

## Can a Jew Keep a Business Open on Shabbos?

**Rabbi Shmuel Honigwachs, Rabbi Daniel Dombroff, Rabbi Yosef Kushner**

**Case:** We know that in general, a Jew is not allowed to keep his business open on Shabbos. But there is a concept known as the *"heter mechira"* that transfers the ownership of the business legally to a gentile.

**Question:** Are there certain businesses that are better candidates for this *"heter mechira"* than others?

**Answer:**

**Rabbi Honigwachs** - The first notion to keep in mind is that if a business can close on Shabbos, it must. We do not say that a business may remain open on Shabbos at all costs simply because otherwise it would need to close or because the owner wants to earn a respectable profit.

However, certain businesses, such as nursing homes must stay open since they have a legal arrangement to stay open. In these cases, the *poskim* attempt to create a *heter* to allow them to function. This *"heter mechira"* is considered a more *bedi'eved* one, and some *rabbanim* do not allow it.

Therefore, it is preferable to use a better *heter* if at all possible.

(But) in my experience, when purchasing a nursing home, it often takes time to work out the details of how to manage the business on Shabbos (especially if it is located in places where there are no religious Jews and the employees are not familiar with the rules of Shabbos). In these cases, it is indeed necessary to take the more *bedi'eved heter* of selling the business to a non-Jew.

**Rabbi Dombroff** - One of the issues raised with selling the business to a non-Jew is that it appears to be a *ha'arama*, or halachic loophole. This is definitely mentioned by the *poskim* as a potential issue, as the solution can appear to be not so serious, and the *heter mechira* doesn't really change the situation, as even though it is "technically" sold to a *goy*, the employees are still essentially working for the Jewish owner. He is still the CEO in essence. At the Bais Havaad, we work very hard to reduce the *ha'arama* and structure the sale in a professional way, with the basic idea being that the Jew sells the non-Jew a portion of the business. The non-Jew does not pay for it up front, and will therefore have a large financial obligation. The seller is therefore more entitled to take *ribbis* (interest) from him, and the Jew consequently has intrinsic rights to a large amount of the money earned on Shabbos by the gentile. Nevertheless, the body of the document is quite real and effective legally, and many safety features are also inserted to ensure that no one is harmed financially.

Putting all of the practical considerations aside, we should also note that according to the *Chasam Sofer*, *ha'arama* is not absolutely forbidden, neither here nor regarding *mechiras chametz*, as in his opinion, we cannot create new cases of *ha'arama*. Rather, only cases defined by the Gemara as *ha'arama* (see, e.g. *Shabbos* 139b) constitute a halachic problem.

Rav Moshe Feinstein has a fascinating *teshuva* about timers. He argues that

Chazal would have forbidden timers because of *amira l'akum*. The prevalent minhag is not according to Rav Moshe's more stringent position about timers. However, it is interesting to note that Rav Moshe probably would hold that using robots to do *melacha* on Shabbos (which could theoretically be possible at some point) might also be problematic due to the concern of *mimtzo cheftzecha* (having one's business dealings taken care of on Shabbos). The point is that we must ensure that the owner is disconnected from the Shabbos desecration that takes place in his business, and this point is relevant in our situation as well.