

HALOCHOSCOPE

This week's question:

A family is ready to move into a new home. The kitchen counters will only be installed on *Erev Yomtov*. May they make their move on *Chol Hamoed*?

The issues [mostly excerpted from Halochoscope XI:39]:

- A) *Melachos on Chol Hamoaid; Mekach umemkar, commerce; Tircha, exertion*
- 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; Tircha*

Chol means, literally, mundane or non-holy, especially 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. *Moaïd* 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. It commemorates the holiday. *Yaaleh veyavo* is inserted in the weekday *shemone esrai*. *Halel* and *musaf* and special Torah readings are recited. *Kiddush* is not recited. There is no obligation to eat bread meals. One must eat to fulfill *simchas Yomtov*. Some say, nowadays one must drink 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. It is considered both *Chol* and *Moaïd*. Thus, the Talmud says, the Rabbis have authority to decide the level of *melacha* restriction. Some consider this Scriptural with Rabbinical guidelines. Others maintain that the Scriptural references are *asmachta*, linkage to support a Rabbinical ordinance. It is 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, threshing, (juicing), sorting and milling or grinding are forbidden on *Yomtov*, unless 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 appliances and driving.

Commercial activity is also restricted on *Shabbos* and *Yomtov* Rabbinnically. It involves writing and it is mundane. On *Chol Hamoaid* writing is also restricted. 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.

Tircha, physical or mental exertion without *melacha*, is also restricted. The Talmud's example of this is our case. One may not move furniture from house to house passing through a street. Moving within the same compound, there is less *tircha*, and it is less public, and is therefore permitted. One may also move to the next house over, even through a street. There are other exceptions: if one wishes to move from a friend's home to his own home, it will give him *simchas Yomtov*. [This refers to one who was living as a guest of his friend]; if one moves from a non-Jewish neighborhood to a Jewish one, he will feel joy. Such cases should be dealt with individually by a competent *rav*.

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 commercial 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 dispensation 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 say the *mitzvah* of *simchas Yomtov* expands *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*. It has become acceptable to travel by car as a fulfillment of *simchas Yomtov*. *Tzorech mitzvah*, needs for a *mitzvah*, are combined with reasons such as availability or the enjoyment of *Yomtov*, to ex-

pand the *tzorech moaid* concept. *Tzorchei rabim*, communal needs are always considered *tzorech hamoaid*. They need not be *davar ha'avaid*, and in some cases, may be planned for *Chol Hamoed*. This saves money from public funds. Workers who are off and not permitted to earn their regular 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 reinforce *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, agricultural work that cannot wait may be done in the easiest way, albeit less economical. [See Chagiga 18a, Moed katan 2a-13b Yerushalmi 2:3 etc., Avoda Zara 22a, Makos 23a, Avos 3:11, Poskim. Tur Sh Ar OC 530 535 etc., commentaries. Chol HaMoed 2:note 12.]

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 Rabbinnically. 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 servant. This refers to a servant who is not otherwise obliged to observe *mitzvos*, i.e., a gentile. *Chol hamoaid* would be included in this restriction.

Something forbidden doubly Rabbinnically is permitted *letzorech mitzvah*. Assuming *melacha* on *Chol Hamoaid* is Rabbinnically forbidden, one may ask a gentile for help in performance 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 directly. Accordingly, anything public or attached to the ground on a Jew's property is forbidden. Many poskim maintain that if the common local practice is to engage only contractors for certain work, it is permitted. Onlookers will not falsely suspect that the gentile was instructed specifically. One must still try to tell the gentile not to do it on *Shabbos*. [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 prevented earlier. One may not delay an activity, including *melacha* or *tircha*, to coincide with *Chol Hamoaid*, to be able to do it then, relying on *davar ha'avaid*. This is forbidden Rabbinnically, 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*, *tircha* 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*.

In our case, we will assume that the move will be done by gentile workers. There might be no *melacha* necessary. If the movers wish to, they can move the items without even driving, so their use of electricity is their choice. However, it involves *tircha*. It also raises the issues of *mechavain melachto* to ask a gentile to do something. It involves *mekach umemkar* on the part of the Jew. It is not a *davar ha'avaid*, preventing financial loss. The issue of *simchas Yomtov* is subjective, tempered with the mental exertion of the move. Our questioner can claim that he is an *oness*. He did everything he could to move in before *Pesach*. The contractors caused the delays. This is the classic case of *oness*. The issue is whether he should delay things more by waiting until after *Chol Hamoaid*. The *oness* mitigates the issue of *mechavain melachto*. However, the matter is not so pressing that it has become a *davar ha'avaid*. He could delay the move, as long as he will not lose out on the opportunity to sell his first home. On the other hand, having prepared for the move, much of his belongings are packed. Moving will certainly provide him with the ability to unpack and enjoy *Yomtov* more. Nonetheless, contemporary poskim maintain that a modern home has so much to move that it is hard to permit a move in the exceptional cases mentioned earlier. If they can manage temporarily without a kitchen, the family could move before *Yomtov*, but leave the kitchen stuff in the old home. After the kitchen is installed, moving the kitchen stuff on *Chol Hamoaid* would be permitted for many of the reasons mentioned. If dividing the move will cause him a loss, he could claim that the move on *Chol Hamoaid* is to avoid the loss. However, he could negotiate a deal with the movers that will not incur this loss. Otherwise, they should not to move on *Chol Hamoaid* at all. [See Moed Katan 11a-13b, Pokim, Tur Sh Ar OC 537:16 538:1-3 539:4-9, commentaries. Chol HaMoed 9:note 59 12:note 76.]

In conclusion, if the main move is done before *Yomtov*, the kitchen move may be done on *Chol Hamoaid*, if one can do so without major additional expense.

On the parsha ... *The one who "the house is his" ... will move [everything] out of the house ... [14:35-36] One who selfishly keeps his house to himself. He does not loan his items, claiming he has none. Hashem publicizes his selfishness. [Erchin 16a] Why does the Talmud need an additional reason for the nega? Does it not all begin with lashon hara! Not every nega is deemed impure. Sometimes the ruling is to permit everything to be moved back into the house immediately. Even so, the tircha and embarrassment are punishment for selfishness.*

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