

# 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 laundry 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.*

### Part III

#### D) *Sechar kailim*

The next issue to discuss is related to the *shvisas kailim*. Though, as we shall see, most poskim distinguish it from *shvisas kailim*, its source in the Talmud is the subject of debate. Some poskim clearly connect it to *shvisas kailim*. In applying it to our case, this will actually lead to possible leniency. If it really is only an issue of *shvisas kailim*, we need not be concerned about it. We follow the ruling that permits the use of the utensils.

The Talmud cites a source forbidding renting utensils to a gentile on *Erev Shabbos*, but permitting it on Wednesday or on Thursday. Some poskim cite this when ruling on the *halacha*, while others omit it. In the absence of a conflicting view, this requires some explanation. Why omit what appears to be a conclusive ruling?

The conventional explanation attributes the debate to the relevance of this source to the dispute about *shvisas kailim*. The view that omits the ruling maintains that this source follows the stringent view on *shvisas kailim*. In that view, one may not let the gentile use his *kailim* on *Shabbos*. Since we do not follow that view, one may indeed rent his utensils to a gentile on any day. The main objection raised to this (omitting) view is that if this is

the reason, why does the Talmudic passage permit renting it to the gentile on Wednesdays or Thursdays? The gentile will use the utensils on *Shabbos* anyhow!

The view that does not omit this source maintains that it refers to another issue. Even if *shvisas kailim* is not required, one may not benefit from the use of his utensils on *Shabbos*. That is, this source refers to *sechar Shabbos* from one's utensils. Accordingly, it applies to all utensils, whether they are used for *melacha* or for non-*melacha* uses. If they are rented on Wednesday or Thursday, the profits are paid for the entire period, i.e., *behavla'ah*. This is permitted. According to this view, only renting utensils is forbidden. Loaning them to the gentile is permitted. No gain will be earned from the *Shabbos* use.

Actually, the exact terminology used by the poskim is that it has the 'appearance' of *sechar Shabbos*. Some poskim question the distinction between a gentile renter and a Jewish renter, if the issue is the appearance of *sechar Shabbos*. Therefore, they interpret the case as follows. No item may be rented solely for *Shabbos*, even by the day, including *Shabbos*. This is real *sechar Shabbos*. It may be rented only *behavla'ah*. If the item being rented is not used for *melacha*, it may be rented even on *Erev Shabbos*, and even by a gentile. If it is used to do *melacha*, one may not rent it to a gentile on *Erev Shabbos*, even *behavla'ah*. An onlooker might suspect that it was not rented at all. He will think that the gentile is doing the work of the Jew on *Shabbos*. This is *mar'is ayin* of *amira le'akum*. This does not apply to a Jewish renter, or to a gentile renting it early in the week.

There are other ways to explain this passage. We mentioned a view that requires *shvisas kailim* even according to the lenient view, if the utensil is used by a human to do *melacha*. According to this view, this source refers to *shvisas kailim*. One may not rent utensils that are used for *melacha* to a gentile on *Erev Shabbos*. He may rent them to the gentile earlier in the week, but must request their return before *Shabbos*.

Another explanation revises the entire issue of *sechar Shabbos*. Until now, we have assumed that it is forbidden to profit from any payment made for *Shabbos*. The other way to view it is that working for pay is similar to *melacha*. Whenever there would be a prohibition against *melacha*, there would be a prohibition against *sechar Shabbos*. The view that does not require *shvisas kailim* maintains that there is no prohibition against '*melacha*' on utensils. Therefore, it would be permissible to take payment for their use on *Shabbos*. The opinion forbidding use of the utensils for *melacha*, due to the requirement of *shvisas kailim*, would also forbid benefiting from their use for non-*melacha* uses, as *sechar Shabbos*. If we follow the view that does not require *shvisas kailim*, and the gentile does no actual work, the payment would be permissible. It is plain profit.

A similar explanation is that the initial prohibition is a precautionary decree. Benefit from permissible work is forbidden, lest one do real *melacha* for payment. This only makes sense with regard to physical work done by the person himself. If he does no work, but his utensils do it all, there is no reason to make the decree, unless one forbids *melacha* done by utensils, i.e., *shvisas kailim*. [See *Shabbos* 17b-19b Avoda Zara 14b-16a 21b, commentaries. Tur Sh Ar OC 243:2 245 246 etc., commentaries.]

#### **Review and application: Modern applications – vending machines**

We are now ready to apply these ideas to the cases of the Laundromat and vending machines. In the case of the vending machines, on the surface, it would appear that nothing could be wrong. If one may arrange for a real *melacha* to take place by itself, one should certainly be permitted to arrange for *mekach umemkar* to happen automatically. However, as we have mentioned, some poskim differentiate between these two situations.

When placing wheat into a mill, every part of the *melacha* that follows happens by itself. When one arranges that a transaction, *mekach umemkar*, should complete itself, he needs intent. It is the buyer's action that finalizes the seller's intent. Since it depends on the consent of the parties, whenever and however it happens, it should be considered as though each party is doing something on *Shabbos*. Others reject this concern. The seller has consented to the deal before *Shabbos*. All he needs to 'do' is, refrain from retracting. Thus, no additional action could be read into the fact that the intent is still needed.

However, the buyer places coins into the machine, which belongs to the vendor. The buyer then removes the candy or soda from the possession of the vendor. This should be considered a straightforward transaction involving active *mekach umemkar*.

The vendor could stipulate before the money comes into his possession that he does not wish to make the acquisition. Still, the buyer took possession of the item, unless one wishes to consider him stealing. Furthermore, this only solves the issue of *sechar Shabbos*. The transaction did take place, and the vendor did nothing to stop it. In fact, he is perfectly happy to let it happen, inasmuch as it gave the buyer what he wanted when he wanted it. One could stipulate that he wishes to do his part of the *kinyan* on *Erev Shabbos*. I.e., as we mentioned, in Jewish law a *kinyan* requires the active participation of the vendor. He makes the *hakna'ah* on *Erev Shabbos*. There is still an outstanding issue. The gentile will be remove the item he purchased from the property of the Jewish vendor.

#### **Gentile taking purchase from premises of Jew on Shabbos**

The Talmud debates whether one may sell, give or loan items to a gentile right before *Shabbos*. One opinion requires that there be enough time for the gentile to reach his home before *Shabbos* with the article in question. The other view only requires that there be enough time for the gentile to leave the property of the Jew by then. This debate applies even to helping the gentile actually pick the items up and take them. All agree that it is forbidden on *Shabbos*. It is also forbidden to make the transaction before *Shabbos* if the gentile will be removing the item on *Shabbos*. The debate is on how much time before *Shabbos* one must do it to be permitted.

The poskim debate the reason for the prohibition if the gentile takes it on *Shabbos*. The main two explanations are that the gentile will look like the agent of the Jew, making a delivery, or that it will look like the Jew actually sold it on *Shabbos*. The first view forbids it as an extension of the laws of the appearance of *amira le'akum*. The second view considers it an extension of the appearance of *mekach umemkar*.

The third way to explain this passage will cause us more problems. There is an opinion that permits letting the gentile remove it on *Shabbos* if he was given the rights to the spot where it lies before *Shabbos*. One explanation of this view is that the reason it is forbidden to let the gentile remove the item on *Shabbos* is because he did not yet acquire it. Removing it causes the acquisition, and is the equivalent of actual *mekach umemkar*. If he acquired its space before *Shabbos*, he can acquire the article left there. Therefore, he may remove it later, on *Shabbos*. This view considers it real *mekach umemkar*.

However, some question these assumptions. If there was concern about acquisition, all authorities would explain the initial prohibition in this way. Apparently, according to the main two views, the actual *kinyan* is not even an issue. One could say that the case refers to taking an item that was already acquired through other means of *kinyan*. Some say that a gentile can make a *kinyan* through lifting an item up in the air, or with other means. If the item is such that the only way a gentile can make a valid *kinyan* is by

removing it from the domain, evidently, in these views, the gentile's part in the *kinyan* is not an issue. The reason seems to be that the prohibition against *mekach umemkar* is not on the effectuation of the transaction, but on the actions that take place. Since the Jew does none of the actions on *Shabbos*, but lets them happen, he is not considered involved.

Applying this directly to vending machines, we will assume that the vendor can consider it as though he does nothing on *Shabbos*. The sale happens by itself. The only action is taking place at the hands of the gentile purchasers. Since the Jew has no idea when or even if the gentile will take the item, the gentile could not be considered his agent. *Maris ayin* would only apply if the vending machine were situated in a Jewish owned domain. In a public domain, it would be permitted. There is some question whether a stipulation before *Shabbos*, disowning the property, would work. The onlooker could never know this. In similar cases, *maris ayin* is forbidden even after a Jew sells something to a gentile [if the Jew still has control over what takes place later]. Onlookers consider the item belonging to a Jew. A prominent sign changing the name might mitigate this. In a non-Jewish area, and far enough away from the Jewish neighborhood that Jews could not go and see it, *maris ayin* can be 'overlooked'. Accordingly, those opinions that are not concerned with the completion of the transaction, but with the action itself, would be satisfied. Those concerned with the completion of the transaction would require disowning the location before *Shabbos*. This way, the gentile could not make his *kinyan* by removing it from the Jew's property on *Shabbos*. In summary, if the vending machine is on property that does not belong to the Jew, this issue does not apply. If the property is Jewish owned, but outside the Jewish neighborhood, disowning possession before *Shabbos* helps. [See refs as above.] *to be continued ..*

**On the Parsha ... they will not leave empty-handed. Each woman shall borrow/ask of her neighbor and of the woman living in her house, silver utensils and gold utensils and garments ... [3:21-22] 'Borrow' in this context means an outright gift. [Rashbam, Daas Zekainim]** Thus, they would not be accused of deceiving the Egyptians. Others say *it does mean to borrow. This was a mitzvah, and cannot be second-guessed. All possessions belong to Hashem, anyhow. [Ibn Ezra]* If it means a gift, why use the term for borrow? Why does the Torah refer to women only? Why refer specifically to neighbors? [See *Ibn Ezra*] A woman may not give away items, since her husband might not agree! One may not even accept such items! [Elsewhere men are also mentioned, as are 'friends'.] What is 'the woman living in her house'? Why was it so important that the Jews take these utensils with them? So that *Avraham Avinu* would not complain: "[Hashem] fulfilled his commitment to enslave the Jewish people, but did not follow through on his commitment that they would leave with a large fortune!" Really, this promise would be fulfilled many times over through the spoils at the *Yam Suf*. This 'borrowing' was for appearances only. While in *Mitzrayim*, the Jews amassed property, with live-in servants. When the Jews would leave, the neighbors and the live-ins would take over the property. [See *Malbim*] Taking a borrowed item from the property would be *maris ayin* of making an acquisition.

♠ In honor and in memory of my mother, Yittele bas R. Shimon a'h, Henriette Silver. ♠

**Sponsored by Dr. Noah Bass in memory of his mother, Goldie bas Shmuel, a'h, whose**

**yahrzeit is on the 25<sup>th</sup> of Teves.**

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