



Parshas Mishpatim 5764

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### *May one hire a gentile worker on Shabbos?*

The *Torah* prohibits us from doing 39 *melachos* on *Shabbos*, which include many *issurim* that are called *toldos* or offspring. The *toldos* are also prohibited from the *Torah*. *Chazal* added many prohibitions which are intended to prevent one from violating an *issur d'oraisso*. They are called a *sh'vut* or *issurei d'rabanan*.

Another category of prohibitions is called *דברי קבלה* – Words of the Prophets. From the *posuk* in Yeshaya "ממצוא חפצך ודבר דבר" we learn that one may not speak on *Shabbos* in a weekday manner, nor may one conduct business transactions on *Shabbos*. This *halacha* includes many subsections and we will *be"H* deal with them in the future.

Hiring a worker on *Shabbos* falls under the section of conducting business transactions on *Shabbos*<sup>1</sup> and accordingly one may not hire even gentile workers on *Shabbos*.<sup>2</sup> One may not even instruct a gentile to hire workers for after *Shabbos* because once again one is conducting business.

### *What if I make an arrangement with the person to come only after Shabbos?*

The actual hiring is prohibited and it is irrelevant when you want the person to work for you. So much so that the *Shulchan Aruch* teaches us<sup>3</sup> that one may not say to

one's friend (Jew or gentile) "be prepared tonight" if it is understood that you would like to see that person after *Shabbos* in order to hire him. The fact that you are instructing the person to come and see you after *Shabbos* is equivalent to speaking about business matters.

Therefore one may not say to a taxi driver "please be prepared after Shabbos" because one is hiring him for after Shabbos.

However, one may say to him "do you think that you can come after Shabbos" or "I would be happy to see you after Shabbos", because in both cases one is not hiring the taxi driver, rather one is *hinting* that one would like to hire him after Shabbos.<sup>4</sup> Talking about such affairs on *Shabbos* is prohibited.

### *I do not really see the difference between the two cases.*

It depends on whether one instructs or tells someone to do something, in this case – hiring the person, or whether one hints at something and both people merely think about the *issur* without saying it.<sup>5</sup>

### *Does that mean that I can hint to a gentile to do a melacha for me?*

No it does not, and since the *halachos* are very complicated we will attempt to simplify them. First we will discuss the issues of a

<sup>1</sup> M"B *simon* 307:7.

<sup>2</sup> *Mechaber simon* 307:2

<sup>3</sup> *Simon* 307:7.

<sup>4</sup> See the *SS"K* 29:52.

<sup>5</sup> M"B *simon* 307:29.

gentile performing *melachos* after Shabbos and then we will concentrate on cases where the gentile performs *melachos* on Shabbos itself.

One may not instruct a gentile to perform an *issur* after Shabbos. <sup>6</sup> Therefore, one may not say

- please turn off all the lights after Shabbos.
- please start the car straight after Shabbos.
- please start the dishwasher straight after Shabbos.

However, one is permitted to give an instruction to do something after Shabbos if there is a permitted way to do it, even though the person might do it in a prohibited manner. Therefore, one may say

- please peel the onions after Shabbos for *melaveh malkah*. This is because one may peel onions on Shabbos close to a meal.
- please wash the dishes after Shabbos for *melaveh malkah*, This is because one may wash dishes before another meal on Shabbos as well. Even though the gentile will use the dishwasher, since there is a permitted way to wash the dishes it is not considered as if one is instructing the person to do an *issur*.
- please tidy the house after Shabbos. This is because there are permitted ways to do this on Shabbos as well.
- I left my *tallis* at shul, please fetch it for me. This is because the *tallis* can be also be brought home in a permitted manner on Shabbos, either through wearing or carrying if there is an *eiruv*.

All of these cases are applicable to instructing a Jew as well.

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<sup>6</sup> *Simon* 307:2 and *M"B* 8-9, and *SS"K* 29:51.

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## Vort on the Parsha

The *possuk* says (22:26) that *Hashem* will hearken to the cries of the orphans and widows because He is merciful. The Torah also tells us that the tormentor's punishment will be a harsh one. Is there a connection between the two ideas?

The *Maharil Diskin* says that a usually merciful person can sometimes be harsher than a cruel person. When a cruel person sees injustice being done he might calmly walk by and not interfere, whereas a merciful person might burn up inside and champion the injustice. Usually, he says, the *מידת הדין* – demands punishment for wrongdoings and the *מידת הרחמים* protects and protests mercy, however, where an injustice is done to orphans and widows it is the *מידת הרחמים* who also cries at the injustice and demands retribution. In such an even it is both the *מידת הדין* and the *מידת הרחמים* who demand justice, in which case retribution is at its peak with no mercy.

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## Food For Thought

*Is one permitted to instruct a gentile before Shabbos to perform a melacha on Shabbos?*

*What if I only hint?*

*What am I permitted to instruct a gentile on Shabbos to do for me?*

*What if the gentile turns on the lights for me without my instructing him to do so?*

Answers coming next week.

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**Note:** The purpose of this series is intended solely for the clarification of the topics discussed and not to render halachic decisions. It is intended to heighten everyone's awareness of important practical questions which do arise on this topic. One must consult with a proper halachic authority in order to receive p'sak.