap the deer, as long as it is not one's primary intention to trap the deer. Ran, *Shabbat* 38a, s.v. *Matnitán* questions Rashba's ruling: Is this not the classic case of *p'sik reishai*?

R. Avraham Borenstein (1838-1910), *Avnei Nezer*, *Orach Chaim* no. 194, defends Rashba's position. He claims that Rashba's leniency is a function of the prohibition against trapping. In reality, trapping an animal by closing the door on it should be considered *gerama* (indirect

²³ R. Shlomo Zalman Auerbach was reluctant to apply this leniency to refrigerators for technical reasons, see *Shemirat Shabbat KeHilchata* ch.31, note 1.

action). However, based on the principle of *melechet machshevet*, (intent is a determinant in the laws of Shabbat) it is considered a direct action in the context of Shabbat prohibitions. Nevertheless the principle of *melechet machshevet* only applies if one's primary intention is to trap the animal in this manner. If it is a secondary result, one cannot apply the stringency of *melechet machshevet*.

Although Rashba's leniency is not the normative opinion, R. Zalman N. Goldberg (in the journal *Ateret Shlomo*, Vol. VI) uses it as a mitigating factor in allowing one to walk in front of a surveillance camera. He claims that being photographed is not considered a direct action unless one intends to be photographed. If one merely walks in front of the camera, the *melechet machshevet* is lacking and it is not considered a direct action.

Motion Sensors in the Hotel Room

Some hotels have motion sensors in the rooms that turn off the lights, heat and air conditioning when the guest is not in the room and reactivate when the guest enters. Leaving the room poses less of a problem because turning off the lights, heat or air conditioning does not benefit the guest and the result is not immediate. However, entering the room and activating these devices certainly benefits the guest. One potential solution to this problem is the leniency of *amira l'nochri on p'sik reisei*. If one asks the non-Jew to enter the room for a reason other than to engage the motion sensor, there is no violation of *amira l'nochri* when he triggers the motion sensor. However, there is still a dispute as to whether one may benefit from these devices.

Motion Sensors on the Toilets

Many public restrooms are equipped with hands-free flushing systems that are equipped with motion sensors. If there is no other restroom available, it is certainly permissible to use one with an automatic flusher because one may violate rabbinic prohibitions in matters relating to *kavod hab'riyot* (human dignity).²⁴ The primary question is whether one may use a public restroom in a case where there is a non-automated restroom available at a less convenient location. It is arguable that in general, this is a case of *p'sik reisei d'lo nicha lei*.²⁵ Since the result is only rabbinic in nature, according to some poskim, it would be permissible to use the toilet.

Surveillance Cameras and Security Systems

As noted earlier, R. Zalman Nechemiah Goldberg permits walking in front of a surveillance camera if one has no intent of being photographed. One of his reasons for leniency is that this is a case of *p'sik reisei d'lo nicha lei*. The passerby does not benefit from being photographed, even if the system is meant for his protection. He only benefits from the system when an intruder walks in front of the camera. Furthermore, he employs Rashba's leniency as a mitigating factor.

²⁴ *Berachot* 19b. Use of an automatic flusher would constitute a rabbinic prohibition according to the lenient opinion in note 18.

²⁵ In a public restroom, flushing the toilet primarily benefits the person who is going to use it next. There is an element of subjectivity on this matter and it does depend on the individual.

Candle Lighting in a Hotel

Most hotels do not allow one to light a candle in a room, certainly if there is no supervision. In this section, we will provide some background regarding the mitzvah of lighting Shabbat candles and the various options one has in a hotel.

The Nature of the Mitzvah

One can question the nature of the mitzvah of lighting Shabbat candles. Is the mitzvah to ensure that a candle is lit in the home, or is the mitzvah to actually light a candle? This question is addressed by Tosafot, *Shabbat* 25b, s.v. *Chovah*, who quote an opinion that if there is already a candle lit in the home, there is no specific obligation to light Shabbat candles. Tosafot then cite Rabbeinu Tam who rejects this opinion and contends that if there is a candle already lit, one must extinguish the candle and rekindle it prior to Shabbat. Apparently, the first opinion maintains that the mitzvah is to ensure that a candle is lit, and therefore, if there is a preexisting light, there is no obligation to light candles. Rabbeinu Tam is of the opinion that the mitzvah of lighting Shabbat candles demands that one light a candle specifically for the purpose of Shabbat, and a preexisting light does not suffice.

R. Yitzchak Z. Soloveitchik (1886-1959), in *Chidushei HaGrach Al HaShas* no. 11, notes that in fact there are two aspects to the mitzvah of lighting Shabbat candles. One aspect of lighting candles relates to *oneg Shabbat*, the mitzvah to enjoy Shabbat. In order to enjoy Shabbat properly, one must ensure that one's home has sufficient light. However, there is an additional aspect of lighting candles which relates to *kavod Shabbat*, the mitzvah to honor the Shabbat. Rambam, *ibid*, 30:2-5, writes that the mitzvah of *kavod Shabbat* is fulfilled on Erev Shabbat by preparing for Shabbat. Rambam includes lighting candles among the activities that are part of the mitzvah of *kavod Shabbat*. R. Soloveitchik notes that even if it were permissible to light candles on Shabbat, one would still be required to light the candles prior to Shabbat as lighting candles is part of the mitzvah of *kavod Shabbat*.²⁶

Use of Electric Lights for the Mitzvah

One element of *oneg Shabbat* is *shalom bayit*, tranquility in the home (Gemara, *Shabbat* 25b). Rashi, *Shabbat* 25b, s.v. *Hadlakat*, explains that when there is darkness and people are stumbling over objects, there is no tranquility. The other element of *oneg Shabbat* is use of the light for the various activities one performs to enjoy Shabbat. Either way, the candles serve a practical purpose in illuminating the home. It would stand to reason that one may fulfill the mitzvah of lighting Shabbat candles with anything that can provide sufficient light in the home. Therefore, use of electric lights would be acceptable for the mitzvah of lighting Shabbat candles.

²⁶ See R. Yosef Falk (17th century), *Introduction to Perisha and Derisha, Yoreh Deah*, who notes that his mother was insistent on lighting Yom Tov candles prior to Yom Tov (whenever it is permissible) even though it is permissible to light candles on Yom Tov. She did this in order to fulfill the mitzvah of *kavod Yom Tov*.

There are a few objections raised by contemporary poskim to the use of electric lights for the purpose of the mitzvah of lighting Shabbat candles. Before exploring these objections, some background information is required. There are two categories of electric lights. The first category includes bulbs that illuminate due to the heating of metal to the point that it glows. The most common forms of light bulbs in this category are incandescent bulbs (the standard light bulb) and halogen bulbs. The second category includes bulbs that illuminate without any heat. This category includes fluorescent bulbs, neon bulbs, and light emitting diodes (LEDs).

What Type of Light is Valid for Lighting Shabbat Candles?

Many poskim (see *Shemirat Shabbat KeHilchata* ch. 43 note 22) write that an incandescent light bulb is comparable to a *gachelet shel matechet*, a glowing hot piece of metal, which most Rishonim (see *Teshuvot Avnei Nezer, Orach Chaim* no. 229) consider to be a fire for halachic purposes. Therefore, they permit use of an incandescent bulb for the mitzvah of lighting Shabbat candles. However, R. Yitzchak Shternhel, *Kochvei Yitzchak* 1:2, disagrees and rules that one may not use a fire that has no fuel. An electric light which doesn't run directly on fuel but rather through resistance of electrons is not considered a *ner* for these purposes.

A further question arises regarding fluorescent bulbs that do not provide light in the form of fire. R. Shmuel A. Yudelevitz, *HaChashmal Le'Or HaHalacha* 3:6, rules that since the light is not derived from glowing metal, it is not considered fire, and is therefore not suitable for lighting the Shabbat candles. However, *Encyclopedia Talmudit, Chashmal*, note 308, comments that one can question the requirement for fire based on the comments of *Moshav Zekeinim MiBa'alei HaTosafot, Vayikra* 24:2. *Moshav Zekeinim* discuss the dispute regarding whether one recites a *beracha* on lighting the Shabbat candles. They quote Rabbeinu Meshulam who claims that if one has a shiny stone that provides light there is no need for a candle. Therefore, one does not recite a *beracha* even when one does light a candle because the candle is not inherently obligatory. *Moshav Zekeinim* then quote Rabbeinu Tam who states that even if one has a shiny stone that provides sufficient light, there is nevertheless an obligation to light the Shabbat candles. *Encyclopedia Talmudit* claims that this dispute is limited to whether there is an active requirement to light Shabbat candles. If there was some way to actively "light" the shiny stone, even Rabbeinu Tam would agree that its use for Shabbat candles would be sanctioned. The implication is that there is no requirement for fire, and any light would suffice. Therefore, fluorescent lights, which can be actively lit, may be used for Shabbat candles.

Reciting a Beracha on Electric Lights

R. Tzvi P. Frank, *Har Tzvi* 2:114, quotes R. Yosef Rosen (the Rogatchover) that one may not recite a *beracha* on lighting an electric light because turning on a light is not considered a sufficient enough action to warrant saying "*l'hadlik*" (to light). Ostensibly, R. Rosen considers

lighting an electric light to be *gerama* (an indirect action).²⁷ R. Frank addresses the issue of *gerama* regarding lighting Shabbat candles, and states that since Maharam (cited in Mordechai, *Shabbat* no. 294) allows recitation of a *beracha* on a candle that was not lit for the purpose of Shabbat, (i.e., one may recite a *beracha* on *oneg Shabbat* without fulfilling the *kavod Shabbat* aspect of lighting Shabbat candles) one may also recite a *beracha* on a light that was lit through *gerama*. R. Shmuel A. Yudelevitz, op. cit., adds that even if one requires that the *beracha* is recited on a light lit for the purpose of *kavod Shabbat*, an electric light would fulfill that requirement, even if it is considered *gerama*.

R. Chaim Y.A. Halberstam, in *Teshuvot Yerushat Pelelitah* no. 7, contends that even if one can fulfill the requirement of lighting Shabbat candles using electric lights, one may not recite a *beracha* on that lighting. His opinion is based on a ruling of Rashba, *Teshuvot HaRashba* 1:18, who rules that one does not recite a *beracha* on a mitzvah that requires the assistance of other people in order to perform that mitzvah. With regards to reciting a *beracha* on electric lights, R. Halberstam suggests that since one must rely on the electric company in order to provide power, one does not recite a *beracha* on such a mitzvah. Rav Shlomo Z. Auerbach (cited in *Shemirat Shabbat KeHilchata* ch. 43, note 22) notes that if the concern to refrain from reciting a *beracha* is the reliance on the power company, one may recite a *beracha* on a battery-powered light (such as a flashlight with an incandescent bulb). It should be noted that R. Moshe Feinstein (cited in *The Radiance of Shabbos*, page 12) was of the opinion that one should not recite a *beracha* on electric lights.

Combining the Use of Candles and Electric Lights

Under normal circumstances, most women opt to fulfill the mitzvah of lighting Shabbat candles with actual candles or oil rather than electric lights. Nevertheless, the presence of the electric lights in the room does impact the mitzvah in a number of ways. First, the purpose of the Shabbat candles is to provide light for activities that are going to be performed on Shabbat. Maharil, *Teshuvot Maharil* no. 53, questions whether one may recite a *beracha* on lighting candles in a room in which other women have lit their Shabbat candles. He writes that although there are opinions that maintain that one does not recite a *beracha* in such an instance, there are grounds to recite a *beracha* because the additional candles provide added light to corners of the room that the original candles do not illuminate sufficiently. *Shulchan Aruch*, OC 263:8, rules that one may not recite a *beracha* upon lighting candles in a room where there are other lit candles. Rama, ad loc., rules that one may rely on the opinion of Maharil. R. Shlomo Z. Auerbach (cited in *Shemirat Shabbat KeHilchata* 43:171) questions whether Maharil's leniency is applicable to lighting candles in a room in which there are electric lights, as the candles are not going to provide any additional light. Although R. Auerbach does provide justification for this practice, he notes that it is preferable to either turn off the electric lights prior to lighting the candles (and then have someone else turn on the electric lights), or to incorporate lighting of the electric lights into the candle lighting service.

²⁷ R. Frank notes that completing a circuit is not considered *gerama* for the purpose of permitting *melacha* on Shabbat. R. Rosen's concern is that one should consider it *gerama* as a matter of stringency to prohibit reciting a *beracha* on electric lights.

Second, *Mishna Berurah* 263:38 notes that if one is in a situation where a few people in the same house must light Shabbat candles, it is preferable for the guest to light in her private quarters rather than the dining room in order to avoid relying on Maharil's leniency. By incorporating electric lights into the candle lighting service, one can follow *Mishna Berurah's* ruling by lighting an electric light in one's private quarters and then lighting actual candles in the dining room (after the hostess has lit her candles).

Third, there is a certain element of danger in lighting actual candles, especially when left unattended. Incorporating electric lights into the candle lighting service provides a means of minimizing the danger. By incorporating electric lights, one can use a candle or oil that will only burn for a short amount of time, and the electric lights will fulfill the task of providing *oneg Shabbat* after the candles are extinguished.

Applications to a Hotel Setting

If one follows the opinions that one may recite a *beracha* on electric lights, lighting an electric light in the hotel room (such as a closet light or bathroom light) is the best option. One can also combine the lighting with lighting of actual candles in a place that is sanctioned by the hotel. The designated area should be set in an area where one will receive benefit from the light. *Mishna Berurah* 263:41 rules that when one lights in a public area (i.e. an area where one is not sleeping or eating), the benefit one receives from the candles must relate in some way to the Shabbat meal or the preparation of the meal.

If one does not follow the opinion that one may recite a *beracha*, the best option is to light candles in the dining room on one's table. If that is not possible, *Shemirat Shabbat KeHilchata* (ch. 45 note 44) rules that at the very least, the candles should provide light or ambience for someone else's Shabbat meal.