

HALOCHOSCOPE



This week's question will be dealt with over the course of the next 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.

Part II

B) *Sechar Shabbos*

Keeping the 'business' open

Perhaps the most perplexing part of this entire case is the fact that one may not leave his business open on *Shabbos*, even though he personally does no *melacha*. In answer to this question, we must examine the other aspect of doing business on *Shabbos*. This involves gaining from a transaction done on *Shabbos*. It is forbidden to pay someone for doing work on *Shabbos*, even if it involves no *melacha*. Thus, one may not pay someone to watch his animals on *Shabbos*. The only way this can be arranged to make it permissible is to make an inclusive agreement. One would engage an employee for a longer period, including *Shabbos*, and pay him for the entire period as a unit. This is called *havla'ah*, literally, causing to swallow. The *Shabbos* payments are absorbed in the larger period payment.

If *melacha* is involved, and the employee is gentile, one could still use *havla'ah*. However, according to many poskim, one may not calculate the time on a day by day basis. Furthermore, many poskim maintain that the employee must be hired to perform a specific job, and be given enough time off that he need not do his work on *Shabbos*. Then, any work he chooses to do on *Shabbos* might as well have been done during the week. The Jewish employer is no gaining from the *Shabbos* work.

The basis for forbidding profits from *Shabbos* is primarily as an extension of the prohibition against *mekach umemkar*. There are three areas of *sechar Shabbos*. One may not gain from work that he did on *Shabbos*, even if it did not involve *melacha*. One may

not profit from work done for him by another. And one may not benefit from work done by his animals or utensils, if the payment is for their use on *Shabbos*. Our case involves, basically, the latter two situations. The landlord does no work himself, but does have others do some activities for him. In addition, his utensils are bringing in business.

Automatic earnings

The poskim deal extensively with types of 'automatic' earnings. Initially, it applied to vending machines, which did not even involve electricity. Some distinctions were drawn between different locations and the like. Later it was dealt with in regard to Laundromats, which involve many clear-cut *melachos*, and with answering machines, which do nothing but record a message. However, the messages provide business. Each order made on *Shabbos* has a tinge of *sechar Shabbos* to it at the very least. Other machines included threshing machines.

Havla'ah

The poskim discuss ways to allow the work to take place and yet to permit the profits. The usual method used to avoid calling it payment for work done on *Shabbos* is *havla'ah*. However, in order to work, the payment must be made as a unit for the entire inclusive period. It may not be itemized. Itemizing it will inevitably include a payment made specifically for the *Shabbos* work.

Partnering with a gentile

Another method is relied on to avoid both the issue of employing a gentile agent for work on *Shabbos*, when it involves *melacha*, and *sechar Shabbos*. This same method is sometimes used to avoid *maase akum beShabbos*, benefiting from such work, which is needed even if it did not entail *melacha*. A gentile employee or agent is given a percentage or commission on the work. He is thus considered a partner in the business, and any work he does will be considered done by himself on his own initiative. He would do this for his share even though he is fully aware that much of the profit goes to the Jewish partner. In this way the work done by the gentile was not forbidden on *Shabbos*, and the profit would not be *sechar Shabbos*.

However, this does not take into consideration the use of the Jewish 'partner's' utensils. This problem surfaces even if the Jewish partner only owns a share in the utensils. The original Talmudic discussions on this subject involve utensils, such as ovens, or facilities, such as bathing houses, owned by a Jew, and used by a gentile. It is taken for granted that one may not actually charge directly for the *Shabbos* uses. The issues involve both the appearance that the user is being charged specifically for the *Shabbos* use, and the possibility that the user is being employed by the owner and hired to do real *melacha*. This would involve *amira le'akum*, telling a gentile to do something forbidden to the Jew. [See Moed Katan 12a Kesubos 64a Nedarim 37a Baba Metzia 58a Avoda Zara 21b-22a, Poskim. Tur Sh Ar OC 243 245 252, 306:4-5 585:5, commentaries.]

B) Shevisas kailim

When the poskim apply the debates to modern situations, they include the use of vending machines, Laundromats and answering machines to take orders. The discussion begins with the issue of *shvisas kailim*. The Talmud debates certain situations where a utensil is set up on *Erev Shabbos*, to do a *melacha* on *Shabbos*. For example, the ingredients to make ink or dyes need to be soaked for a long time. May one begin soaking them (in a utensil) on *Erev Shabbos*, so that they will continue doing so on *Shabbos*? The same

question arises with regard to setting a trap for animals.

The Talmud then lists cases where there is no apparent dispute, yet some are permitted and others are forbidden. One may arrange for perfuming clothing with incense on *Erev Shabbos*, with the process taking place all day on *Shabbos*. However, one may not place wheat into a water-driven mill right before *Shabbos*, unless there is enough time for the milling to be completed before *Shabbos* begins.

The Talmud then debates the differences between the undisputed cases, and at the same time, the basis for the dispute. In one view, all agree that the Torah forbids having a *melacha* done by one's utensils. This is derived from superfluous language when the *mitzvos* of *Shabbos* are commanded. In the disputed cases, the utensil is not involved in an action. Milling grain, however, involves an action. All agree that the mill may not be in use. This view could also hold that when the entire process seems to happen with no effort other than gravity, there is no issue of *shvisas kailim*.

Another view maintains that the dispute is about *shvisas kailim*. The one opinion forbids preparing utensils to do *melacha* even when there is no action, and the lenient view permits it even if action is involved. Milling involves an additional problem of *hashma'as kol*, intrusive non-*Shabbos* sounds.

A possible third view maintains that all agree that there is no Scriptural issue of *shvisas kailim*. The dispute is about a precautionary decree. If these activities were permitted on *Erev Shabbos*, causing the *melacha* to happen on *Shabbos*, one might come to do them on *Shabbos*. Alternatively, this view could consider action done by utensils Scripturally forbidden, but utensils doing no action forbidden by Rabbinical decree.

Halachic applications

The poskim debate the Talmud's conclusion. All agree that basic *shvisas kailim* is not forbidden, Scripturally or Rabbinically. This follows the lenient view in the dispute. Some say that *hashma'as kol* is also not forbidden, according to the lenient opinion in that dispute. To forbid it would be to follow the stringent view. Others maintain that *hashma'as kol* is forbidden. The source forbidding it concurs with the lenient view.

As we shall see, if a gentile actually does a *melacha* with the utensil, one should take steps to avoid this. This is due to other reasons, which will be discussed shortly. Even if no person will be doing actual *melacha*, but the utensil does it by itself, one should refrain whenever possible from allowing this to happen. There is one view cited that maintains that even the lenient view in the original dispute, that does not require *shvisas kailim*, still requires it in certain situations. It is only relaxed when no human is needed to cause the usual action of the utensil. If the usual action requires human intervention, the utensil may not be used to do the action on *Shabbos*. Thus, while it is even possible to permit using millstones, depending on whether one is concerned about *hashma'as kol*, one may not let a gentile use his hammer.

Appliances

Nowadays, the proliferation of home appliances that go on and off on *Shabbos* make this view difficult to implement. It would appear that using a time switch to cause the appliance to work (and to do its *melacha*) would be the same as allowing a gentile to use it. The issue is not whether the gentile does *melacha*, but whether the utensil does it. Unlike a millstone, these appliances require the action of switching on the circuit. The mill moves automatically, due to the water or the wind.

It might be possible to satisfy this view as well, depending on the circumstances. When appliances turn themselves on or off, no actual *melacha* is violated. It only becomes an issue when the utensil's normal use involves a human setting it up to do a *melacha*. For example, electronic appliances that always work automatically, such as the central heating system, could be classed in the same category as a pot full of dye. A regular lamp, which is usually switched on manually, may not be switched on on *shabbos*, by a gentile or by a time switch.

A dishwasher is also usually turned on manually. Turning it on involves electricity, but this is not the *melacha* that the utensil does. The *melacha* is washing the dishes, including some form of cooking and any other *melachos*. These functions do not need direct human intervention, but they are not passive results of the utensil standing still. Is the human involvement considered human based *melacha* or is it utensil based *melacha*? We would need to define the problem, according to this view, and to determine whether this fits into the category of forbidden utensils.

Vending machines could fall into three categories. (i) Simple mechanical devices, such as newspaper or bubble-gum machines, involve no *melacha*. (ii) Washers and dryers involve multiple *melachos*. However, as mentioned, these *melachos* do not require human activity. They happen automatically. (iii) Refrigerated beverage machines could involve *melacha*. However, the *melachos* involved are not intrinsic to the function of the machine. The ways the money is registered, the selection is made, the item is dropped, and the cans are kept cool, involve *melachos*. These *melachos* are not necessary for the true function of the machine, that is to supply a drink in return for the money. Each of the activities could be done without the need for the *melacha*. This makes it more acceptable than a washer or dryer. However, on the other hand, the selection and release involve a human action. Even accepting and registering the money requires the human to drop the coins or feed the bills. Vending machines often use some kind of reading device for bills, and sometimes, for coins as well. [One could argue that the human involvement in this particular *melacha* is indirect.] Accordingly, we will need to deal with *shevisas kailim* to resolve this issue. [See *Shabbos* 17b-19a, poskim. Tur Sh Ar OC 246:1-2, commentaries.]

Before applying the discussion so far, we will need to address a subject that combines *sechar Shabbos* with *shevisas kailim*, known as *sechar kailim*. *To be continued ..*
On the Parsha ... Zevulun will settle at the coast of the sea, he will be at the coast of the ships, and his thigh will be until Zidon .. [49:13] His land will be on the coast, but he will always be found at the harbor, taking merchandise off the boats. Zevulun conducted business to support Yisachar who studied Torah [Rashi]. Zevulun was stretched in many directions, doing business, while Yisachar stayed in one place, studying Torah [Kli Yakar]. The younger Zevulun is blessed before Yisachar, due to his support of Yisachar's Torah study. Perhaps there is more to it. Zevulun could have directed the business from the comfort of home. However, he saw his role as merely the supporter of Yisachar. His personal needs would be satisfied after Yisachar had been provided for. He would be the worker-partner, like an agent on commission, while Yisachar should stay in comfort and study, like the senior partner.

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

© Rabbi Shimon Silver, January 2009.

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