
BEYOND DISPUTE

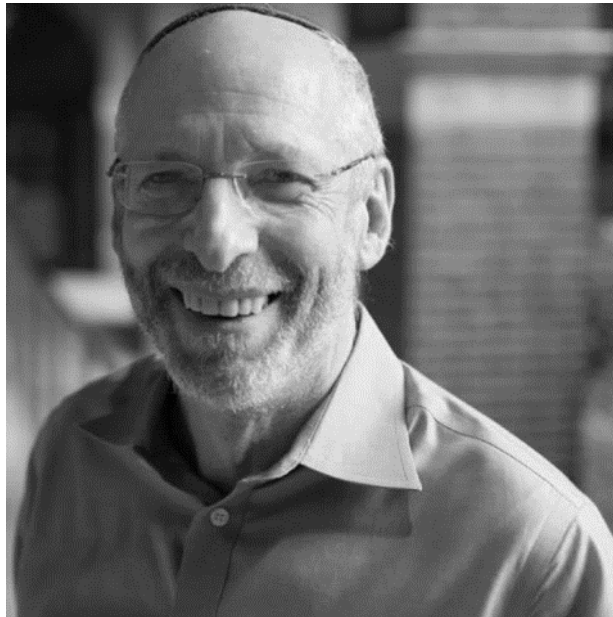
DEBATES THAT SHAPE JEWISH LIFE

UNIT 3

WHEN CAN WE LEGITIMATELY MODIFY TRADITION? WAGING WAR ON SHABBAT

Rabbi Eliezer Diamond, PhD

1. Exodus 20:8–11
2. Exodus 16:29
3. Deuteronomy 20:1–9
4. Book of Jubilees 50: 6–8, 12–13
5. Josephus, Against Apion I:212
6. I Maccabees 1:29–41
7. Josephus, The Jewish War II: 389–395
8. II Maccabees 15:1–5
9. II Maccabees 6:11–15
10. I Maccabees 2:15–26
11. II Maccabees 6:18–25, 27–28, 30–31
12. Josephus, Jewish Antiquities XIV:63–64
13. Josephus, The Jewish War II:455–456
14. Deuteronomy 20:19 and Midrash Tannaim
15. Babylonian Talmud, Eruvin 45a
16. Mishnah Yoma 8:6



RABBI ELIEZER DIAMOND, PhD

Dr. Eliezer Diamond is the Rabbi Judah Nadich Associate Professor of Talmud and Rabbinics at JTS. He teaches courses in rabbinic literature and introductory, intermediate, and advanced Talmud studies.

Dr. Diamond has written on prayer, asceticism, and issues of environmental law and ethics. He is the author of *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture* (Oxford University Press, 2003), which provides a thorough reassessment of the role that asceticism plays in rabbinic Judaism. He is currently editing a commentary on *Yerushalmi Pesahim* written by the late Professor Louis Ginzberg, as well as a book on prayer. Dr. Diamond has taught in a variety of settings, including Stern College, the Reconstructionist Rabbinical College, the 92nd Street Y, and several Ramah camps. He was ordained at the Rabbi Isaac Elchanan Theological Seminary of Yeshiva University and received his doctorate in Talmud from JTS. Learn more at www.jtsa.edu/eliezer-b-diamond.

I. FROM WORK TO WARFARE: ROOTS OF THE PROHIBITION

1. Exodus 20: 8–11

⁸Remember the sabbath day and keep it holy. ⁹Six days you shall labor and do all your work, ¹⁰but the seventh day is a sabbath of the Lord your God: you shall not do any work — you, your son or daughter, your male or female slave, or your cattle, or the stranger who is within your settlements. ¹¹For in six days the Lord made heaven and earth and sea, and all that is in them, and He rested on the seventh day; therefore the Lord blessed the sabbath day and hallowed it.

(ח) זְכוֹר אֶת־יּוֹם הַשַּׁבָּת לְקַדְּשׁוֹ:
(ט) שֵׁשֶׁת יָמִים תַּעֲבֹד וְעָשִׂיתָ כָּל־
מְלֹאכֶתֶךָ: (י) וַיּוֹם הַשְּׁבִיעִי שַׁבָּת לַה'
אֱלֹהֶיךָ לֹא־תַעֲשֶׂה כָּל־מְלֹאכָה אֹתָהּ
וּבְנֶךָ וּבִתֶּךָ עַבְדְּךָ וְאִמָּתְךָ וּבְהֵמָתְךָ וּגְרֶךָ
אֲשֶׁר בְּשַׁעְרֶיךָ: (יא) כִּי שֵׁשֶׁת־יָמִים
עָשָׂה ה' אֶת־הַשָּׁמַיִם וְאֶת־הָאָרֶץ אֶת־
הַיָּם וְאֶת־כָּל־אֲשֶׁר־בָּם וַיָּנַח בַּיּוֹם
הַשְּׁבִיעִי עַל־כֵּן בֵּרַךְ ה' אֶת־יּוֹם הַשַּׁבָּת
וַיְקַדְּשֶׁהוּ:

2. Exodus 16:29

Mark that the Lord has given you the sabbath; therefore He gives you two days' food on the sixth day. Let everyone remain where he is: let no one leave his place on the seventh day.

רְאוּ כִּי־הָיָה נָתַן לָכֶם הַשַּׁבָּת עַל־כֵּן הוּא נָתַן
לָכֶם בַּיּוֹם הַשְּׁשִׁי לֶחֶם יוֹמִים שְׁבוּ אִישׁ
תַּחֲתוֹ אַל־יֵצֵא אִישׁ מִמְּקוֹמוֹ בַּיּוֹם הַשְּׁבִיעִי:

3. Deuteronomy 20:1–9

¹When you take the field against your enemies, and see horses and chariots—forces larger than yours—have no fear of them, for the Lord your God, who brought you from the land of Egypt, is with you.

²Before you join battle, the priest shall come forward and address the troops. ³He shall say to them, “Hear, O Israel! You are about to join battle with your enemy. Let not your courage falter. Do not be in fear, or in panic, or in dread of them. ⁴For it is the Lord your God who marches with you to do battle for you against your enemy, to bring you victory.”

⁵Then the officials shall address the troops, as follows: “Is there anyone who has built a new house but has not dedicated it? Let him go back to his home, lest he die in battle and another dedicate it.

⁶Is there anyone who has planted a vineyard but has never harvested it? Let him go back to his home,

(א) כִּי־תֵצֵא לְמִלְחָמָה עַל־אֹיְבֶיךָ וּרְאִיתָ
סוּס וְרֶכֶב עִם רֶב מִמֶּךָ לֹא תִירָא מֵהֶם
כִּי־הָיָה אֱלֹהֶיךָ עִמָּךְ הַמַּעֲלֶךְ מֵאֶרֶץ מִצְרָיִם:
(ב) וְהָיָה כְּקִרְבָּנְךָ אֱלֹהֵי־הַמִּלְחָמָה וְנִגַּשׁ
הַכֹּהֵן וְדִבֶּר אֶל־הָעָם: (ג) וְאָמַר אֲלֵהֶם
שְׁמַע יִשְׂרָאֵל אַתֶּם קִרְבִּים הַיּוֹם
לְמִלְחָמָה עַל־אֹיְבֵיכֶם אֲלִירֶךְ לְבַבְכֶם אַל־
תִּירְאוּ וְאִל־תַּחֲפְזוּ וְאִל־תַּעֲרֹצוּ מִפְּנֵיהֶם:
(ד) כִּי ה' אֱלֹהֵיכֶם הֵלֶךְ עִמָּכֶם לְהִלָּחֵם
לָכֶם עִם־אֹיְבֵיכֶם לְהוֹשִׁיעַ אֶתְכֶם:
(ה) וְדִבְרוּ הַשְּׂטָרִים אֶל־הָעָם לֵאמֹר מִי־
הָאִישׁ אֲשֶׁר בָּנָה בַּיִת־חֹדֶשׁ וְלֹא חָנְכוֹ יֵלֶךְ
וְיָשָׁב לְבֵיתוֹ פְּוִיָּמוֹת בַּמִּלְחָמָה וְאִישׁ
אַחַר יַחְנַכְנוּ: (ו) וּמִי־הָאִישׁ אֲשֶׁר נָטַע
כַּרְם וְלֹא חָלְלוֹ יֵלֶךְ וְיָשָׁב לְבֵיתוֹ פְּוִיָּמוֹת

lest he die in battle and another harvest it. ⁷Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her.” ⁸The officials shall go on addressing the troops and say, “Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his.” ⁹When the officials have finished addressing the troops, army commanders shall assume command of the troops.

בְּמִלְחָמָה וְאִישׁ אַחֵר יַחֲלֹלְנוּ: (ז) וּמִי־
הָאִישׁ אֲשֶׁר אָרַשׁ אִשָּׁה וְלֹא לָקַחָהּ יִלְךְ
וְיָשֵׁב לְבֵיתוֹ פְּוִימוֹת בְּמִלְחָמָה וְאִישׁ
אַחֵר יִקְחֶנָּה: (ח) וְיִסְפוּ הַשְּׁטָרִים לְדַבֵּר
אֶל־הָעָם וְאָמְרוּ מִי־הָאִישׁ הִירָא וְרָךְ
הַלֵּבֵב יִלְךְ וְיָשֵׁב לְבֵיתוֹ וְלֹא יִמַּס אֶת־לֵבֵב
אֲחָיו כְּלָבְבוֹ: (ט) וְהָיָה כְּכֹלֵת הַשְּׁטָרִים
לְדַבֵּר אֶל־הָעָם וּפְקִדוֹ שָׂרֵי צְבָאוֹת בְּרֹאשׁ
הָעָם:

4. Book of Jubilees 50:6–8, 12–13

Jubilees is a second-century BCE apocryphal book, purporting to be an account of what was revealed to Moses during the forty days that he spent on Mount Sinai. It contains a review of biblical history from the time of Creation until the Exodus.

⁶And behold the commandment of the Sabbaths [that] I have written for you and all of the judgments of its laws. ⁷Six days will you work, but the seventh day is the Sabbath of the Lord your God. You shall not do any work in it, you, or your children, or your manservant or your maidservant, or any of your cattle or the stranger who is with you. ⁸And let the man who does anything on it die. Every man who will profane this day...and whoever draws water on it, which was not prepared for him on the sixth day, and whoever lifts up anything that he will carry to take out of his tent or from his house, let him die.

¹²And any man who does work on it, or who goes on a journey, or who plows a field either at home or any [other] place, or who kindles a fire, or who rides on any animal, or who travels the sea in a boat, and any man who slaughters or kills anything, or who slashes the throat of cattle or bird, or who snares any beast or bird or fish, or whoever fasts or makes war on the day of the Sabbath, ¹³let the man who does any of these on the day of the Sabbath die....

II. DEBATING SELF-DEFENSE ON THE SABBATH

5. Josephus, *Against Apion*, Book I:212¹

Josephus was a Jewish historian of the first and second centuries. He is best known for The Jewish War, a record of the Jewish rebellion against Rome, and Jewish Antiquities, a 20-volume history of the Jewish people (Jerusalem and Rome, 37-100 CE).

Agatharchides² quotes...a tale told about us [the Jews]. The following are his words: “The people known as Jews, who inhabit the most strongly fortified of cities, called by the natives Jerusalem, have a custom of abstaining from work every seventh day; on those occasions they neither bear arms nor take any agricultural operations in hand, nor engage in any other form of public service, but pray with outstretched hands in the temples until the evening. Consequently, because the inhabitants, instead of protecting their city, persevered in their folly, Ptolemy, son of Lagus, was allowed to enter with his army; the country was thus given over to a cruel master and the defect of a practice enjoined by law was exposed....” Agatharchides finds such conduct ridiculous; dispassionate critics will consider it a grand and highly meritorious fact that there are men who consistently care more for the observance of their laws and for their religion than for their own lives and their country’s fate.

6. I Maccabees 2:29–41³

I Maccabees is a historical work probably written during the second half of the second century BCE. It covers the Maccabean revolt through the rededication of the Temple, ending with the appointment of the Hasmonean ruler John Hyrcanus (a nephew of Judah the Maccabee) in 134 BCE. The writer’s sympathies clearly lie with the Hasmonean rulers; not all Jews felt that way.

²⁹At that time many went down to dwell in the desert, seeking justice and vindication, ³⁰they and their children, and their wives and their cattle, hard pressed by the persecutions. ³¹A report came to the king’s men and to the forces in Jerusalem, the City of David, that men who had violated the command of the king had gone down to the hiding places in the desert. ³²With a large force they pursued them and, on coming upon them, they encamped and formed in battle line against them on the Sabbath day, ³³saying to them, “Come out to us and obey the word of the king, and we shall let you live.” ³⁴They, however, replied, “We shall neither come out nor obey the word of the king to profane the Sabbath day!” ³⁵Accordingly, they advanced quickly upon them in battle formation. ³⁶But the Jews neither reacted to them nor hurled a stone at them nor blocked the entrances to their hiding places, ³⁷saying, “Let us all die in our innocence. Heaven and earth bear witness over us, that you condemn us unjustly.” ³⁸They attacked them in battle formation on the Sabbath. They were killed with their wives, their children, and their cattle, to the number of one thousand human beings.

¹ Trans. Henry St. John Thackeray (Cambridge: Harvard UP, 1926).

² Second-century BCE Greek historian and philosopher.

³ I and II Maccabees. Ed. and Trans. Jonathan A. Goldstein (Garden City: Doubleday, 1964).

³⁹When the news reached Mattathias and his friends, they were deeply grieved over the victims' fate. ⁴⁰They said to one another, "If we all do as our brothers have done and do not fight against the gentiles for our lives and our laws, they will now quickly wipe us off the face of the earth."
⁴¹On that day they came to a decision: "If any man comes against us in battle on the Sabbath day, we shall fight against him and not all die as our brothers died in their hiding places."

7. Josephus, Jewish War II: 389–395⁴

The only refuge, then, left to you [Jews] is divine assistance. But even this [divine assistance] is on the side of the Romans, for, without God's aid, so vast an empire could never have been built up....If you observe your Sabbath customs and refuse to take any action on that day, you will undoubtedly be easily defeated, as were your forefathers by Pompey, who pressed the siege most vigorously on the days when the besieged remained inactive; if, on the contrary, you transgress the law of your ancestors, I fail to see what further object you will have for hostilities, since your one aim is to preserve inviolate all the institutions of your fathers. How could you invoke the aid of the Deity, after deliberately omitting to pay Him the service which you owe Him?

8. II Maccabees 15: 1–5

The Second Book of Maccabees was written sometime between the end of the second century BCE and the second half of the first century BCE. It records the history of the Maccabean revolt up until the defeat and death of the Syrian-Greek general Nicanor at the hands of Judah the Maccabee in 161 BCE.

¹Nicanor, on learning that Judas and his men were in the region of Samaria, plotted to take advantage of the day of rest to attack them when he could do so in perfect safety. ²However, the Jews who were being forced to accompany him said, "Do not perpetrate so savage and barbarous a massacre, but give due respect to the day that has been preeminently honored with sanctification by Him who sees all." ³The heinous sinner asked in reply, "Is He who gave the command to keep the Sabbath day master in heaven?" ⁴When they answered, "It is the living Lord Himself, the master in heaven, who has given the order to observe the Seventh Day," ⁵Nicanor said, "I, too, who give the command to take up arms and carry out the king's orders, am master, on earth!" Even so, he did not succeed in carrying out his cruel intention.

9. II Maccabees 6:11–15

¹¹Other Jews hastily assembled nearby in the caves to observe the Sabbath in secret. On being denounced to Philip⁵, they were all burned to death because they refrained from defending themselves, out of respect for the holiest of days.¹²I beg the readers of my book not to be

⁴ Trans. Henry St. John Thackeray (Cambridge: Harvard UP, 1927).

⁵ Syrian-Greek minister and companion to Antiochus.

disheartened by the calamities but to bear in mind that chastisements come not in order to destroy our race but in order to teach it. ¹³If the ungodly among us are not left long to themselves but speedily incur punishment, it is a sign of God's great goodness to us. ¹⁴With the other nations the Lord waits patiently, staying their punishment until they reach the full measure of their sins. Quite otherwise is His decree for us, ¹⁵in order that He should not have to punish us after we have come to the complete measure of our sins.

10. I Maccabees 2:15–26

¹⁵The king's officials in charge of enforcing apostasy came to the town of Modi'in to make them sacrifice [to the king]. ¹⁶Many Israelites came up to meet them, and Mattathias and his sons were brought into the gathering. ¹⁷The king's officials addressed Mattathias as follows, "You are a respected and distinguished leader in this town, supported by sons and kinsmen. ¹⁸Now be the first to come forward and obey the command of the king as all the gentiles have done, as well as the people of Judah and those who have been allowed to remain in Jerusalem. In return, you and your sons will be raised to the rank of the Friends of the King, and you and your sons will be honored by grants of silver and gold and many gifts."

¹⁹Mattathias replied in a loud voice, "[Even] if all the gentiles under the king's rule listen to his order to depart from the religion of their fathers and choose to obey his commands, ²⁰nevertheless, I and my sons and my kinsmen shall follow the covenant of our fathers. ²¹Far be it from us to desert the Torah and the laws. ²²We shall not listen to the words of the king, that we should transgress against our religion to the right or to the left."

²³When he had finished uttering these words, a Jewish man came forward in the sight of all to offer sacrifice upon the altar in Modi'in in accordance with the king's decree. ²⁴When Mattathias saw this, he was filled with zeal and trembled with rage and let his anger rise, as was fitting; he ran and slew him upon the altar. ²⁵At the same time he also killed the king's official in charge of enforcing sacrifices, and he destroyed the altar. ²⁶He acted zealously for the sake of the Torah, as Phineas acted against Zimri the son of Salu.⁶

11. II Maccabees 6:18–25, 27–28, 30–31

¹⁸One of the leading sages was Eleazar, a very handsome man, now of advanced age. Repeatedly they tried to force him to open his mouth and eat pork. ^{19–20}He, however, preferred death with glory to life with defilement. He spat, as one should when standing fast to resist the temptation to let love of life bring him to taste what religion forbids, and of his own free will he began to march to the whipping drum. ²¹The meat was part of a sacrifice, and to eat it was a violation of the Torah. The men appointed to compel him to do so had known Eleazar for many years. They took him aside and in secret urged him to fetch meat that he was permitted to eat, prepared by himself, and

⁵ See Numbers 25:1–9, Phineas, grandson of Aaron the priest, pursues and slays Zimri and the Midianite woman he has brought in to the camp. Phineas' actions end the plague God had brought against the Israelites.

to pretend that he was eating the meat from the sacrifice as ordered by the king, ²²for in so doing he would escape death and would receive from them the kindness due an old friend.

²³Eleazar came to a lofty resolution, one worthy of his years, worthy of the authority of old age, worthy of his conspicuous well-earned white hair, and of his way of life, which had been exemplary from childhood. More important, it was worthy of the sacred legislation established by God. Eleazar showed himself consistent: he told them to send him off to the netherworld without delay. ²⁴⁻²⁵“Such pretense is unworthy of my advanced age. My pretense for the sake of a brief transitory span of life would cause many of the younger generations to think that Eleazar at the age of ninety had gone over to the gentile way of life, and so they, too, would go astray because of me, and I would earn the defilement and besmirching of my old age. ²⁷Therefore, if I now bravely give up my life, I shall show myself worthy of my old age, ²⁸as I leave to the young a noble example of how to go eagerly and nobly to die a beautiful death in the defense of our revered and sacred laws.”

³⁰As he was about to expire under the lashing, he groaned forth, “The Lord, who possesses sacred knowledge, perceives that, though able to escape death, in my body I submit to cruel torment under the lash, and that yet in my soul I am glad to suffer it, out of reverence for Him.” ³¹So he died, leaving his death as an example of nobility and as a precedent of valor to be remembered not only by the young but by the multitudes of his nation.

12. Josephus, *Jewish Antiquities* XIV:63–64

⁶³But if it were not our national custom to rest on the Sabbath day, the earthworks⁷ would not have been finished, because the Jews would have prevented this; for the Law permits us to defend ourselves against those who begin a battle and strike us, but it does not allow us to fight against an enemy that does anything else.

⁶⁴Of this fact the Romans were well aware, and on those days which we call the Sabbath they did not shoot at the Jews or meet them in hand to hand combat, but instead they raised earthworks and towers, and brought up their siege-engines in order that these might be put to work the following day.

13. Josephus, *The Jewish War* II:455–456

⁴⁵⁵The whole city was a scene of dejection, and among the moderates there was not one who was not racked with the thought that he would personally suffer for the rebels' crime. ⁴⁵⁶For, to add to its heinousness, the massacre [of unarmed Roman soldiers] took place on the Sabbath, a day on which, from religious scruples, Jews abstain even from the most innocent acts.

⁷ An artificial bank or mound of earth used as a fortification.

14. Deuteronomy 20:19 and Midrash Tannaim on Deuteronomy 20

The tannaim were the rabbis from the time of the Mishnah, the legal code edited around 200 CE. Midrash Tannaim refers to the collection of midrashim on Exodus, Leviticus, Numbers, and Deuteronomy.

Deuteronomy 20:19

When you lay siege to a city [literally: build a siege works] for an extended time while fighting against it to capture it, you must not destroy its trees by putting an ax to them, because you can eat their fruit. You must not cut them down. Are the trees of the field human, that you should besiege them?

כִּי־תִצּוֹר אֶל־עִיר יָמִים רַבִּים
לִהְלַחֵם עָלֶיהָ לְתַפְשָׁהּ לֹא־
תִשְׁחִית אֶת־עֵצָהּ לְנֹדַח עָלָיו
גִּרְזֹן כִּי מִמֶּנּוּ תֹאכַל וְאֵתוֹ לֹא
תִכְרֹת כִּי הָאָדָם עֵץ הַשָּׂדֶה
לֵבָא מִפְּנֵיךָ בְּמִצּוֹר:

Midrash Tannaim:

“When you build a siege works”: you may do so both on Shabbat and on weekdays. What meaning do I give, then, to the verse “Those who profane the Sabbath shall be put to death” (Exodus 31:14)? It refers to matters other than an optional war.⁸ Perhaps the prohibition [of building on Shabbat] applies even to optional war, and the permission to build a siege works applies [only] to days other than Shabbat? Or, perhaps [returning to the first possibility] even on Shabbat? [Which of these two interpretations is correct?] Scripture states, “[Use them to build siege works against the city that is waging war against you] until it falls” (Deuteronomy 20:20). “Until it falls”—even on Shabbat. These are the words of Rabbi Josiah.

ובנית מ' בין בחול בין בשבת
מה אני מקיים (שמות לא
(ד) מחל' מות יומת בשאר
כל דבר חוץ ממלחמת רשות
או אף במלחמת רשות ומה
אני מקיים ובנית מצור
בשאר כל הימים חוץ מן
השבת או אף בשבת ת"ל עד
רדתה אפלו בשבת דברי ר'
יאשיה:

15. Babylonian Talmud, Eruvin 45a

The central body of Rabbinic law, dialectic, and lore, comprised of the Mishnah and the Gemara—the latter being an exposition and elaboration of the former. Two separate Talmudic compilations exist: the Babylonian Talmud (c. 500 CE) and the Jerusalem Talmud (also known as the Talmud of the Land of Israel, c. 400 CE).

It was taught: At first, [Jews] used to leave their weapons in a house that was nearest to the town wall [when returning from battle on Shabbat, so as to handle and carry weapons

כְּדַתְנִיָּא: בְּרֵאשׁוֹנָה הָיוּ מְנִיחִין
כְּלֵי זֵינָן בְּבֵית הַסְּמוּךְ לְחוּמָה.
פַּעַם אַחַת הִפְּרִיזוּ בְּהֵן אוֹיְבִים

⁸ The term “optional war,” *milhemet reshut*, was used by the rabbis to describe a war that was not a response to an immediate existential threat but rather a means of achieving long range goals such as enhanced security. They are assuming that if the threat is imminent, one can build on Shabbat.

of war as little as possible]. It once happened that the enemies discovered them and pursued them, and as they entered the house to take up their weapons, the enemies followed them. There was a stampede, and the [Jews] who killed one another were more than those whom the enemies killed. At that time, it was ordained that in such circumstances they may return to their homes with their weapons...

So, too, it was also taught: If foreigners besiege Israelite towns, it is not permitted to go forth against them with their weapons or to desecrate Shabbat in any other way. This [prohibition] applies only where they came regarding financial matters, however; if they came with the intention of taking lives, it is permitted to go forth against them with weapons and to desecrate the Sabbath.

If the attack was made on a town that was close to a frontier, even if they did not come with any intention of taking lives but merely to plunder straw or stubble, it is permitted to go forth against them with weapons and to desecrate Shabbat.

וְרָדְפוּ אַחֲרֵיהֶם, וְנִכְנְסוּ לִיְטוּל
כְּלֵי זֵינָן וְנִכְנְסוּ אוֹיְבִים אַחֲרֵיהֶן.
דַּחְקוּ זֶה אֶת זֶה וְהָרְגוּ זֶה אֶת זֶה
יוֹתֵר מִמָּה שֶׁהָרְגוּ אוֹיְבִים.
בְּאוֹתָהּ שְׁעָה הִתְקִינוּ שְׂיָהוּ
חוֹזְרִין לְמִקוֹמָן בְּכֵלֵי זֵינָן...

תִּנְיָא נְמִי הָכִי: נְכָרִים שְׂצָרוּ וְכוּ'
— בְּמָה דְבָרִים אָמוּרִים?
כְּשֶׁבָאוּ עַל עֶסְקֵי מָמוֹן. אָבֵל בָּאוּ
עַל עֶסְקֵי נַפְשׁוֹת, יוֹצְאִין עֲלֵיהֶם
בְּכֵלֵי זֵינָן וּמַחֲלִיין עֲלֵיהֶן אֶת
הַשַּׁבָּת.

וּבְעִיר הַסְּמוּכָה לַסָּפֵר, אֶפִּילוּ לֹא
בָּאוּ עַל עֶסְקֵי נַפְשׁוֹת אֶלָּא עַל
עֶסְקֵי תְבוֹן וְקֶשׁ, יוֹצְאִין עֲלֵיהֶם
בְּכֵלֵי זֵינָן וּמַחֲלִיין עֲלֵיהֶן אֶת
הַשַּׁבָּת.

16. Mishnah Yoma 8:6

...Moreover, Rabbi Mattiah ben Harash said: If a person has throat pain, they may drop medicine into the person's mouth on Shabbat, since the person's life may be in danger. And whenever a person's life may be in danger [i.e., even if it is not definitely but only potentially in danger], this overrides the [prohibitions of] Shabbat.

וְעוֹד אָמַר רַבִּי מַתִּיָּא בֶן חֲרָשׁ: הַחוּשׁ שׁ
בְּגֵרוֹנוֹ, מִטִּילִין לוֹ סֵם בְּתוֹךְ פִּי בְּשַׁבָּת, מִפְּנֵי
שֶׁהוּא סָפֵק נַפְשׁוֹת, וְכָל סָפֵק נַפְשׁוֹת דּוֹחָה
אֶת הַשַּׁבָּת.

SUGGESTIONS FOR FURTHER STUDY

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