

HALOCHOSCOPE

This week's question:

A Jew is running a political campaign office on a main street in a Jewish area. The name of the Jewish backer does not appear anywhere on the building. Non-Jews staff the office. May the campaign office remain open on *Shabbos*?

The issues:

A) *Mekach Umemkar*, commercial activity, *Uvdin Dechol*, weekday activity, on *Shabbos*

B) *Amira Le'akum*, gentile activity for a Jew

C) *Chilul Hashem* and *Maris Ayin*, conspicuous appearance of Torah-violation

A) *Mekach Umemkar*

Scriptural *melachos* including writing, erasing, using power in its various forms, and the like, are not necessarily needed in *opur* case. The Jew will not be there himself. The gentiles present are volunteers. Any *melacha* they choose to perform for their own convenience is not the liability of the Jew. The activity closest to being considered a liability for the Jewish owner would be something related to the Rabbinical restrictions on *mekach umemkar*, commercial activity. No actual commercial activity takes place. However, we must rule out any connection to its underlying reasons.

Commercial activity is forbidden, in part as a precaution against writing. One may not read *shtarei hedyotos*, transactional documents. This extends to other types of non-*Shabbos* documents or written matter. Some maintain that it is restricted in its own right, as a precaution against the *melacha* of erasing. *Igros shalom*, casual correspondence, is a matter of debate. Some permit them. Others maintain that they were forbidden as an extension of *shtarie hedyotos*, and others maintain that due to possible vital information, they were never restricted. The Talmud forbids reading a guest list and captions under murals or statues. Many *poskim* extend this to forbid reading anything other than Torah.

Commercial activity is thus a Rabbinical prohibition based on Scriptural *melachos*. It is also forbidden due to activities that also apply outside the business realm. This is a Prophetic *mitzvah* in its own right, called, by the *Navi*, *asos chafatzecha. Vechibadeto mai'asos derachecha, mimtzo cheftzecha, vedaber davar*, you shall honor [*Shabbos* by refraining] from doing your ways, seeking your affairs, and talking about the matters. These restrictions are in the vein of a positive *mitzvah midivrei sofrim*, by the Prophets, more serious than a Rabbinical *mitzvah* but not on the level of a Scriptural *mitzvah*.

Thinking of business is also forbidden. This reduces one's *oneg Shabbos*, gaining pleasure from *Shabbos*. This is another one of the *mitzvos* mentioned in the same passage of *Navi*. Recreational thoughts might indeed be a fulfillment of *oneg Shabbos*. *Vedaber davar* includes talking about plans or of taking care of a matter after *Shabbos*.

Besides the *melachos* and the activities determined by the *Navi* as matters not in the honor of *Shabbos*, sometimes, the Rabbis invoke the positive *mitzvah* of *Shabason*, to

rest on *Shabbos*. This means to desist from mundane weekday activities. The Rabbis determined that certain activities should be forbidden as a *shevus*, desisting. Specific to our case, we will focus on the idea of *uvdin dechol*, something considered too weekday to be allowed on *Shabbos*. In some ways, these institutions are based on the *Navi's* injunctions against mundane activities. These are usually case sensitive issues, and in each generation, the rabbis of the time would be able to make this determination. However, a common theme is an activity that makes people forget about *Shabbos* and its holiness.

In summary, though activity in the office in question does not involve any commercial transactions, many of its underlying restrictions apply here. [See Yeshaya 58:13-14, Nechemiah 13:17, Shabbos 19a 113a-b, 116b, 148a-151a, 126b, etc., Poskim. Tur. Sh Ar OC 246 306 307, commentaries. Ar Hash 310-311.]

B) *Amira Le'akum*

In our case, the Jewish 'proprietor' will not enter the office at all on *Shabbos*. Any activity taking place will be performed by gentiles. This could involve *amira le'akum*, instructing a gentile to do *melacha* for a Jew that the Jew is forbidden to do on *Shabbos*. This is based on the verse that implies no *melacha* shall be done for a Jew, even if the Jew is not doing the activity. Some consider it a Scriptural prohibition. Some say this is true if the item on which the *melacha* is done belongs to the Jew. If it belongs to the gentile it is Rabbinically forbidden. Others maintain that it is a Rabbinical ordinance, to prevent the sanctity of *Shabbos* from becoming light in the eyes of the Jew. He might then do the *melacha* himself. It is also linked to the Prophetic prohibition against speaking mundane matters on *Shabbos*. It is also linked to the idea that the gentile is considered, in this respect, an agent of the Jew.

Amira le'akum is forbidden on all *melachos*, including Rabbinical ordinances. It is forbidden to direct the gentile before *Shabbos*, to do a *melacha* on *Shabbos*. It is also forbidden to indicate or hint to the gentile that he is expected to do the *melacha*. Under certain circumstances, one may hint to him that there is a situation that calls for a *melacha* to be done. The gentile will then decide to do it himself. If the gentile does a *melacha ada'ata denafshei*, of his own initiative, to serve his personal needs, the Jew need not stop him. In fact, one might even be permitted to set up such a situation. Of-course, the gentile might not do it, since he is really acting only in his own interests.

One may not benefit from activity done by a gentile. This is to prevent *amira le'akum*. A Jew may not reward a gentile for doing work for him on *Shabbos*. This includes exchanging work in a way that makes it clear that the gentile was working on the Jew's behalf on *Shabbos*. The Talmud and poskim discuss partnerships with gentiles, in which work is done on *Shabbos*, with specific guidelines. The work done by the gentile must be *ada'ata denafshei*. The arrangement is that on *Shabbos* the business belongs to the gentile. No work is done for the Jewish partner. In exchange, the Jew takes all the work of another day of the week. However, the deal must not be phrased in a way that shows an 'exchange' of profits or of workload. This will be considered rewarding the gentile for his *Shabbos* work. Rather, it is written up as a partnership excluding those two days. On those days it is written up as the exclusive business of each respective party.

The poskim discuss the modern applicability of partnerships with great caution. The permissible cases of partnerships usually related to existing true partnerships. The issue

was how the Jew could avoid *chilul Shabbos*. Nowadays, businesses that are totally Jewish owned often try to use the partnership loopholes to remain open on *Shabbos*. Clearly, this violates the spirit of the original restrictions. In addition, it might not fit the guidelines for their relaxation. The partnerships can still be implemented under extenuating circumstances, under the instruction and supervision of a *Rav* competent in these matters.

In our case, the entire office is being run by volunteers. The Jew arranges for use of the premises. It could be argued that he is considered the owner by paying for their use. Gentiles may do contractual work for Jews on *Shabbos*, if this is their own choice. However, on premises known to be owned by Jews, this raises the issue of *maris ayin*, appearances. Onlookers assume the Jew to be employing them in violation of *amira le'akum*. This does not apply when there is no visible sign that the work is being done for a Jew.

In reality, the Jewish volunteer is in a partnership of sorts. The partnership was not created to avoid *chilul Shabbos*. This is not a partnership for business or activity that involves direct *chilul Shabbos*. However, it could involve some underlying reasons to forbid the activity. It is not being performed by a Jew, and the gentiles who perform it are doing so of their own volition. The Jew does not benefit financially, and the gentiles are not doing it under instruction of the Jew. Indirectly, they will all have to account for their activities to each other at some point. Thus, it is similar to a regular partnership.

Amira le'amira means that so long as one does not instruct the gentile directly responsible for the activity, according to some poskim, he is not liable. One could instruct one gentile to instruct another. Assuming the first gentile violates *amira le'akum* to instruct the second gentile, the Jew violates *amira le'akum* of a Rabbinic prohibition. The more gentiles involved before the actual Scriptural *melacha* is violated, the more multi-Rabbinical the case. Some only permit this when the initial instructions are given before *Shabbos*. Certainly, when there are no instructions, but the gentiles perform the activity of their own accord, this would apply. Some add, one reason for the restriction of *amira* is *shlichus*, agency. This does not apply to being an agent to say words. The second gentile's activity could not be attributed to the original Jew. On *Shabbos*, instructing also involves speaking, its own prohibition of *vedaber davar*. Before *Shabbos*, this does not apply. In our case, the actual activities are at worst Rabbinical prohibitions, as precautions against Scriptural activities. In this respect, the reasons to permit *amira le'amira* should apply. [See Shabbos 19a 121a 150a, Eruvin 67b, Gitin 8b, etc, Poskim. Tur, Sh. Ar. OC 244, 276, 307:19-22, etc., commentaries.]

C) *Chilul Hashem and Maris Ayin*

The store-front in question is on a main street in a Jewish neighborhood. This raises an additional issue. One concern raised by the poskim with regard to partnerships is *chilul Hashem*, desecration of Hashem's Name, a Scriptural violation. When something is done that flagrantly challenges Hashem's authority, it raises this issue. This includes any public violation. It also applies when there might not be a true violation, but there is a perception that one is 'getting away with it'. Hashem is 'forced to look on and do nothing about it'. If any business could stay open on *Shabbos* using some ploy, there is a risk that the entire Jewish commercial neighborhood, including all businesses on the main street would remain open for business as usual. This would make the entire restriction look ridiculous for a number of reasons. It would totally water down the sanctity of *Shabbos*

and the precautions in place to protect it. It causes gentiles to ridicule the Jewish system of applying *halacha*, with good reason. Whenever loopholes are taken advantage of for personal gain, *chilul Hashem* is possible. Furthermore, modern commerce invariably involves *Shabbos* activity due to the global manner of business. Those who observe *Shabbos* are practically sacrificing. Allowing such loopholes will, firstly, seem unfair to those who sacrifice, and secondly, encourage many more people to resort to them.

For this reason, there arose a consensus of poskim not to rely on such partnership arrangements inside the Jewish neighborhoods. Expanding this consensus, in keeping with its underlying principles, businesses that do not necessarily involve *chilul Shabbos*, but that have such appearances, might also be forbidden to open on *Shabbos*. However, this could only apply where it is known that an establishment is run by a Jew. If there is no visible sign that it is owned by a Jew, such as a franchise or generically named enterprise that happens to have a Jewish proprietor, extenuating circumstances could be invoked to permit a partnership, or, in our case, relying on the absence of any forbidden activity.

We have already raised the issue of *maris ayin*. Activity perceived to be in violation is forbidden. It raises the specter of *chashad*, suspicion of wrongdoing. This is forbidden, since one must always appear upright in the eyes of onlookers. It also raises the issue of others learning from one's actions. The unlearned might think that the forbidden activity being confused with this permissible activity, is also permitted. Specific restrictions are placed on some *mekach umemkar*-like activities. However, some specific activities are permitted, due to the self-evident nature of their permissibility. Our case does not appear to fit the criteria of *maris ayin*. [See references to section B. Igros Moshe OC I:90-91 III:36. Radiance of Shabbos 4:n34 etc. 11:n9. Halochoscope I:1 etc.]

In conclusion, the Jew may not instruct gentile volunteers to do anything. The gentiles may show up at their own convenience. While there, they may perform any activity that they choose to. The Jew may not take credit for any activity done on his behalf by a gentile, especially if the Jew will provide some form of reward to the gentile in return.

On the Parsha ... [Noach] sent forth the raven ... and he sent forth the dove from him, to see whether the water had lightened ... [8:7-8] The raven did not go on its shlichus, mission ... He sent forth [the dove] – this is not an expression of shlichus, but of sending it on its way. Thus, he would see whether the water had lightened. [Rashi] Why did Noach send the raven on a shlichus, and not the dove? What was the shlichus of the raven? Why does the Torah use the same word? Vayeshalach can be used both ways. Animals have no shlichus, because they have no da'as. [See Gur Aryeh] One cause of the flood was that people raised the status of animals to that of humans, even affecting their behavior. Noach knew the raven's nature. He refused to go, showing that he had some da'as, and viewed this as shlichus. He wanted to act ada'ata denafshei. Some pre-mabul effects were still there. [See their dialog in Rashi] He then sent the more virtuous dove, hoping that it would not be a shlichus. The dove would act on animal instinct.

ב In honor and in memory of my mother, Yttele bas R. Shlmon a'h, Henrlotto Silver. ♣

In memory of Harav Hagoan Reb Aryeh Zeev ben Hagoan R. Moshe Aharon Gurwicz
zt'l, (Reb Leib) Rosh Yeshiva of Gateshead, on his 26th yearzeit, 4th of Mar Cheshvan.

© Rabbi Shimon Silver, October 2008.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com