

HALOCHOSCOPE

This week's question:

One may not plan work for *chol hamoaid*, relying on it becoming an urgent need then. One may not buy, sell or take care of business on *chol hamoaid*, unless it is needed for the *moaid* or will otherwise cause irretrievable loss. Someone has difficulty getting to a place where he can service his cell-phone, due to his age. He will spend *chol hamoaid* with a son, right near a service center. May he plan to have the service done then?

The issues:

- A) *Melachos on chol hamoaid; Mekach umemkar*, commercial activity
 - B) *Tzorech hamoaid*, needs of the Yomtov; *Davar ha'avaid*, irretrievable loss
 - C) Having a gentile work for a Jew on *chol hamoaid*
 - D) *Mechavain melachto lamoaid*, planning work for *chol hamoaid*
- A) *Melachos on Chol Hamoaid; Mekach Umemkar*

Chol means, literally, mundane or non-holy. This term is applied to contrast the ordinary with the holy, such as the days of the week that are not *Shabbos* or *Yomtov*. The intermediate days of *Yomtov* do not have all qualities of the first and last day or days. The special laws of the particular *Yomtov* still apply in full force. On *Sukos* one must stay in the *sukah*. On *Pesach* one may not eat *chameitz*. The *korban musaf*, additional offering is made. Nowadays, *tefilas musaf* is recited. *Moaid* describes *Yomtov*. It means 'meeting' between Hashem and His people. The Torah uses the term *mikra kodesh*, holy proclamation, for these days, too. Accordingly, *chol hamoaid* has some characteristics of *Yomtov*, including holiness, but not all of them. Bound on both sides by *Yomtov*, it commemorates the holiday in part. *Yaaleh veyavo* is inserted in the weekday *shemone esrai*. *Halel* and *musaf* and special Torah readings are recited. *Kidush* is not recited, and there is no obligation to eat bread meals. Many rule that one must eat foods to fulfill *simchas yomtov*. Some maintain that nowadays this can only be done with wine. *Kavod hamoaid*, honoring *Yomtov* applies. One wears festive clothing and refrains from anything that shows a lack of respect for the *moaid*. One who is *mevazeh*, shows disrespect to the *moaid* is compared to an idol-worshiper and forfeits his share in the world-to-come.

Melacha, forbidden creative activity, is restricted. The contradiction in its being considered both *chol* and *moaid* is used by the Talmud to indicate that the Rabbis have authority to decide the level of *melacha* restriction. Some interpret this to be considered Scriptural with Rabbinical guidelines. Once the rabbis forbid a *melacha* it is forbidden Scripturally. Others maintain that the Scriptural references are *asmachta*, linkage to support a Rabbinical ordinance. It is still very serious because it reinforces a Scriptural concept. Violations are strongly condemned.

Those holding that it is Rabbinical explain that the Rabbis wished to enhance the *Yomim Tovim* preceding and following these intermediate days. We should be free to eat,

drink and study Torah. Thus, *melachos* forbidden include mainly those forbidden on *Yomtov* proper, with emphasis on those that recall the tedium of *chol* activity. Some term these *melechtes avoda*, 'work'. This would be agricultural, commercial and skilled labor. *Melachos* allowed on *Yomtov* for food preparation are not restricted. These include the series of *melachos* culminating in cooking, beginning with those done after the product is detached from the ground. On *Yomtov*, some of these are only permitted under specific circumstances. For example, *dash*, *mefaraik*, *borair* and *tochain*, threshing, (juicing), sorting and milling or grinding are forbidden on *Yomtov*, or permitted only if they could not be done before *Yomtov*. On *chol hamoaid* these are permitted. Wood may be cut down for cooking fuel. Creating a new fire is forbidden on *Yomtov*, but permitted on *chol hamoaid*, including using electric appliances and driving.

Commercial activity is also restricted. It is restricted on *Shabbos* and *Yomtov* Rabbini- cally. It involves writing and it is mundane. On *chol hamoaid* writing is also restrict- ed. Mundane activity is not in the spirit of the *moaid*. In most cases, commercial activity is done as an independent act, regardless of outside circumstances.

B) Tzorech Hamoaid; Davar Ha'avaid

Tzorech hamoaid allows things needed for the rest of *Yomtov*. *Hachana*, preparing for another day, is normally restricted on *Yomtov*, but permitted on *chol hamoaid*, unless it is done for after *Yomtov*. *Davar ha'avaid*, something that will cause a loss if delayed, is also permitted. Hashem is concerned for the money of the Jews. The Rabbis did not make the *chol hamoaid* laws so strict that people would lose money over them.

Thus, sewing, a non-food *melacha*, may be done for *tzorech hamoaid*. This skilled work is not universally relaxed. *Maase uman*, a professional job is forbidden. *Maase hedyot*, amateur work, is permitted. Anything done professionally is basically commer- cial activity. Therefore, it is not seen as *tzorech hamoaid*. A true professional may do his work in an irregular fashion. When he is needed *letzorech hamoaid* he may do the work in private. Onlookers, who might otherwise be misled, will not see. He should also not negotiate or stipulate a charge, but may take the payment casually.

Poel sheain lo ma yochal, a worker who needs money to buy immediate basic needs, is a subdivision of *tzorech hamoaid*. He may work to earn what he needs. This dispensa- tion has been broadly expanded nowadays. Many jobs depend on maintaining an order with no breaks in a routine and fixed hours and days. Continuing employment is often at stake, and the dispensation is expanded accordingly. Some add, this is a form of *davar ha'avaid*, irretrievable loss. However, often the attendance is more important than the actual work. Therefore, proper *melacha* should be avoided whenever possible.

Some use the *mitzvah* of *simchas Yomtov*, enjoying the *moaid*, to expand *tzorech hamoaid*. Using fire is permitted to cook and for other minor needs that are universally accepted as a necessity rather than a luxury. This could also apply on *chol hamoaid*. Sim- ilarly, carrying or using electronic devices could be restricted for the same reasons. Smoking is a luxury, besides being unhealthy. However, an addict to nicotine could be- come depressed without his smoke. It has become acceptable to travel or take trips as a fulfillment of *simchas Yomtov*. Using electronic devices is also included in this expan- sion of the dispensation. *Tzorech mitzvah*, needs for a *mitzvah*, are combined with rea- sons such as availability or the enjoyment of *Yomtov*, to expand the *tzorech moaid* con-

cept. *Tzorchel rabim*, communal needs are always considered *tzorech hamoaid*. They need not be *davar ha'avaid*, and in some cases, may be planned for *chol hamoaid*. This saves money from public funds. Workers who are off and not permitted to earn their reg- ular pay, agree to work for less at this time. However *maase uman* should not be done for the *rabim*, unless it is also *tzorech hamoaid* in its own right.

Some *tzorech hamoaid*, including laundering and haircutting, is restricted to rein- force *kavod moaid*, honor for *Yomtov*. It could and should have been done before *Yomtov*. So that people do not put it off to *chol hamoaid* and begin *Yomtov* unkempt, they were restricted totally on *chol hamoaid*.

Davar ha'avaid is permitted to prevent loss, but not to safeguard gains or profits. One may not do the *davar ha'avaid* in a manner of *tircha*, extra exertion. Thus, agricul- tural work that cannot wait may be done in the easiest way, albeit less economical. [See Chagiga 18a, Moed katan 2a-b 11b Yerushalmi 2:3 etc., Avoda Zara 22a, Makos 23a, Avos 3:11, Poskim. Tur Sh Ar OC 530 etc., commentaries.]

C) A Gentile Working for a Jew on Chol Hamoaid

What is forbidden for a Jew, he may not ask of a gentile. Based on *shlichus*, agency, it is almost never considered Scriptural. Only one involved in the same obligations can act as a *shliach*. However, to preserve the integrity and sanctity of *Shabbos* and *Yomtov*, and to save a Jew from falling into the trap of violating himself, it is forbidden Rabbini- cally. It also involves discussing *melacha* with the gentile, a violation of the restriction on discussing the mundane. It is also linked to the *passuk* restricting *melacha* by a ser- vant. This refers to a servant who is not otherwise obliged to observe *mitzvos*, i.e., a gen- tile. *Chol hamoaid* would be included in this restriction.

Something forbidden doubly Rabbini- cally is permitted *letzorech mitzvah*. Assuming *melacha* on *chol hamoaid* is Rabbini- cally forbidden, asking a gentile for help in perfor- mance of a *mitzvah*. A gentile may also work in his own time, even if it is for a Jew and on *Shabbos*. He was not hired by the hour or day, to do it specifically on *Shabbos*. He does it *ada'ata denafshei*, on his own initiative. A contractor promises to finish by a date, but does not commit to specific days of work. The restriction on this dispensation is work done on the property of a Jew. It gives the appearance of having instructed the gentile di- rectly. Accordingly, anything public or attached to the ground on a Jew's property is for- bidden. Many poskim maintain that if the common local practice is to engage only con- tractors for certain work, it is permitted. Onlookers will not falsely suspect that the gen- tile was instructed specifically. One must still try to tell the gentile not to do it on *Shab- bos*. [See Moed Katan 12a, Poskim. Tur Sh Ar OC 543, commentaries.]

D) Mechavain Melachto Lamoaid

Davar ha'avaid is permitted to prevent imminent loss that could not have been pre- vented earlier. One may not delay an activity to coincide with *chol hamoaid*, to be able to do it then, relying on *davar ha'avaid*. *Mechavain melachto lamoaid* is forbidden Rabbini- cally, in part, as a penalty. One doing the activity to prevent real loss ignores the spirit of *chol hamoaid* as a time of rest. A matter that should have been taken care of before *Yomtov*, but got delayed due to *oness*, circumstances beyond control, is permitted on *chol hamoaid*. The usual example is workmen who backed out of an agreement very late. It could not be rearranged before *chol hamoaid* and the produce will rot if delayed any

longer. This is not considered *mechavain melachto lamoaid*.

In summary, five guidelines permit *melacha* or *mekach umemkar*, often in combination: *davar ha'avaid*; *tzorech hamoaid*; *poel she'ain lo ma yochal*; *tzorchai rabim*; *maase hedyot*. The restrictions on these are: *tircha*; *mechavain melachto lamoaid*; *kavod Yomtov* that should have been done *Erev Yomtov*; *maase uman* when it is not *betzina*; *hachana* for after *Yomtov*.

Our case raises the issues of *mechavain melachto* to ask a gentile to do something. It involves *melacha* on the part of the gentile, and *mekach umemkar* on the part of the Jew. It is not a *davar ha'avaid*, preventing financial loss. One could claim that he gains some *simchas Yomtov* by fixing his cell phone. Could our questioner claim that he is an *oness*, or that the opportunity that arises now is rare for him and a *davar ha'avaid*, or a combination of the two? For example, merchants whose market or fair occurs on *chol hamoaid* may participate. The opportunity will not arise at another time. Perhaps, combined with the practical inaccessibility of his regular service location, our questioner could claim *davar ha'avaid* in this sense here. Actually, the questioner wishes to know whether he may delay the servicing to do it then, or should he go out of his way to arrange it before *Yomtov*. Since he is able to do it beforehand, albeit with difficulty, this could not really be termed an *oness*. It is not beyond his control. However, if he did whatever he could to try to do it earlier, but could not, he is an *oness*. This is the classic case of *oness*. Then, the issue is whether he should delay things more by waiting until after *chol hamoaid*, or do them when this opportunity arises. Could this now be considered *davar ha'avaid*?

Contemporary poskim permit one who visits a location where opportunities avail themselves that he does not have at home, to make purchases, even for after the *Yomtov*. Presumably, the buyer is aware of this beforehand. He is also able to purchase the items, albeit at an added effort, and possible expense of transportation. Based on this, our questioner could claim *davar ha'avaid* as well. [See Moed Katan 11a-12b, Pokim. Tur Sh Ar OC 537:16 538:1 etc. 539:4-9, commentaries. Chol HaMoed 12:note 76.]

On the Parsha ... Any man who slaughters .. and did not bring it to the.. tabernacle .. as an offering .. it shall be counted as though he spilled blood .. so that they no longer offer to [the idols] ... [17:3-7] This refers to kodshim. He is like a murderer. [Rashi] Why is this compared to a murderer? What does this have to do with idol offerings? Perhaps one who shows this lack of respect for the Tabernacle is like one who shows no respect for human life. The underlying lack of perspective and respect is the same. Even one who murders unintentionally requires atonement. He is exiled to a city of refuge, and the relatives have the right to kill him if he is caught outside of it. He murdered unintentionally because of his lack of appreciation of human life. Evidently, this lack of appreciation of the Tabernacle is the same trait that lies behind the one who makes offerings to idols. In the same way, the reason one who shows disrespect for *chol hamoed* is compared to an idolater. In fact, the term for the Tabernacle is 'tent of meeting' between Yisroel and Hashem. Both of these violators do not appreciate the special relationship and the special chance to 'meet' Hashem.



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