

May a Jew Keep a Business Open on Shabbos? Part 2

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

In Part 1, we began discussing the case and question below with responses by Rabbi Honigwachs and Rabbi Dombroff. Part 2 begins with a continuation of the discussion and comments by Rabbi 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 “*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?

Rabbi Kushner: There are a few additional points that must be made here.

First, purchasing a nursing home or hotel is not a process that takes place in a few hours. Such transactions can take months or even a year to complete, but unfortunately it seems that many individuals do not even consider the halachic challenge of how it can remain open on Shabbos until the final moment. At that time, they may be forced to rely on leniencies that they prefer to refrain from using in the long term, such as the *heter mechira*, but the situation could have been avoided had they placed the issue at the top of their priorities from the beginning.

Second, let us better clarify which businesses should rely on the “*heter mechira*” and similar leniencies and which should not. A store that has a physical location and is theoretically capable of closing on Shabbos must be closed. One cannot rely on halachic leniencies simply to maintain the financial viability of the operation, as this seriously breaches the sanctity of Shabbos in the eyes of others.

This is different than a nursing home or similar institution, where there is no practical manner that it can close on Shabbos, as the residents must be able to receive services there on Shabbos as well. This is also different than an online business, where the breach of sanctity is significantly less, since most people know that the entire operation occurs automatically and the owner does not do anything to facilitate the business. As a result, halachically permissible methods of running an online business do exist (though not all *poskim* agree that one may maintain the website as usual on Shabbos).

(See <http://baishavaad.org/commerce-on-shabbos-and-yom-tov/>)

Question: It is no secret that some rabbinic authorities oppose the *heter mechira* for Shabbos. Is this opposition halachic in nature, hashkafic, or both?

Rabbi Honigwachs: The opposition definitely has a halachic component to it. Although Rabbi Dombroff pointed out in the previous session that some *poskim* limit the notion of a problematic *ha'arama* to cases mentioned in the

Gemara, nevertheless some contemporary *poskim*, such as Rav Shlomo Miller, do consider this *heter mechira* for Shabbos to constitute a problematic *ha'arama* (halachic loophole) and are strongly opposed to it. It should also be noted, though, that the *heter mechira* used by the Bais HaVaad and others nowadays differs from that used by the *Divrei Chaim* in earlier times (which could be was less problematic). In his case, a non-Jew who had a debt owed to the Jewish owner bought the business, and any profit he earned on Shabbos was credited towards repaying the debt. Thus, he was the one that primarily benefited from the arrangement. In contrast, the type of *heter mechira* used most widely today is where the non-Jew has no liability and the only benefit he receives is directly from the earnings of the business.

With regard to the point of Rabbi Kushner who strongly recommended that the owners of nursing homes and the like consider the issue of Shabbos at the beginning of the process of the purchase, in their defense we can at least note that they are to be commended for attempting to consult with a rabbinic authority even a few minutes before Shabbos so that the issue is addressed. At that time, they are willing to do anything to resolve the problem, and we must help them as much as possible. We can be lenient to find some solution for them then (even the lowest level of the *heter mechira* can often be implemented) and then over the next week, encourage them to expend the effort necessary to arrive at a more permanent solution.