

# HALOCHOSCOPE

This week's question is being dealt with over the course of a few weeks as a series. The issue is much more complex than meets the eye, and though it will be discussed in some detail, this should not be used as a personal *halachic* guide.

**What arrangement, if any, should be made by a Jewish landlord, for the use of coin-operated machines by his tenants on *Shabbos*?**

**In the same vein, if someone owns a vending machine, what, if anything, should he do about its use by gentiles on *Shabbos*?**

**The issues:**

- A) *Mekach Umemkar*, commercial activity on *Shabbos*
- B) *Sechar Shabbos*, earning money from activities done on *Shabbos*
- C) *Shvisas kailim*, requiring utensils to 'rest' from *melacha* on *Shabbos*
- D) *Sechar kailim*, profiting from use of one's utensils
- E) *Hashma'as kol*, intrusive, non-*Shabbos* sounds

*So far: We have suggested that rather than separate the chalos from the action, the entire part played by the 'vendor', the hakna'ah should be done on Erev Shabbos.*

*In relation to sechar Shabbos, we have discussed the issue of whether one may allow himself to benefit from business conducted on Shabbos, specifically if it happened without his direct actions. In regard to shevisas kailim, we have outlined the issues. Based on one view, certain types of machines belonging to a Jew may not be allowed to operate on Shabbos, possibly even by themselves. This depends on how much human intervention is involved, on how much actual melacha takes place, and on how intrinsic the melacha is to the function of the utensil. We have also dealt with the issue of sechar kailim, profiting from the use of one's utensils on Shabbos. This item will need to be expanded, along with some other commercial aspects, relating to mekach umemkar in general.*

## Part IV

### D) *Sechar kailim*, continued

#### *Chalos Kinyan on Shabbos*

There remains the issue of arranging that a *kinyan* become effective on *Shabbos*. This, too, could apply only if some kind of action is involved. The typical example is the sale of licenses or permits. Assuming that a prospective licensee must first apply and the application and the fee must be sent by a specific date, what if that date is *Shabbos*? It is clear that the panel grants the licenses on the date that they open the applications. The same issue will arise in any situation where a specific date is set for the conclusion of a transaction process. If the set date happens to be *Shabbos*, it is unavoidably concluding on *Shabbos*. In our situations, a physical activity will take place on *Shabbos*. The question will be whether that activity will be considered the conclusion and effectuation

of the transaction of which it is a part.

There are three possible cases. In the first, the issue is whether the *chalos* that will take place can depend on the fulfillment of a requirement that will take place on *Shabbos*. The actual *chalos* will be effective retroactively to the time the original agreement took place, but will need the actions on *Shabbos* to make it work. In the second, simpler situation, the transaction will be in two parts, one of which will take place on *Shabbos*. However, the fact that it will have been initiated before *Shabbos* could mean that the part done on *Shabbos* does not constitute forbidden *mekach umemkar*. In these situations the issue seems to be whether the actions done on *Shabbos* are forbidden.

There is a third possible situation. The initial transaction was not determined with any certainty, but was left to be determined by events that happened later. To illustrate this third situation, let us study the passage cited as its source. The *koahin gadol*, high priest, is required to have a wife on *Yom Kippur*. If she dies, he must immediately remarry. Could he arrange to have a reserve wife, with whom he will go through the process of marrying, but make a condition that it does not take effect unless his wife dies? What if his wife would then die on *Shabbos*? In this case, no action need take place on *Shabbos* to make the transaction complete.

A classic case that arises occasionally, as a practical matter, is the sale of *chametz* to a gentile, effective on *Erev Pesach*, when *Erev Pesach* falls on *Shabbos*. The poskim debate these cases. One proof cited by the lenient view is that of a document (a bill of debt or contract of sale) that has a Hebrew date in it on which one may not write. It is self-evident that the document was not written on that day. If it was written after that date and then pre-dated, it is invalid. However, if it was written before that date, such as on *Erev Shabbos*, it is valid. We may assume that the writer had in mind that the document should not become effective until the date inside it. Thus, we see that one can stipulate to allow a transaction to take effect by itself on *Shabbos*. [See *Shabbos* 17b 18b Yuma 13a-b Beitza 36b, Poskim. Tur Sh Ar OC 246:1-3 252:1 306:5-6 339:4-5, commentaries. RAE I:159. Sdei Chemed, Chametz 9:35. Shearim Metzuyanim Bahalacha 80:64.]

Even according to the stringent view, vending machines could be permitted. The stringent view refers to a case where one wishes to make a marriage or similar transaction take effect specifically on *Shabbos*. The whole reason one does it before *Shabbos* and delays its *chalos* is because one cannot do the act on *Shabbos*. The reason to forbid it might be because one is literally planning the business venture to take place on *Shabbos*. In our case the vendor does not care whether the gentile purchases his candy on *Shabbos* or before or after *Shabbos*. He only places the candy or soda in the machine before *Shabbos* for convenience. Therefore, he is not planning the transaction for *Shabbos*. The same could be said of the laundry machines.

There is a small concern that the proprietor wishes to provide the convenience of the use of the machines to further his general relationship with the customers. Thus, he might have the machines available for employees or tenants who frequent or live in the vicinity of the machines. Nonetheless, he has no active interest in the transactions taking place, just because he wants the appearance of availability.

#### **Vending machines – halachic conclusions**

Thus, some poskim conclude that the vending machine may be stocked before *Shabbos* and left out in the street on *Shabbos*. There will be no appearance of making the sales on *Shabbos* as long as the gentile does not leave the property of the Jew holding his

purchase. Some poskim permit this with some conditions. First, one should stipulate that he does not take possession of the money until after *Shabbos*. Second, some say that one should stipulate clearly that the *kinyan* should work retroactive to *Erev Shabbos*. The lack of action by the seller combined with the lack of completion of the *kinyan* (since it does not take effect on *Shabbos*) means that the simple action of the buyer does not implicate the seller in any act of *kinyan* on *Shabbos*. It is literally as though something happened by itself, as far as the seller is concerned, much like the milling of the wheat.

Some insist that the machine should not have the name of the Jewish owner anywhere on it. Some also say that the machine may not be stocked on *Erev Shabbos*, but on Thursday. This leaves time for the merchandise to be sold before *Shabbos*, and does not give the appearance of planning the sale for *Shabbos*. This touches on the prohibition forbidding renting one's utensil to a gentile too close to *Shabbos*. There is the appearance of the gentile doing the work for the Jew. For a similar reason, this opinion forbids a machine that will perform a *melacha*, despite the lenient practice with regard to *shvisas kailim*. For example, this opinion forbids a vending machine that takes photographs. Nowadays, this would apply to coin-operated copier machines. Others, however, disagree with both of these conditions. Yet others forbid vending machines altogether, and forbid benefiting from the profits of *Shabbos*.

#### **Laundromat – coin operated washing machines**

The coin-operated washing machine situation is much more complex. In terms of practicing stringency on *shvisas kailim*, real *melacha* takes place. The clothing is not even placed before *Shabbos*, but on *Shabbos*. The property is either the Jew's, or it is known that the machines are leased from the Jew. He is seen coming to collect the coins or to maintain the machinery. There is *mar'is ayin* of *mekach umemkar* at the very least.

The poskim discuss the possibilities of permitting machines that are left in a public area. Since they are not on Jewish owned premises, the *melacha* taking place (by gentiles) does not raise as many issues.

Under extenuating circumstances, with specific mitigating factors, some poskim permit letting gentiles use one's coin operated laundry machines. Such factors include: anonymity, the presence of a gentile manager or partner who gets a share in each use, *havla'ah*, the indefinite nature of the use, and the lack of prearrangement. Generally, however, one should either close his store, or make some arrangement with a gentile partner that complies with the *halacha*. [See Maharshag OC 65 101-102 117. Chelkas Yaakov III:94 102-103. Minchas Yitzchok V:14. Be'er Moshe, Kuntres Electric 50 82-87. Shearim Metzuyanim Bahalacha 80:63.]

#### **Laundry facilities provided by a landlord**

In our case, the issues also with regard to a Jewish landlord who does not allow private washing machines. He usually provides coin-operated machines in his building. Here there are more reasons to rule leniently. The machines usually belong to an independent company. The amount of money that the landlord gets from the uses is to cover his overheads, rather than to profit from the specific use of the machine or from the acts of washing the clothes. However, there could be other arrangements. Some landlords actually have more than one arrangement, varying from location to location. This might depend on the availability or costs involved.

On the other hand, a mitigating factor could apply. The landlord provides the machines for the use of the tenants as part of his rental agreement. While he charges per

use, he really does not provide the machines as a service to the general public. The individual usage charges are to provide some control over the indiscriminate use of the machines. Accordingly, there is room for a ruling that no individual transaction takes place on *Shabbos*, but that it is included (*behavla'ah*) in the rental arrangement. Usually, there is gross revenue, but due to utility overheads, there might be no net profit. The lease does not specify that if the laundry service is unavailable, some rent may be deducted. However, the availability is always an important issue when a tenant agrees to rent.

The following are examples of the arrangements: (i) The landlord owns the machines. A 'contractor' is paid a fixed monthly amount for maintenance and collection of the coins. The landlord keeps the coins. (ii) The landlord has the same arrangement, but he or an employee collects the coins. (iii) The landlord or his employees do everything themselves. (iv) The landlord rents the machines for a fixed monthly rate from a maintenance company. They collect the coins and hand over the money to the landlord. (v) Rather than the landlord paying a fixed rental amount, the coins collected are divided 55/45 between the landlord and the company that owns and maintains the machines. In all cases, the machines are on the property of a Jew.

In arrangements (iv) and (v) the money is *behavla'ah*, and is not *sechar kailim*. The company is not 'employed' specifically for the *Shabbosos*. The only issue is *maris ayin*, due to the appearance that the machines belong to a Jew. Outside the boundaries of the Jewish neighborhoods, this issue would also be mitigated. In the first three arrangements, there is *sechar kailim*. However, the coins are accumulated *behavla'ah*. The employees need not 'work' on *Shabbos*. In the first arrangement, the contractor is not even an employee. The question is whether the fact that the coins placed there on *Shabbos* can be considered mixed with the others – *behavla'ah*. Furthermore, the transactions and uses that take place on *Shabbos*, in all cases, pose *mekach umemkar* issues of their own. Assuming that these last issues are circumvented by the inclusivity of the rental agreement, the ideal arrangements would be (iv) and (v).

**On the Parsha ...** "The houses of Mitzrayim shall be filled with the *arov*, mixed wild animals – and also the land that they are upon. On that day, I shall distinguish the land of Goshen, that My people stands upon it, that there shall not be *arov* there ... I will place a *pedus* between my people and your people. Tomorrow this sign shall come to pass ..." [8:17-19] The term 'stand upon' rather than 'sit or dwell', is unusual. The term *pedus* is translated by some as another term for distinction. Why would the Torah repeat the idea of a distinction, once referring to the land, and another time referring to the people? The 'sign' seems to refer to the distinction, rather than the plague! It seems that the object of this plague was more than to scare the *Mitzriyim*. They would escape the *arov*, to *Goshen* [see *Haamek Davar*]. The Jews would be reluctant to host them in their homes, because they purposely lived apart. There were parts of *Goshen* that the Jews 'stood upon' but did not actually settle. Hashem promised to show clearly, where the property of the Jews ended, so the gentiles could camp there. This would show how Hashem 'owned' the land they thought was theirs.

♫ In honor and in memory of my mother, Yitele bas R. Shimon a"l, Henriette Silver. ♫

**Sponsored in honor of the birth and *bris milah* of Sholom Grossman, mazal tov.**

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