May a Jew Keep His Business Open on Shabbos? Part 3

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Question: We are familiar with different types of famous cases of *ha'arama* (halachic loophole) and "*heter mechira*" cases, such as *prozbul*, *heter iska*, selling *chametz,* and *heter mechira* of land in Eretz Yisrael for *shemita*. Which of these precedents are relevant for our context of owning a business that operates on Shabbos, and how do these precedents shape and dictate the way that we deal with the "*heter mechira*" for Shabbos today?

Answer:

Rabbi Kushner – The concept of a *heter iska* (used to avoid problems of *ribbis*) does have roots in the Gemara and then evolved and was adapted (first by the *Terumas HaDeshen* and later by others) to the form used currently today. In contrast, the notion of selling a business to a non-Jew for Shabbos does not have roots in the Gemara or Rishonim at all, which is in fact a difficulty for those *poskim* who support the *heter.*

We do find the notion of a *shutafus* (partnership) in the Gemara and *Rishonim,* where joint ownership is established between the Jew and the non-Jew for the business as a whole, and this arrangement is in effect during the rest of the week as well as Shabbos. The newer "*heter mechira*" concerning Shabbos though creates ownership for the non-Jew on Shabbos alone, which is a much more novel and controversial concept that was first conceived approximately 150 years ago by *poskim* such as the *Divrei Chaim.*

The difference between this institution and selling *chametz* for Pesach (which, despite some reluctance to use it, is much more accepted in the halacha) is that *chametz* is an asset-based prohibition. This means that it is forbidden for you to own *chametz* on Pesach, but it may be sold to avoid the *issur.* Although the sale may involve some questions of *ha'arama,* if the sale is performed correctly and the contract is valid, then you do not violate the *issur* of owning *chametz.*

In our case, on the other hand, observing Shabbos is not an asset-based *issur.* Rather, it is *assur* to hire non-Jews to work for you on Shabbos in most situations because of the prohibition of *mira l'akum* (instructing non-Jews to perform *melacha* for you). So if the Jew is still the legal owner of the business, and the non-Jewish workers at the nursing home, hotel, or apartment complex answer to him, then selling it to a non-Jew for Shabbos has not changed anything, as he is not really their boss.

This is essentially the approach of Rav Moshe Feinstein about this issue. He explains that if there is absolutely no relationship whatsoever between the workers and the non-Jewish partner, the arrangement of selling is invalid *me'ikar hadin*. Although the lowest level of the "*heter mechira*" may involve simply selling the business on paper to a non-Jew, Rav Moshe was opposed to it since in his opinion, it does not change anything vis-à-vis the *issur* of

amira l'akum.

Rabbi Dombroff – We always recommend giving ownership of the business to a non-Jew as much as possible so that the halachic difficulties with the arrangement are significantly reduced.
In addition, we still generally advise the owner to minimize the *chilul Shabbos* in whatever way possible. For example, one who owns an apartment building complex should close all operations on Shabbos and limit the work to hiring a non-Jewish superintendent to be available to the non-Jewish residents when needed.
These two factors can rectify the problem to a tremendous degree and demonstrate to all that Shabbos has not been treated in a lax fashion or forgotten about.
Despite all of these methods of reducing the problem, one should still be aware that ownership of such businesses as nursing homes, hotels, and the like often force one to rely on certain leniencies. Therefore, a person should consult with his personal rav before entering such a field to evaluate whether it is indeed the correct decision for him.

Rabbi Kushner – Even if a person must rely on certain leniencies such as the ones under discussion, a person must be aware of how those leniencies work (even if he is trying to upgrade Shabbos observance in the business in the long term) and be capable of formulating providing a proper response to explain his actions. I often ask people in these businesses how they have negotiated some of the halachic issues, and they immediately falter and cannot provide even a semblance of a coherent answer.
The explanations for the halachic leniencies must be articulated to the owner when signing the contracts of sale, and he must in turn be able to explain it to others, such as his children or neighbors, should they ask about it.

Rabbi Honigwachs – We should mention that the basic "*heter mechira*" of the Divrei Chaim of selling a business on paper was acknowledged to have the non-Jewish workers serving as employees of the Jew. The *Divrei Chaim* himself notes this and attempts to suggest that according to one minority opinion in the *Acharonim,* it can be allowed, similar to *chametz* on Pesach. He was likely dealing with situations following the Industrial Revolution where Jews owned large factories and needed to find a way to allow work on Shabbos to continue, which is somewhat similar to some of the cases nowadays.
I think the following concluding reflection is worthwhile to keep in mind. I used to be extremely opposed to the lowest level of the *"heter mechira"* of simply selling the business on paper for Shabbos alone.
But I changed my mind after one person to whom I had suggested trying to implement a better *heter* for a nursing home did not respond for an entire year. When I finally saw him and asked him what happened with it, he said, "it's running!" Apparently, he could not find a non-Jew to partner with, so

he simply did not do anything about the problem. After that, I decided that one should help these business owners to find any solution (such as the lowest level sale of the *Divrei Chaim* on paper), even if it is not ideal, as any solution is better than no solution.