

HALOCHOSCOPE ^{TOI}

May one give a gift on Shabbos if there is a strong possibility that the recipient will be *Mechalel Shabbos* (carrying or driving) when taking it home?

The issues:

(A) Giving a gift on Shabbos

(B) *Lifnei Ivair*, liability for causing another to sin

(C) *Hochei'ach Tochiach*, preventing another from sinning

(A) *Giving a gift on Shabbos*

Giving a gift on Shabbos involves *Mekach Umemkar*, literally translated, buying and selling. Commercial transactions are forbidden on Shabbos, even though no actual Melacha is necessarily violated. In one view it is considered a Prophetic institution, alluded to in a passage in *Yeshaya* [58] and a passage in *Nechemia* [13]. In *Yeshaya* the verse says [.. you honor Shabbos by refraining] *Mimtzo Cheftzecha Vedaber Davar*, from seeking your affairs and speaking mundane words. Others are of the opinion that it is a Rabbinical precautionary measure to prevent writing. Records are usually written at the time of a transaction, a Melacha. In addition to actual commercial activity, checking up on one's business, and discussing a transaction or business or work are forbidden. This is included in the words, *Vedaber Davar*. Giving the appearance of *Mekach Umemkar* is also forbidden. Due to *Oneg Shabbos*, enjoying Shabbos, one should refrain from thinking about business or reading advertisements as well.

Gift giving is not a commercial activity. The Talmud expressly permits borrowing food and items. However, the Poskim generally forbid giving a gift. They make an exception if the gift is given for a Mitzvah. In terms of the Prophetic reference, *Cheftzecha* refers to personal affairs, as opposed to *Cheftzei Shamayim*, those of Hashem, which are permitted. As for the Rabbinical institution, if writing is not normally done for a gift, and a Mitzvah will be performed, the Rabbis would not forbid it. True commercial activity is forbidden even for a Mitzvah. [A rare exception to this is the Mitzvah to settle Eretz Yisroel. It might be permissible to have gentiles actually draw up documents for this on Shabbos.] Thus, on Sukos (Yomtov has the same rules as Shabbos) one may not ask an *Esrog* dealer for an *Esrog*. However, friends may give or receive an *Esrog* for

the performance of the Mitzvah, even on condition that it be returned.

For use on the day of Shabbos or Yomtov, one may give a gift. On Yomtov there is an additional Mitzvah to rejoice. Therefore, even if it will not be used on Yomtov but will bring joy to the giver or recipient, one may give it. However, giving a gift to a Bar-Mitzvah on Shabbos is not considered needs of that Shabbos.

One view permits giving a gift to another Jew, but forbids giving it to a gentile. Only true commercial activity is forbidden. Strictly speaking, one may never give a gentile a free gift, except in cases of *Kidush Hashem*, sanctifying Hashem's Name. However, when giving a gift one expects a return 'gift' or might be returning a gift himself. This type of ulterior motive turns the 'gift' into a transaction. Under these rules, giving a gift to maintain peaceful relations (*Darkei Shalom*) is permitted. Thus, on Shabbos, this is like Mekach Umemkar. Giving to a fellow Jew for no ulterior motive is not commerce. However, the issue of *Hachana*, preparation for after Shabbos could still arise. Therefore, only items that can be used on Shabbos may be given according to this view.

Those forbidding giving on Shabbos suggest concluding the *Kinyan*, act of transaction, before Shabbos. The recipient need not know about this. One may be a self-appointed agent of the recipient. Anything done to benefit another is considered done with his consent. This can be specified at the time of purchase, even without telling the vendor for whom it is intended. It may be done later as well. Then the gift may be 'presented' on Shabbos. [See Shabbos 54a-b 148a Eruvin 66a 81b Beitza 27b 37a Avoda Zara 20a Poskim. Tur Shulchan Aruch Orach Chaim 306-307, Magen Avraham 306:15, commentaries. Avodas Hagershuni 24.]

(B) Lifnei Ivair

The Torah forbids placing a stumbling block before someone blind. This is interpreted three ways as a Scriptural Mitzvah and one Rabbinical extension of them. Scripturally, one may not be the accessory to enable another person to sin, for example, to pass wine to a *Nazir*, one who has banned himself from wine. 'Stumbling' means spiritual blundering. Second, one may not do something that will cause another person to sin in reaction. For example one may not discipline an older child. He might react disrespectfully to his parent. Thirdly, one may not offer someone advice against his own best interests. He is 'blind' about the matter and one may not cause him to 'stumble.' In all cases the helper or advisor has done nothing himself. The other person need not have done what he did, or acted on his advice. He is not financially liable nor obligated to atone for the sin. Nonetheless, the Torah holds him partially ethically liable for the consequences of the other

person's actions. Rabbinically, this is extended to forbid helping another person in the process of sinning even if the other could sin without his help. This is known as *Mesaye'a*, aiding or *Machazik*, supporting. [See Pesachim 40b. Avoda Zara 65b. Nidah 61b. Tosefta Makos 3. Poskim. Tur, Sh. Ar. 301:8 303:2, commentaries.]

Facilitating Melacha by another Jew on Shabbos touches on Lifnei Ivair and Mesaye'a. Asking him to transport the gift home right then would amount to giving him the means to sin, the Scriptural violation. However, he does not ask the recipient to violate Shabbos. Furthermore, there is a possibility that the recipient will not violate Shabbos to take it home. Since it is not certain that a sin will be committed, the stringency of Lifnei Ivair is somewhat relaxed. In fact, the giver has no intention of helping the recipient violate Shabbos. He would prefer it if he would not.

According to some Poskim Mesaye'a or Lifnei Ivair are only forbidden when the help is given at the time of the sin. In our case, the 'help' is given ahead of time. The violation will occur when the recipient chooses to take it home. Unfortunately, in our case, the recipient is likely to violate Shabbos anyhow. Either he will drive to get home, with or without the gift. Or he will carry other things with the gift. In the same act he will be violating Shabbos with no 'help' from the giver. Thus the observant Jew is not adding to his Chilul Shabbos. [See Igros Moshe O.C. IV:79.]

In addition, to maintain peaceful relations (*Darkei Shalom*) one may sometimes be *Machazik*, support a sinner. [However, this might only apply when the sinner is a gentile who can be dangerous if one is unfriendly to him.] In addition, there is a view that the Rabbinical prohibition of Mesaye'a does not apply to a *Mumar*, one who sins habitually with full knowledge that what he does is forbidden. However, saying this presumes that the recipient is considered an intentional violator. Due to the unfortunate under-appreciation of Shabbos, many contemporary Poskim maintain that violators raised in a Chilul Shabbos environment are considered Shogeg, unintentional, even if they were exposed to Shmiras Shabbos. [See Gitin 61a Rashi Tosafos Poskim Sh. Ar. O.C. 266 Magen Avraham 8. Yoreh Deah 151:3.]

(C) Hocheiach Tochiach

If one comes across someone in the midst of violating a prohibition, there is a positive commandment of *Hoche'ach Tochiach*, to admonish the sinner. This applies even after the sinner has been admonished many times before. Accordingly, in our case there might be an obligation of sorts to talk to the non-observant Jew about the prohibitions of Melachos he will violate on Shabbos. These Mitzvos obligate the bystanders, regardless of whether the sinner is aware of what he is doing. In our case, the violation takes place when the observant Jew is not around.

Nonetheless, the obligation to admonish applies when one knows that the sin will be violated. However, Hoche'ach Tochiach has limitations. If the person will anyway not listen, it is sometimes better to let him continue sinning in ignorance of its severity than to inform him about it and have him violate it brazenly — *Mutav Sheyiheyu Shogegin*. Generally, if he is violating anything forbidden explicitly by the Torah, it is better to admonish him. The violator probably knows about it and is anyway brazen, a *Maizid*. This does not exempt the admonisher of his duty. If he is violating something not written but derived through the Oral Torah, it is better not to admonish him. Right now he might not be *Maizid*. *Melacha* is specified in the Torah, but single *Melachos* are not.

One need not admonish one who by nature does not accept it. It is sometimes a *Mitzvah* to remain silent. According to many *Poskim* one is not obligated to admonish a *Mumar*, who shows contempt of the Torah. The *Mitzvah* is only to admonish *Es Amitecha*, your friend, interpreted as *Am Sheitecha*, one who is “with you” in Torah-observance. In our case, the violation is not recorded in the Written Torah, and the violator sins habitually. Yet, he is not considered brazen by many *Poskim*. Such people generally did not abandon *Mitzvos*. They were never taught about them seriously. They do not sin out of contempt for the Torah. Therefore, they are *Shogegin* even after being admonished. It will take a while to make them understand the gravity of the sin. Thus, one may still admonish them, although it is unclear whether there is an obligation to do so. [See *Parshas Kedoshim* 19:14, 17. *Shabbos* 54b-55a 69a *Beitza* 30a *Yevamos* 65b *Kidushin* 32a *Baba Metzia* 31a *Chinuch Mitzvah* 239 *Tur Sh. Ar. O.C.* 608:2, commentaries *Poskim*. e.g. *Chazon Ish Y.D.* 2:17 *Divrei Binyomin* 5.]

In our case, another issue arises. Both giver and recipient are aware that *Shabbos* is the only time they meet. The recipient knows that the giver is aware that he will probably violate *Shabbos*, and probably already did so. By giving the gift in the knowledge that the recipient might violate it further, is the giver tacitly condoning the act in the perception of the recipient? Might the recipient think that it can't be that bad if the observant Jew decided not to mail it but to let him take it home on *Shabbos*? In light of this consideration, it is probably best to mail it, rather than to present it face to face. This removes some of the personal effect, but avoids all possible problems.