

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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A Deeper Look

לע"נ הרב אהרן בן הרב גדליהו ע"ה

DOES YOUR BUSINESS KEEP SHABBOS? THINK AGAIN

afternoon, he can be found reclining on a comfortable sofa and enjoying a story about the great rav of a *kehillah* of old who circulated around the local marketplace late Friday afternoon, cajoling people to close their businesses.

Yankel, of course, would never dream of working on Shabbos. Yet he is blissfully unaware that his own relationship with Shabbos is seriously compromised: His health care facility is open on Shabbos, which can involve numerous Shabbos violations on Yankel's part without his even realizing it.

This problem is more pervasive than people think. Many people close their offices on Shabbos, for instance, but don't realize that the building's non-Jewish superintendent or doorman is working on Shabbos. Furthermore, the dynamics of today's business environment frequently require that a company operate around the clock, seven days a week. Patients at a health care facility require constant care, and the tenants of a commercial mall, residential building, or upscale property expect immediate service when repairs are needed — and the superintendents at these facilities are contractually obligated to provide that kind of service.

With a large dose of forethought and preparation, along with a bit of ingenuity on the part of a competent rav, Yankel's business model could be set up in a way that avoids Shabbos desecration, and he could indeed rest peacefully as he enjoys Shabbos the way it was meant to be.

Before discussing some of the strategies that Yankel — and many other business owners like him — can implement in order to steer clear of *chillul Shabbos*, we must stress that the relevant *halachos* are complicated and that each business is unique, so no business owner should independently implement a halachic solution given to another business owner. The solution formulated by the rav is custom-tailored to the business under discussion, and the owner of any other enterprise must consult his own rav and formulate with him a model suited to his business alone.

A commonly practiced method for businesses to avoid *chillul Shabbos* is

the pro forma sale of the company to a non-Jew. This is known as *heter mechirah*, and it involves a non-Jew taking halachic ownership of the company on Shabbos and Yom Tov, while the Jewish owner retains the legal responsibility for all operations of the company. This arrangement is by nature a *haaramah* — a ploy to avoid transgressing, and ever since its inception in the nineteenth century, it has been frowned upon by many *poskim*.

Yet other, better alternatives to *heter mechirah* do exist. Before examining them, let us first consider two major issues involved in running a business on Shabbos: performing *melachah* on Shabbos, and *schar Shabbos* — earning profits from the operation of the business on Shabbos.

Unlike Yankel, Elimelech and his partner, Yosef, consulted with a rav early in the development of their business model, to ensure that they would be able to provide service to their customers seven days a week without infringing upon the holiness of Shabbos.

Elimelech and Yosef planned to open an assisted-living facility for non-Jewish seniors that would emphasize wellness and socialization. As they shaped their vision, the marketing team they had hired mentioned casually that they intended to hold a sales event on Saturday, since that is prime time for engaging with prospective residents. Upon hearing this, Elimelech and Yosef realized that this and other aspects of their proposed business might be problematic in terms of Shabbos observance: the 24-hour call service, the social workers seeing clients on Shabbos, and the activities scheduled for residents on Shabbos, some of which involved *melachah*.

Elimelech and Yosef wanted their business to be one hundred percent *lechatchilah* and not to rely on any questionable leniencies, so they met with a rav to discuss if and how they could open their assisted-living facility in a way that complied with halachah.

The rav explained to them that even though they, the Jewish

DID YOU KNOW?

Earning interest from a savings account on Rosh Hashanah can be considered Schar Shabbos/Yom Tov

(see Igros Moshe 4:59, Be'er Moshe 5:100)

Ask your Rav or email ask@businesshalacha.com for guidance and solutions.



owners, were not planning to participate in the Shabbos marketing event, it was nevertheless not permitted to hold the event as planned, since it involved *amirah l'Akum*: a non-Jew performing prohibited work for a Jew on Shabbos. Because the non-Jewish marketers are working for the Jewish owners, the fact that the owners did not specifically tell them to hold the event on Shabbos does not help the owners avoid this prohibition. The owners are therefore obligated to object and prevent the marketers from doing work for them on Shabbos. The marketing event would therefore have to be held on a different day of the week — Sunday, perhaps.

But the rav then presented an alternative solution that would make it possible for the marketing team to hold their events on Shabbos. He explained to Elimelech and Yosef that there are three possible arrangements through which a non-Jewish employee might perform work on Shabbos for a Jewish employer, two of which are prohibited. The first arrangement involves a *sechir yom* (day laborer), who is hired specifically to do work on Shabbos, and is performing that work for the Jewish owner. This is obviously not allowed.

The second type of worker is a *kablan* (contractor), who is paid for the completed job. An example of this is an auto mechanic, who is paid when a part is replaced and the car is restored to its proper function. One may not specifically ask the non-Jewish *kablan* to do the work on Shabbos, but he does not have to be instructed not to do the work on Shabbos, as it is his prerogative when to do the work. Nevertheless, if a person sees the *kablan* performing the work on Shabbos, he must voice his objection, as his silence would indicate tacit approval. If the non-Jew still prefers to do the work on Shabbos, then he is not considered to be doing so on behalf of the Jew.

The third type of worker is an *aris*, a worker who has a profit share. This type of worker is actually working for himself, in order to increase his own profits, and is not considered to be working for the Jew.

If the non-Jewish marketing company is granted a profit share, and they therefore earn commission from their events, then the marketing staff would be considered in the category of *aris* and working for themselves when they bring new clients to the facility. They would then be permitted to hold their events on Shabbos.

The same solution could work for the 24-hour call service as well. If the Jewish owners outsource the call service — either to an outside company or to a new company set up by the partners that includes a non-Jewish shareholder — then the company responsible for the call service can be deemed an *aris*, in which case they are allowed to provide their service on Shabbos.

As far as the non-Jewish social workers seeing clients on Shabbos, the fact that they travel to and from the facility on Shabbos does not pose any issue of *chillul Shabbos*, since the travel is not part of their job. Although social workers generally take notes while speaking to their clients, technically they can write their notes after Shabbos, and the fact that they choose to take the notes during the session on Shabbos is their own choice, and not part of their job.

The activities scheduled at the facility for Shabbos may involve the most blatant Shabbos violations, but the solution to this issue is actually the easiest. Although some activities involve outright *melachah* — baking, sewing, and art, for instance — other activities do not. Yoga and exercise classes, although not a good choice of activity for Jewish people on Shabbos, do not involve *melachah*. Therefore, the management of the facility can simply schedule exercise and similar non-*melachah* activities on Shabbos, and hold the other, problematic activities during the week.

Let us consider another scenario. Shlomo wishes to purchase a trampoline park, and since Shabbos is a peak day in the amusement park industry, it is important that the trampoline park remain open on Shabbos. While it would be a nightmare to give each low-level park worker a profit share, it *would* be reasonable to offer a non-Jewish executive a profit share and then have him employ the workers at the park on Shabbos.

The trampoline park presents another issue as well, since the Jewish owner is profiting from the admissions paid, and thereby benefitting from *schar Shabbos*. The Friday whole-day pass poses no problem, since the revenues earned on Friday night are bundled with the Friday morning and afternoon revenues, rendering them permissible, as they are earned *b'havlaah* ("swallowed" by the permissible revenues). The same applies to the Saturday whole-day pass, which is bundled with the Saturday night hours. The Friday night and Saturday hourly passes do pose a problem, however, since they are not bundled with any permissible hours.

Shlomo's rav suggested an ingenious solution: Have the weekend hourly passes include a cup of slush, thus transforming the sale of the passes into *havlaah* and avoiding the *schar Shabbos* problem.

In addition to the major issues of *melachah* and *schar Shabbos*, operating a business on Shabbos — even in the manners outlined above — can involve the prohibitions of *maris ayin* (giving the appearance of transgressing), *mekach u'memkar* (conducting business transactions on Shabbos), and *kovei'a melachto b'Shabbos* (assigning work to be done specifically on Shabbos). Earning interest on Shabbos and Yom Tov can also be problematic, as can operating a business in different time zones, considering that Shabbos begins and ends at different hours in different places.

Each of these issues poses its own challenges of Shabbos observance, but solutions do exist. Obviously, consulting a rav *before* launching one's business operations will ease the implementation of these solutions, as the business model can be set up to conform with *halachah* from the get-go. If a business owner makes the proper arrangements from the start, Shabbos will not be a speed bump for him — rather, it will present him with the opportunity to infuse his business with the holiness of Shabbos.

To Yankel's good fortune, his friend pointed out to him that it would be wise to speak to a rav and ensure that the running of his healthcare facility does not involve any Shabbos violation. After consulting with his rav and adjusting his business contracts and practices to comply with halachah, Yankel can now truly relax on Shabbos afternoon, with the added contentment of knowing that his business is truly Shabbos observant.

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