

*A summary of*

# HILCHOS SHABBOS

**FOR REAL ESTATE MANAGEMENT**

*Written by:*

**RABBI ARI MARBURGER**, DIRECTOR OF BUSINESS HALACHA INSTITUTE  
**RABBI YOSEF KUSHNER**, AUTHOR OF "COMMERCE & SHABBOS"



For more information contact:  
**Business Halacha Institute: 877.845.8455**  
[ask@businesshalacha.com](mailto:ask@businesshalacha.com)

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*Before investing in a business opportunity, people research all potential obstacles to achieving their targeted return. The deeper one understands the challenges, the greater the chance of success. If this is true regarding financial risk, it is certainly true about spiritual issues as well. Every industry poses a unique set of Halachic concerns; they can be successfully navigated only if one is aware of the issues. The purpose of this article is to raise awareness of such issues, and suggest ways in which they can be resolved. This work is not intended to be relied upon for an actual Psak Halachah; rather its purpose is to encourage practitioners to discuss their specific situations with their Rav or Posek.*

## **REAL ESTATE MANAGEMENT**

Real estate management requires constant attention. Security, doormen, and call centers may be expected to operate 24/7. When a boiler blows or a snowstorm hits, managers must react quickly to the crisis, and often do not have the luxury of waiting. These raise serious Halachic concerns that must be addressed. Hiring a Gentile to perform work on Shabbos is often a violation of Amirah L'akum, as will be explained below.

### *Amirah L'akum*

Instructing a Gentile to perform work on behalf of a Jew on Shabbos violates the rule of Amirah L'akum. This applies even if the instructions were given prior to Shabbos. The parameters of Amirah L'akum depend on the nature of the employment.

1. An employee that is hired to work a specific amount of time (i.e. he is hired to work for an hour/day/week etc) may not do melacha on Shabbos for his employer. Even if he was not explicitly directed to perform the task on Shabbos, and even if he performs the work in the privacy of his own house, the fact that his time is being paid for by a Jew and he is performing a Shabbos melacha violates the prohibition of Amirah L'akum<sup>1</sup>. An exception to this prohibition is when the employee can perform the required task without violating a melacha; if he chooses to do a melacha for his own convenience or comfort, this melacha is not considered having been performed on behalf of the Jewish employer and it would be permitted<sup>2</sup>.
2. A contractor (kablan)<sup>3</sup> who is free to perform the task whenever he chooses may perform a melacha on Shabbos (subject to the rules of Maris Ayin, as explained below). As he is free to perform the task before or after Shabbos, any melacha being done on Shabbos is not considered being done on behalf of the Jew. This exemption applies only when the employee was not specifically ordered to work on Shabbos, and the task can be performed at a different time<sup>4</sup>. In addition, this exemption does not apply when only the Jewish employer benefits from the Shabbos work; the Gentile must personally gain from the Shabbos work as well<sup>5</sup>.
3. An employee/partner that has a profit-share in the business may work on Shabbos on his own volition. However, according to most Poskim, one may not instruct even such workers to specifically perform melacha on Shabbos<sup>6</sup>.



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A common complication to the above rules is when a contractor or profit-sharing employee hires laborers on behalf of the Jewish-owned business. In such cases, although the manager may be permitted to work on Shabbos since he is a contractor (subject to the rules of Maris Ayin), the employees, who are being paid by the Jewish owner, may not have this heter. A Rav should be consulted in such circumstances<sup>7</sup>.

### *Maris Ayin*

Although Amirah L'akum does not proscribe a Gentile contractor from voluntarily working on Shabbos, the Gemara states<sup>8</sup> that there is an issue of Maris Ayin. Bystanders may presume that the workers were specifically instructed to work on Shabbos, in violation of Amirah L'akum. Chazal therefore prohibited having a Gentile perform most types of public work.

In practical terms, this means that any work performed on a Jew's property is prohibited. (If the norm is to delegate such work to a contractor, there is room for leniency and a Rav should be consulted<sup>9</sup>). However, if the work is performed in seclusion<sup>10</sup>, or in an area where there are no Jews, the concept of Maris Ayin would not apply.

In summary, any work that entails a melacha that an employee must perform on Shabbos is prohibited. If the work need not be done on Shabbos, but is performed in a public manner, it is prohibited due to Maris Ayin. When the work is not required by the Jewish employer to be done on Shabbos and is performed in a private setting, it is permitted for a contractor but prohibited for a laborer.

In practice, this means that having call centers, security guards, or maintenance personnel that are ordered to work on Shabbos would violate the rules of Amirah L'akum.

### *Potential Solutions*

The following is a basic outline of some possible ways to avoid violating Amira L'akum:

1. Restructuring the Leases. Amirah L'akum applies when a Gentile performs melacha on behalf of a Jew. With respect to maintenance personnel, the entire issue can be avoided by structuring the employment relationship so that all maintenance work is being done directly on behalf of the tenants. As such, the tenants are the employers, and the landlord is not a party to the employment agreement. Accordingly, he would not violate Amirah L'akum. The leases with the tenants should state that a portion of their rent is going to hire the maintenance/security personnel. The landlord is appointed to negotiate and hire the maintenance personnel on behalf of the tenants. The employment contract with the maintenance personnel should reflect this arrangement as well. The bottom line result will be that the work necessary for Shabbos will get done, but the prohibition of Amirah L'akum will be avoided<sup>11</sup>.
2. Hefsid Meruba. Shulchan Aruch rules that in cases of extreme loss, a contractor may be ordered to perform melacha on Shabbos, even if it is done in a public manner<sup>12</sup>. This exemption applies only to a contractor; an hourly laborer would be prohibited from performing melacha regardless of the circumstances. This exception may be appropriate for emergency maintenance where failure to respond promptly could endanger the entire investment<sup>13</sup>. However, as noted previously, this would only be applicable if the Gentile stands to directly gain from the work that is required on Shabbos. Thus, an appropriate compensation



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plan must be structured for the work done on Shabbos to ensure that the work is not being done solely on behalf of the Jewish employer<sup>14</sup>.

3. Partnership with a Gentile. If one has a Gentile partner, it is permitted to structure the partnership so that the Gentile is entitled to all of the profits generated on Shabbos/ Yom Tov, and is responsible to manage the business during those periods. In exchange, the Jewish partner will be entitled to the profits for Sunday (or multiple days if necessary). If this arrangement was put into place at the inception of the partnership, we do not view the Gentile partner as working on behalf of the Jew and the arrangement would be permitted<sup>15</sup>. It should be noted that, at the end of the year, the partners may choose to divide the profits equally instead of calculating the actual profits and losses of their respective days<sup>16</sup>. A potential complication is if there are other employees working for the partnership; a Rav should be consulted about the matter<sup>17</sup>.
4. Management Company. Another option is to create a Gentile-owned management company that hires all employees. This changes the employees from direct salaried employees of the Jewish owner to employees of a Gentile-owned management company. The contract with the management company should specifically state that they need not perform any melacha on Shabbos. However, the management company's compensation may be structured to ensure that there is a strong financial incentive for them to maintain the appropriate level of service on Shabbos as well. Since the contractor is not obligated to perform services on Shabbos, it is permitted even though he will, in all likelihood, perform the services because of his own financial gain. The contract can be structured in a way that minimizes the economic cost to the owner. It should be noted that this arrangement does not address the Maris Ayin issue which must be dealt with separately.
5. Heter Mechira. Another approach is to execute a Heter Mechira, wherein the entire business is sold to a Gentile for Shabbos. While this approach is certainly the simplest, it is not without controversy. The sales are often performed in a manner that is not legally binding, and is not taken seriously by either the Jewish owner or the Gentile 'purchaser'. Many of the leading Poskim of the past generations have refused to sanction a Heter Mechira, and one should discuss the matter with their Rav before choosing this option<sup>18</sup>.

The above is a basic outline of some potential solutions. However, each of these approaches has technical issues that must be addressed, and a Rav must be consulted about the practical applications.

### *Schar Shabbos*

One may not derive benefit from wages or rental income earned on Shabbos<sup>19</sup>. This applies both to wages earned for work performed on Shabbos/Yom Tov, and rental income attributed to Shabbos/Yom Tov. In addition, interest earned over Shabbos/Yom Tov would be forbidden as well<sup>20</sup>.

An important exception to Schar Shabbos is the concept of Havla'ah<sup>21</sup>. If the wages/income are paid for a period that includes weekdays, and there is no set amount being paid specifically for Shabbos, it is permitted. Thus, one may charge monthly rent even though it includes Shabbosim. However, if one is charging rent per diem, in theory, one should be unable to charge for Shabbos. Nevertheless, it is generally permitted for a technical reason. Per Diem calculations generally consider Saturday to run from 12:00 Friday night through



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12:00 Saturday night. Hence, even rent earned on Saturday includes a few hours that are not Shabbos. The entire rent is therefore permitted since there is one fee for a period that includes both Shabbos and weekday<sup>22</sup>.

As a result of the above, Schar Shabbos in real estate management is most applicable in the following cases:

1. Per Diem rates when Yom Tov falls out on Friday or Sunday. The entire 'day' for which the fee is being paid is Shabbos/Yom Tov without any weekday component. Interest earned over such days is problematic as well<sup>23</sup>.
2. Parking Lots. If a customer's entire stay is on Shabbos, the fee they pay would be subject to Schar Shabbos.

Resolutions of the above cases are beyond the scope of this article, and a Rav should be consulted.

### *Conclusion*

Shabbos is referred to as a sign between Klal Yisroel and Hashem. The Chofetz Chaim explains that if a craftsman's shingle is on display, it is clear that he is in business. Even if he temporarily leaves his office, his clients expect him to return. If, however, the shingle is removed, it signals that the business is no longer functioning. Shabbos is Klal Yisroel's 'shingle'. By honoring Shabbos, we are publicly declaring our Emunah and our identity as the nation of Hashem. A defect in our Shmiras Shabbos is not viewed as 'merely' a sin, but rather a flaw in our entire relationship with Hashem.

The Chofetz Chaim famously writes that it is almost impossible to properly observe the laws of Shabbos if one does not study its Halachos. He cites the concept of Amira L'akum as his prime example of a Halacha that one will certainly violate if one is not fluent in all of its rules. The Chofetz Chaim's advice applies to everyone—but businessmen whose entire livelihood depends on such activities have an even greater obligation to study the Halachos and to discuss the matter thoroughly with their Rav. As the Chofetz Chaim concludes, only through constant review of these laws can one have the awareness and mindfulness needed to honor and appreciate this most glorious gift from Hashem, the gift of Shabbos.



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- 1 משנ"ב ס' רנ"ב ס"ק כ"ב וש"ע הרב ס' רמ"ג אות ד.
- 2 ט"ז סו"ס רע"ו, ומשנ"ב ס"ק כ"ז.
- 3 והנה, בענין מי ששכר א"י לעשות לו איזה דבר בהעיסק שלו, וקצץ לו סכום מעות מסוים לשנה (yearly salary), באמת יש סברה חזקה לומר שאין זה חשוב שכיר יום אלא קבלן. ואף שהוא מחויב לעשות מלאכה בכל יום כפי השעות שקצץ לו, מ"מ כיון שאם עושה פחות או יותר באיזה יום, או אם מבטל יום או ימים מן השנה, אינו רגיל להקפיד עליו והדרך הוא שאין בו שינוי בהמעות א"כ אינו חשוב שכיר יום כיון שאינו משלם לו כפי השעות ממש וחשוב קבלן. וכן מבואר בט"ז ס' רמ"ד ס"ק ה' דאם שכר לשנה אבל אינו מקפיד אם יבטל איזה יום, חשוב קבלנות ומותר להניח לו לעשות המלאכה בשבת וכמו בכל קבלנות. אמנם בנידון דידן, ששכר לשנה, וגם מפקיד על ביטולו בשבת, כ' המשנ"ב רמ"ג ס"ק י' דלכו"ע אסור מעיקר הדין כמו כל שכיר יום ע"ש. וגם יש בזה משום האיסור של המהר"י אבוהב ז"ל וכמו שבאר לקמן בהערה 5 כיון שכל הרווח הוא של הישראל אם אין בו שום תשלומי עודף בעד מלאכת שבת.
- 4 שו"ע ס' רנ"ב ס"ב.
- 5 ב"י ס' רמ"ג בשם המהר"י אבוהב ז"ל, וכמו שפסק המ"א שם ס"ק ב', ובמשנ"ב שם סוס"ק י' ע"ש.
- 6 ע' במשנ"ב ס' רמ"ה ס"ק י"ח שכל בשם התוס' שבת לאיסור, וכן בשו"ע הרב ס' רמ"ג סוף אות ז'. וכן במהרש"ג ח"ב ס' מ"ב כ' דפשוט דאסור כיון דקבלנות אסור ע"ש. אמנם בשו"ת אנבי נזר או"ח ס' מ"א כ' להקל ע"ש.
- 7 ע' מש"כ הביה"ל בענין זה בס' רמ"ד סוף ד"ה או לקצור לו שדהו ובאגרות משה או"ח ח"ד סי' נ"ב.
- 8 גמ' ע"ז כ"א ע"ב.
- 9 ע' בביה"ל ס' רמ"ד ס"ה או לקצור לו שדהו שכ' לאיסור, וע' באגרות משה ח"ג ס' ל"ה שכ' שמעיקר הדין יש להתר, אבל מן הראוי להחמיר בענין זה כיון שזלזול שבת הוא דבר חמור מאוד ע"ש.
- 10 שו"ע רנ"ב ב'. וע' שו"ע רמ"ד א', ב' לענין עבודת קרקע.
- 11 כן הורה הגרש"א מילר שליט"א מובא בספר COMMERCE AND SHABBOS דף 264, וכע' זה כ' מרן הגרי"ש אלישיב זצ"ל בקובץ תשובות ח"ב סי' י"ט. ומצד מראית ע', י"ל דכיון שאין הפעול עושה המלאכה אלא בשביל הגוים הדיירים שם, אפשר שאין בזה משום מראית ע', כיון שאין הישראל מקושר כלל המלאכה שנעשה שם כלל, ויל"ע.
- 12 שו"ע ס' רמ"ה ס"ז ומשנ"ב שם ס"ק ל"ב.
- 13 בכמה פעמים קשה לסמוך על ההיתר של הספד מרובה כיון שחז"ל רק התירו כדי שהישראל לא יבא לעשות בעצמו



בחילול שבת ר"ל, וכמו שמובא במשנ"ב הנ"ל. אבל באופן שגם בימות השבוע אין הישראל עושה מלאכות אלו, וגם לא ידע איך לעשות מלאכות אלו, משמע שאין להתיר. וכן כ' להדיא בשו"ת חת"ס סי' נ"ט ע"ש.

14 וכמו שכ' המשנ"ב בסוס"ק י' כדי להתיר קבלנות של המהר"י אבוהב ז"ל ע"ש.

15 וכמו שמבואר בשו"ע ס' רמ"ה ס"א.

16 מ"ב שם ס"ק ו' בשם המג"א. וע' באג"מ ח"ב ס' ס"ה דצריך עכ"פ אפשרות לידע כמה רויח בשבת וחול, דאל"ה היה התנאי פטומי מילי בעלמא.

17 ע' בדברי חיים ס' ה' כ', ערוך השלחן ס' רמ"ה אות י' כ', אג"מ ח"ב ס' ס"ה.

18 ע' אגרות משה או"ח ח"א צ', שבט הלוי ח"ג כ"ג, אורחות שבת ח"ב בשם הרב אלישיב זצ"ל.

באג"מ ח"ד ס' נ"ה שכ' הרבה טעמים שלמעשה אין לסמוך על ההיתר מכירה להתיר איסור אמירה לעכו"ם.

19 שו"ע ש"ו ד'

20 מג"א ש"ו אות ז'

21 שו"ע ש"ו ד'

22 אגרות משה או"ח ח"ד נ"ט

23 אגרות משה או"ח ח"ד נ"ט



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