

May a Retail Store Remain Open on Chol Hamoed?

Rabbi Yosef Kushner

Question: In the previous session, we discussed some of the rules of commerce on Chol Hamoed as they relate to real estate management. Commerce that takes place in a retail store with a physical location would appear to qualify as a more classic case of commerce that is prohibited on Chol Hamoed. However, it is well known that activities that qualify as *davar ha'avud* (preventing potential financial loss) are permitted. When does the concept of *davar ha'avud* apply concerning a retail store, and when would we apply the rule of not allowing *melacha as meni'as revach* (not earning a profit)?

Answer: Let us preface the answer by noting that one may sell food products and other items needed for Chol Hamoed itself. This may even be done in public, since people are aware that the store is open for this purpose.

Regarding stores that do not sell items needed for Chol Hamoed (or it is not obvious that the items are used on Chol Hamoed), the Shulchan Aruch (O.C. 539) says that selling is only permitted where one may lose out on the principle [*yafsid hakeren*], but not in order to earn a profit [*menias revach*]. Thus, one may not engage in work on Chol Hamoed even if he will not earn any profit otherwise (or even if he will be unable to earn any profit after Yom Tov), since no loss is incurred. On the other hand, if the person will suffer an actual loss of his assets, it would be permitted under the auspices of *davar ha'avud*.

Implementing this principle can sometimes be complex on a practical level. For example, if one owns a summer seasonal store that sells swimming pool accessories, the demand and value may be slowly decreasing around Sukkos time. Likewise, if one sells winter coats, their demand and value will be slowly decreasing around Pesach time. In this case, perhaps one would argue that the evaluation of what is a loss of the principle depends on the original purchase price.

But this seems difficult, as if so, one who received the stock for free as an inheritance would not suffer any loss and be forbidden from selling, while one who paid a large price for it would incur a major loss and would be permitted to sell. Therefore, the Chazon Ish strongly argues that according to the Shulchan Aruch, the value would be determined solely based on the current value – if one can sell it for the current price (even if it is lower than the price was in the summer) after Chol Hamoed, then it is not considered a *davar ha'avud* and it is forbidden to sell it on Chol Hamoed.

However, if the price will continue to decrease after Yom Tov (which it often will in our examples), then the Chazon Ish claims that not selling it would be considered a loss of the principle if one is not allowed to sell it on Chol Hamoed, since one will not be able to earn that amount of profit afterward.