



HEALTHCARE FACILITIES *in* HALACHAH





Operating Nursing Homes and Assisted Living Facilities in Accordance with Halachah A Guide for Owners, Administrators and Employees

A PROJECT OF BAIS DIN MAYSHARIM
Reviewed by: **Rav Yaakov E. Forchheimer**
and **Rav Doniel Y. Neustadt**



SHABBOS OPERATIONS



PESACH / CHOMETZ



FEEDING NON-KOSHER



BASAR B'CHALAV



MONETARY ISSUES



MEDICAL ISSUES



END OF LIFE ISSUES

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Bais Din Maysharim was founded over two decades ago under the guidance of the venerable *gadol*, Hagaon Rav Nissim Karelitz zt"l, and currently has more than twenty experienced Dayanim on staff.

The unique policies instituted by Maysharim, along with its **professionalism and integrity**, have earned it a reputation as one of the most prominent Batei Din in America. Its volume of *diney torah* is a testament to the broad appeal and confidence that Maysharim has inspired within the *klal*.

Beyond serving as a venue for dispute resolution, Maysharim is also committed to **educating the public and raising awareness in the area of Business Halachah**. Maysharim Dayanim have authored various works in both English and Hebrew on business ethics and their contemporary application, have been featured in seminars in numerous communities across North America, and continue to bring innovative educational programs to the general public.

Maysharim is committed to the ongoing education and training of the next generation of high caliber *poskim*. Its Dayanim have successfully guided numerous *Choshen Mishpat* and *Even Ha'Ezer* kollelim, producing accomplished *talmidei chachamim* who serve in rabbinic and *dayanim* positions. Currently, there is an expanding network of kollelim in Lakewood, Brooklyn, Manhattan, Cleveland and Passaic, under Maysharim's guidance. These kollelim ensure that the next generation of *poskim* and *dayanim* will have the knowledge and expertise to provide guidance and advice to the *klal* in all civil matters.

Maysharim provides a full spectrum of business halachah services. Maysharim offers help to halachah-conscious businessmen in drafting halachic and legally compliant partnership agreements, wills, *heter iskas*, and more. **Maysharim also operates a business halachah hotline**, making it easy for everyone to connect with *dayanim* and experts when navigating challenging situations, including healthcare, ribbis and Shabbos areas. These initiatives grant the *klal* ready access to the practical tools and guidance that they need to ensure that their business dealings, and personal monetary dealings, conform with halachah.

The Maysharim Business Halachah Hotline can be reached at 732.905.3005.

This *sefer*, **Healthcare Facilities in Halacha**, is yet one more way that Maysharim is at the forefront of addressing today's contemporary halachic challenges for the public at large.

Maysharim has created a Healthcare Halachah Department to address the *klal's* *shailos*, and to assist in the drafting of the various *shtaros* relevant to the proper halachic operation of a Jewish-owned Healthcare Facility.

The Maysharim Healthcare Halachah Department can also be reached at healthcare@maysharim.org.

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הנה הרבה מאמצי בארבע ימי ארבע פועמי למסקי בהם אבותי
אשר מנצחיהם בהם בקרית גמלים ומה יבדקם שאלים שאלו גמלים
ובמסק זה יש הובה שאלים הלכתיים אין למהם, ושי"כור אבות
חלקים מהשול, וביצור חברי בידק "משושים" בידר איקולד גמלים
כא"ר גמל בידר עם אנשים יהלים הוסקים בעסקי זהו אבותי הילד
שיכיר וילקן את כל השאלות הקשורות לעסקי זה, ועל גביהם חברי
היה, ולפי כחם שנים בגמל עם אלוה נכח חלקן זה נפגשו אלוה.
לכבוד כא"ר שאלים הלכתיים. ובמסק ספר זה הוא דבר בחוקי אבות
שאלים גמל עסקיו עם הגמל, ואמנה אפסלם טבא "ש"ר. וכל נמקפיד
חמל עסקיו עם הגמל, והנה הנה ד' אלו חומצין בכל מלי דמלכ.
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א' דר"ח מרחשון תש"פ

הנה הרבה מאחב"ב בארבע ימי להם פרנסה מעסק "בתי אבות" אשר מתגוררים בהם זקנים נכרים וגם יהודים שאינם שומרי תומ"צ, ובעסק זה יש הרבה שאלות הלכתיות איך לנהוג, ושייכות לכו"כ חלקים מהשו"ע. וביצור חברי ביד"צ "מישרים" בעיר ליקווד התעוררו כו"כ ת"ח ביחד עם אנשים יראים העוסקים בעסק זה, לחבר חיבור שיכיר וילקן את כל השאלות הקשורות לעסק זה, ועל גביהם חברי ביה"ד. ולפני כמה שנים בהיותי שם אורח נוטה ללון ג"כ נפגשו איתי לברר כו"כ שאלות הלכתיות.

ובודאי ספר זה הוא דבר נחוץ לכל מי שרוצה לנהל עסקיו ע"פ ההלכה, ואמינא לפעלא טבא יישר. וכל המקפיד לנהל עסקיו ע"פ ההלכה, תהא ברכת ד' עליו להתברך בכל מיילי דמיטב.

וע"ז באעה"ח
שריאל רוזנברג

אשר זעליג וייס

כגן 8

פעיה"ק ירושלים ת"ו

ב"ה

כסלו תש"פ

הן ראיתי את הספר הנפלא שנכתב ונערך במשותף ע"י האברך היקר והמופלא הרה"ג ר' אברהם שלמה דיקמן שליט"א מורה הוראה ומרביץ תורה, והרבני היקר והנפלא הרב יעקב פרומר הי"ו.

ספר זה הוא צורך השעה, כי רבים ועצומים בציבור המדקדקים במצוות המתפרנסים מבתי מחסה לזקנים ותשושים ומבתי מגורים ושאלות רבות וחמורות מתעוררות בכמה וכמה תחומים בהלכה, בהלכות שבת, מאכלות אסורות, במצוות המועדים ועוד כהנה וכהנה. וספר יקר זה עוסק בשאלות הללו בפרטיהם ודקדוקיהם.

הספר ערוך ומסודר בטוב טעם ודעת, בפסקים ישרים ונכונים ובשפה ברורה ונעימה בשפה האנגלית.

ברכתי למחברי הספר שליט"א שיזכו לזכות את הרבים, ולהגדיל תורה ולהאדירה.



גס"ד

בגמ' ביצה (טו:) תני רב תחליפא אחוה דרבנאי חוציאב דל מצינוגיו לל אדם
קצובין לו מאיל הלצה ועד ראל הלצה. אמנש צי רך לענין כמה מחון ירווח
בצי הלצה אלא איך ירווח ממנו אם בהיר יזו באיסור לא נקבה, דהלא אינו חייס
בצולם הבחירה, ואלוין לבחור טוב להתפרנס בהיגר.

והנה להתפרנסים מבעלותם במלש צקנים יש הרבה שאלות חמורות, וצריך
שימת לב גדולה לעלות הכל על הצד היותר טוב. ובגדר הצי נלאו זכו של האיש
היה ואמר לקבר ה' מהגר וצד פומר שליטא לחבר ספר עם כל השאלות
המצויות בהנהלת מושב צקנים כדי שיעל כל מעשהם בדרך ההיגר.

והנה הנ"ל דבר עם מהגר אברהם דיקמאן שליטא מחלובי הכולל של ביה מחל
גבא ועם עוד תלמידי חכמים אחרים צי, ואחר ספר חלובי לראו שמו

Healthcare Facilities in Halacha אשר וולבן כל השאלות המצויות
בענין צי, וכבר איך לנהל בצקנים אלו, ועם איך הנהלת מורכבת להחל
ואי צי רך בשלם הצורך.

יזכו כל המתעסקים בצי לצבור זוג רבים וללמדם את הדרך ילכו בה ואם
המעשה אלא יעלן.

על צי באר על החתום יום אצל פרלמן לך י' מרחשון תש"פ
יעקב אפרים הכהן פארכהיימער

בס"ד

בגמ' ביצה (טו:) תני רב תחליפא אחוה דרבנאי חוצאין של אדם קצובין לו מראש השנה ועד
ראש השנה. אמנם זה רק לענין כמה ממון ירווח בזה השנה, אבל איך ירווח ממנו אם בהיתר או באיסור לא נקצב,
דהלא אנו חייס בעולם הבחירה, ועלינו לבחור בטוב להתפרנס בהיתר.

והנה להתפרנסים מבעלותם במושב צקנים יש הרבה שאלות חמורות, וצריך שימת לב גדולה לעשות הכל
על הצד היותר טוב. ובדבר הזה נשארו לנו של האיש הירא וחרד לדבר ה' מהגר"ר יעקב פרומר שליט"א לחבר ספר
עם כל השאלות המצויות בהנהלת מושב צקנים כדי שיעשו כל מעשיהם בדרך ההיתר.

והרב הנ"ל דבר עם מהגר"ר אברהם דיקמאן שליט"א מחשובי הכולל של בית מדרש גבוה ועם עוד תלמידי
חכמים אודות זה, וחברו ספר חשוב שקראו שמו Healthcare Facilities in Halacha לברר וללבן כל השאלות
המצויות בענין זה, וכתבו איך לנהל בענינים אלו, וגם איזה הנהגות מותרות לכתחילה ואיזה רק בשעת הצורך.

יזכו כל המתעסקים בזה לזכות את הרבים ללמדם את הדרך ילכו בה ואת המעשה אשר יעשו.

על זה באתי על החתום יום עש"ק פרשת לך לך י' מרחשון תש"פ

יעקב אפרים הכהן פארכהיימער

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RABBI
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MINCHAS CHEN

יום זה כסדר לאגדה נכתב

נח אייזיק אהלבוים
בעמדות פנחת חן
רב ואביר וקדש נחלת יצחק
בקרן נאדענסה וילסני

אמרו חז"ל דתלמידי חכמים אין להם שמחה בלבד כשאלו איש חיל, שהולך מחיל אל חיל, ה"ה האי גברא יקירא הרה"ג חריף ובקי, הלן בעומקה של הלכה, כש"ת מו"ה אברהם שלמה דיקמאן שליט"א, ואתא ואיייתי מתנייתא בידו חיבור נחמד ונעים הנוגע למעשה, פסקי הלכות ודינים בענין "ניהול בית אבות ע"פ הלכה", אשר טרח ועמל בחכמה ובכשרון רב לירד לעומקא דדינא לברר ולבלין שיטת הראשונים והאחרונים ז"ל ולהעמיד ההלכות על תילס בטוב טעם ודעת בסדר נאה דבר דבור על אופנו, וזכה להקיץ ולעורר את כל החששות העומדים על הפרק, מעשים בכל יום בניהול בתי אבות עפ"י הלכה, והתועלת בזה מרובה. והנני בזה בברכה שיזכה לברך על המוגמר, ולהמשיך בעבודת הקודש מתוך הרחבת הדעת ומנוחת הנפש, ולהוסיף חכמה על חכמתו ולזכות את הרבים בחיבורים המועילים להגדיל תורה ולהאדירה.

בידי חתמו, נח אייזיק אהלבוים



בס"ד

יום ה' לסדר "נעשה אדם" תש"פ לפ"ק

אמרו חז"ל דתלמידי חכמים אין להם מנוחה בעוה"ז. ונתתי שמחה בלבי לראות איש חיל, שהולך מחיל אל חיל, ה"ה האי גברא יקירא הרה"ג חריף ובקי, הלן בעומקה של הלכה, כש"ת מו"ה אברהם שלמה דיקמאן שליט"א, ואתא ואיייתי מתנייתא בידו חיבור נחמד ונעים הנוגע למעשה, פסקי הלכות ודינים בענין "ניהול בית אבות ע"פ הלכה", אשר טרח ועמל בחכמה ובכשרון רב לירד לעומקא דדינא לברר ולבלין שיטת הראשונים והאחרונים ז"ל ולהעמיד ההלכות על תילס בטוב טעם ודעת בסדר נאה דבר דבור על אופנו, וזכה להקיץ ולעורר את כל החששות העומדים על הפרק, מעשים בכל יום בניהול בתי אבות עפ"י הלכה, והתועלת בזה מרובה.

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ביקרא דאורייתא
נח אייזיק אהלבוים

FOREWORD

To My Dear Fellow Healthcare Facility Operators:

It was the mid-1990s and I was in the Ramada hotel in Yerushalayim, chatting with a fellow hotel guest. At the time, I was working in the jewelry trade. My new friend had also worked in that field, but had since transitioned to the healthcare industry, becoming a Nursing Home operator. Intrigued, I began to seriously contemplate a similar career change. Not long after, I purchased my first Nursing Home, *b'siyata d'Shmaya*.

Since the Nursing Home industry was a prototypical “Jewish business,” with so many Facilities owned by *frum* owners, it didn’t occur to me to question or research any halachic issues prior to entering the industry. I innocently imagined that I would “do whatever everyone else does.”

Then, after I purchased my first Home, I asked the obvious question: “What happens on Shabbos?”

Sure enough, I was immediately provided with a *shtar mechirah* — the simple mechanism that “everyone was using” to operate on Shabbos.

But as time progressed, I began to wonder how does this really work? I only met my non-Jewish “partner” once — when he initially signed the contract — never to see him again. Is it that simple to make him the owner of the Facility each and every Shabbos while the Nursing Home operates on Shabbos just as it does during the week?

And the questions kept coming:

— How can my Facility serve non-kosher food to Jewish residents?

- For that matter, how can my Facility do business with non-kosher food, such as non-kosher meat — isn't that a problem even when dealing with non-Jews!?
- Must I affix mezuzos in the rooms used by Jewish patients? Does the front door of the building require one?
- How can I allow *chametz* into my Facility during Pesach? Or *avodah zarah* paraphernalia in the Facility's prayer room? May we even have a prayer room in the Facility?

And on and on....new issues were constantly arising.

I discussed my questions with *rabbanim* in America and in Eretz Yisrael to receive guidance. In the course of my discussions I became increasingly aware that there are numerous issues that need to be addressed that few owners — if any — are cognizant of.

Incorporating the guidance I received from the *rabbanim*, I repeatedly revised my *shtar mechirah*, so that it best satisfied all halachic requirements. I also began to focus on the necessity of satisfactorily addressing the issue of non-kosher food in my Facilities. Hagaon Harav Menashe Klein *zt"l* really drove the point home for me when he related the story of a Mrs. Gonzales, who was mistakenly assumed to have been a non-Jew and was fed non-kosher, until she asked a Jewish owner for matzos on Pesach!

With his encouragement, I began to convert my Facilities to all-kosher operations. This overhaul created a new series of challenges, which I managed to overcome, *b'ezras Hashem*. However, it became clear to me that a halachic solution that would work for everybody would not be easy to come by.

After struggling with these issues for years, I realized there was an urgent need for a *sefer* that would provide much-needed guidance for the many Nursing Home operators who were also grappling with these issues, and even more so, to bring awareness of these serious concerns to those who don't even realize that they needed to be addressed. I turned

to an old *yedid* of mine, Harav Dov Kahan *shlit"a*, the *av beis din* of Bais Din Maysharim of Lakewood, *rav* of the Khal Rayim Ahuvim — Arlington Shul of Lakewood, NJ, and author of numerous *halachah sefarim*, and requested his assistance in this monumental project. Rav Dov accepted the responsibility of overseeing the project, and hired capable, accomplished *talmidei chachamim* to research the issues involved and document their conclusions. The Bais Din Maysharim halachic department also initiated a *she'eilah* hotline for all Healthcare Facility-related questions, which can be reached at (732) 905-3005 ext. 3 or by email at healthcare@maysharim.org.

Thus began the process of identifying the myriad questions in Halachah that needed to be addressed, carefully considering each issue and its many repercussions, and attempting to identify halachically acceptable solutions. This was a difficult task, requiring considerable time and effort.

I will give you an example of why this task was so daunting:

The problems relevant to keeping businesses open on Shabbos are not new; they have been discussed in halachic literature for hundreds of years, and much has been written about them.

The issue of a Jewish business serving non-kosher to other Jews, on the other hand, **is almost unprecedented in Jewish history, and very little has been written about it in classic Halachah sources.**

Thus, this issue — among numerous other issues in this *sefer* — needed to be delved into as practically new questions. And this entailed discussions with many, many *rabbanim*.

(Please note that regarding the particular issue of serving non-kosher food, one of the most difficult in this *sefer*, our conclusions are based on the majority opinion of the *rabbanim* with whom we consulted. Approaches other than the ones we present were also suggested, but after much consideration and consultation we have chosen to present the ones that have the strongest basis in Halachah.)

When it came to several particular issues, the decision was made to present certain leniencies that need to be relied upon to address those problems. Some may feel that it is not proper to look for halachic leniencies. See, however, what Harav Moshe Feinstein *zt"l* writes (*Igros Moshe, Orach Chaim, chelek beis*, §62¹ and §66²) regarding the importance of finding halachic leniencies where strict interpretation of Halachah would prevent Jews from entering a particular industry.

Of course, the guidelines in this *sefer* are general in nature. In actuality, each situation will have its own nuances, some of which may impact the *psak halachah*. Therefore, one should consult with a halachic authority before applying the principles presented within.

One final note mentioned in this *sefer* that is worthwhile to point out here, at the outset: As a *frum* Nursing Home operator, you will invariably come into contact with many Jews who are marginally religious or not religious at all. You have a tremendous opportunity for *kiddush Hashem*, and to help these patients and their families make the right choices. Specifically, when it comes to end-of-life decisions, and to burial arrangements and the like, if you have established a warm and respectful relationship with your clients and their families, you will be in the unique position to guide the family to adhere to Jewish law and customs.

I would like to express my deep *hakaras hatov* to **Harav Dov Kahan *shlit"a***, and to the many people who assisted and directed this enormous project, and saw it through to completion. In particular, I want to thank **Rabbi Shlomie Dickman *shlit"a***, author of *sefer Shloshim Yom Kodem Hachag*, among other *sefarim*. He literally “put

1. ז"ל שם: ודאי היתר ברור קשה לומר בזה, אבל אם נאסור הרי לא ישמעו לנו כי יתבטל הרבה ענייני מסחר ונוגע לחיי נפש של הרבה מישראל, מוכרחין לחפש טעמים להיתר.

2. ז"ל שם: אבל מכיון שמוכרחין מדיני המדינה להעמיד להם פועל שיחמם המים, והיה נמצא שאי אפשר לשומרי תורה להרויח בבתים לשכירות, יש לעשות בעצה זו וכו'.

in nights as if they were days,” and took this project to heart as if it was a personal project.

I am deeply grateful to **Harav Doniel Neustadt *shlit”a***, author of many *Halachah sefarim* and *rav* of the Pine River Village shul in Lakewood, NJ, who gave many hours of his precious time to guide us in this project, in addition to reviewing the *sefer*.

Harav Yaakov Ephraim Forchheimer *shlit”a*, senior *posek* of Beth Medrash Govoha of Lakewood and my personal *rav* of many years, took time from his extremely busy schedule to review the *sefer*. May Hashem give him the strength to continue to guide his *kehillah* and the *bnei hayeshivah*, as well as the many others who rely on his counsel to live their lives in accordance with Halachah.

Rabbi Moshe Rotberg *shlit”a*, author of *Emergencies in Halachah* and *Medical Decisions in Halachah*, *rav* of Khal Zichron Yechezkel of Toms River, and *posek* of Hatzalah of Lakewood, authored the chapters of this *sefer* which deal with medical issues in Facilities, as well as Jewish burial. May he be *zocheh* to continue guiding Klal Yisrael with his great expertise in these fields for many, many years to come.

Rabbi Yosef Weinman *shlit”a*, author of numerous *Halachah sefarim*, authored four of the first five chapters of this *sefer*. **Rabbi Boruch Greenspan *shlit”a***, member of Bais Din Maysharim of Lakewood and *bochen b’inyanei Choshen Mishpat*, provided vital assistance in coordinating this *sefer*, as well as authoring the two financial chapters. May they continue to be among those who are *mezakeh* the *rabbim*.

The *sefer* was expertly edited by **Harav Eli Herzka *shlit”a***, *rav* of Khal Meor Chaim, and editor of many English *Halachah sefarim*. He was assisted by **Rabbi Zev Epstein**, editor of the *sefer Life’s Ladder*, among many other *sefarim*. **Rabbi Eliyahu Jacobowitz** also contributed to the final editing.

To the many other individuals who assisted in the project, too many to name, I thank you all and wish you continued success in all your endeavors.

I would like to express my deep *הכרת הטוב* to my *אשת חיל שתחי'* who stands behind me with her unwavering support for all my endeavors. It's only with her sacrifice and encouragement that I have merited to spend many hours *בין כתלי בית המדרש* and to bring this project to fruition. May the *ע"ע* grant us *ימים ושנים* and much *נחת* from all our children and grandchildren.

My fervent *tefillah* to *Hashem Yisbarach* is this: that this *sefer* brings awareness and education to my fellow Healthcare Facility operators and administrators, and help guide them in operating their Facilities in full accordance with Halachah.

יהי רצון מלפני אבינו שבשמים שבזכות שמירת שבת – שהיא מקור הברכה – ובזכות דקדוק בהלכה כראוי, שנזכה כולנו יחד לקדש שם שמים ולראות ברכה והצלחה בכל מעשה ידינו.

Of course, implementing the *halachos* presented in this *sefer* will often entail *mesiras nefesh*. I therefore end with a *tefillah* — may our *mesiras nefesh* finally engender the long-awaited *Geulah sheleimah*.

Yaakov Frommer

Lakewood, N. J.

Elul 5781

FOREWORD TO THE THIRD EDITION

With *shevach v'hoda'ah* to *Hakadosh Baruch Hu*, the *sefer Healthcare Facilities in Halacha* was published less than five years ago. It is with great excitement that we present the third edition.

The enthusiastic response from healthcare operators and administrators and from *Rabbanim* alike illustrates the need that this *sefer* has met. *B'ezras Hashem*, the *sefer* has become a fundamental resource for the many questions that constantly come up in this very complex environment.

Based on numerous questions we received regarding the unique halachic challenges that arise in the healthcare setting, this new edition has an entire chapter devoted to the topic of *tumas hameis*. The complex issues of *tumas hameis* aren't widely studied or known, and a section in which these *halachos* can be easily referenced will be an invaluable resource when questions arise.

A special thank you goes to **Rabbi Kalman Katz *shlita***, *Rosh Kollel Mechanchim* of Lakewood and well-known expert in the *halachos* of *tumas kohanim*, who wrote this new chapter. May he be blessed with *brachah* and *hatzlachah* in all his endeavors.

In addition, I would like to express *hakaras hatov* to **Harav Dov Kahan *shlita*** and **Rabbi Shlomie Dickman *shlita***, who continue to devote much time and energy toward this important mission.

With continued *tefillah* to *Hashem Yisbarach* that this *sefer* will bring awareness and education to my fellow healthcare facility professionals and guide them to operate their facilities in full accordance with halachah,

Yaakov Frommer

Nisan 5786

INTRODUCTION TO HEALTHCARE FACILITIES IN HALACHAH

The following is a short synopsis of the two primary areas of halachic concerns discussed in this *sefer*: How to operate a Healthcare Facility on Shabbos and the *kashrus* of the food served in a Facility. This guide should not be used without first reading the full text, as it does not contain many of the details discussed within; rather, it is intended only as a short introduction as to what will be discussed, as well as a helpful review guide. Additionally, many other halachic topics are discussed within the *sefer* that are not covered in this synopsis.

Shabbos and Yom Tov (Chapters 1-4)

The Prohibition of *Amira L'Akum* — a Non-Jew May Not Work for a Jew on Shabbos

Since a Facility must remain operational on Shabbos and the workers perform many tasks that are prohibited on Shabbos (as explained in Chapter 2), the *sefer* presents four approaches that, when properly implemented, will permit the Facility to operate on Shabbos in a halachically acceptable manner. **This should be**

addressed with ample time prior to taking ownership of the Facility.

(1) Partnering with a Non-Jew: If a Jew owns a business together with a non-Jewish partner who has an equity stake of at least twenty percent of the business, the problem of *amira l'akum* on Shabbos can be resolved by stipulating at the outset of their partnership that they are dividing the annual days of the ownership between them. The non-Jewish partner will own the business for Shabbos and Yom Tov, and the Jewish partner will own a corresponding number of regular weekdays.

(2) *Heter Mechirah*: The Jewish owner leases or sells the entire business to a non-Jew for the duration of every Shabbos and Yom Tov. The numerous problems with this *heter* are discussed within, and suggestions are given how to best address these issues.

(3) Management Company: Some *poskim* recommend hiring a company to oversee the management of the Facility. Under this arrangement, the Jewish owner of a Facility contracts with an outside non-Jewish company to actually manage the Facility's day-to-day operations over the course of the entire year.

(4) In-House Management Company: If hiring a separate management company is not practical, one has the option to set up an in-house management company.

Food Operations

The Prohibition of “Commerce with Non-Kosher Food” (Chapter 5)

This prohibition precludes serving non-kosher food in a Facility, even if all the patients are non-Jews.

The Prohibition of *Lifnei Iveir* — One May Not Cause Others to Sin (Chapters 6-7)

This prohibition presents an additional issue when non-kosher food is served and there are Jewish residents in the Facility, as there inevitably will be. Therefore, it is highly recommended that the Facility only serve kosher food, whenever possible.

Operating a Non-Kosher Kitchen (Chapter 9)

When serving kosher meals does not seem to be a viable option, **a competent halachic authority should be consulted to decide what steps can be taken to rectify the situation, and whether or not non-kosher food service is in fact permissible.** The *sefer* presents four possible approaches:

(1) *Heter Mechirah*: This approach is to lease or sell the entire Facility to a non-Jew, and sell all the foodstuffs to him. The numerous problems with this approach are discussed within.

(2) Outsourcing the Kitchen: The optimal solution suggested is to hire a company to run the food-servicing department of the Facility, and allow them to choose whether to serve kosher or non-kosher food.

(3) In-House Outsourcing: If hiring an independent outsourcing company is not an option, one can set up an in-house outsourcing company.

(4) Partnering with a Non-Jew: If the previous two approaches cannot be arranged, a non-Jew may be brought in as a partner in the Facility. The terms of the partnership are such that the non-Jewish partner is completely responsible for the food service of the Facility, has full ownership of all the food in the Facility, and makes all decisions regarding what to serve.

Chametz on Pesach (Chapter 11)

Chametz on Pesach is an *issur hana'ah* and carries an especially strong punishment for those who eat it. Additionally, the *issur* is only in effect for a short duration. Therefore, every effort should be made to avoid serving *chametz* to Jewish residents.

Operating a Kosher Kitchen (Chapter 8)

Operating a kosher kitchen has its own set of challenges, such as *bishul akum*, unwatched food (commonly referred to as *basar she'nisalum min ha'ayin*), and *basar b'chalav*.

SECTION 1— Operating on Shabbos and Yom Tov

Chapter 1: *Amira L'Akum*

Instructing a Non-Jew (to Perform Work Prohibited to Jews)

Synopsis of the Laws

As is well known, a Jew may not tell or ask a non-Jew to perform *melachah* for the Jew's benefit on Shabbos or Yom Tov. This prohibition is known as *amira l'akum*. Although the laws of *amira l'akum* are generally associated with the laws of Shabbos, this prohibition actually applies to *all* laws of the Torah.¹ (For example, since it is forbidden for a Jew to do commerce with non-kosher foods, as is discussed in Chapter 5, it is also forbidden for a Jew to hire a non-Jewish worker to do such commerce on his behalf² (see Chapter 5, Sec. V).

1. עיין בבא מציעא (דף צ.), ושלחן ערוך (חו"מ סי' שלח ס"ו; אה"ע ס"ה סע' יד), ורמ"א (יו"ד סי' רצז ס"ד).

2. כ"כ בשו"ת חתם סופר (יו"ד סי' קד-קה), ובשו"ת מהר"ם שיק (יו"ד סי' קלו). ראה בזה לקמן (פ"ה הע' כג).

The laws of *amira l'akum* are wide-ranging, and it is beyond the scope of this work to elaborate on all the details. Obviously, though, these laws are extremely relevant to the operation of a Healthcare Facility, which operates seven days a week and whose employees generally include numerous non-Jewish personnel working on Shabbos. We therefore provide here a synopsis of the laws of *amira l'akum*, focusing on the rules that impact the management of a Facility.

I. Basis of the Prohibition of *Amira L'Akum*

The general consensus of the *poskim* is that the prohibition of *amira l'akum* is a Rabbinic law (*d'Rabbanan*).³

The *poskim* provide three reasons why *Chazal* instituted the prohibition of *amira l'akum*. The first two reasons apply specifically to Shabbos and Yom Tov, and the third reason applies to all of the Torah's laws.

A. Honor of Shabbos

The *pasuk* (*Yeshayahu* 58:13) says regarding Shabbos, וְכַבַּדְתוּ וְיִבְרַח דְּבַר מַעֲשֵׂוֹת דִּרְכֵיךָ מִמְצוֹא חֲפִצֶּךָ וְדִבַּר דָּבָר – Honor it by refraining from your dealings, from seeking out your needs, and from speaking [forbidden] matters. Thus, it is forbidden to instruct a non-Jew to do something that the Jew may not do on Shabbos. As the *pasuk* indicates, the honor of Shabbos demands that one refrain from such speech.⁴

3. במכילתא פ' בא (יב:טז) ילפינן איסור אמירה לעכו"ם מהך קרא, והביאו רש"י שם, ומשמע דס"ל שהוא דרשה גמורה. אבל הרמב"ן חולק עליו וכתב דע"כ אסמכתא בעלמא הוא, כמפורש בגמרא (שבת דף קנ). "אמירה לנכרי שבות". וכן היא הסכמת הפוסקים, עיין משנה ברורה (סי' רמג ס"ק ה) ושער הציון (שם ס"ק ז).

4. גמרא (שבת דף קנ), ורש"י (ע"ז דף טו. ד"ה כיון).

B. Protecting against Desecration of Shabbos

If it would be permitted to tell a non-Jew to perform *melachah* on one's behalf, the sanctity of Shabbos would be lessened in people's eyes and they might come to do *melachah* themselves. Therefore, to protect against *chillul Shabbos* done by Jews, *Chazal* forbade telling a non-Jew to do *melachah*.⁵

C. Agency — שליחות

A *shaliach* is an agent. The concept of *shlichus*, agency, is based on the principle of *שלוחו של אדם כמותו* – *a person's agent is considered like himself*. In other words, the *shaliach* “becomes” the sender with regard to the task that he was sent to fulfill. Although by Biblical law, a non-Jew cannot become a *shaliach* for a Jew, *Chazal* decreed that the non-Jew should be viewed as the Jew's agent, and one may not instruct a non-Jew to do *melachah* on one's behalf.⁶

D. Applying the Reasons

There are practical differences that emerge from the above reasons for the prohibition of *amira l'akum*.

According to the reason that *amira l'akum* is a form of speech that infringes on the honor of Shabbos, it would be forbidden only to tell a non-Jew *on* Shabbos to do *melachah*, but it would not be forbidden to instruct him before Shabbos to do *melachah* during Shabbos. Since, however, the non-Jew is considered the Jew's agent, anything he does on Shabbos is viewed as being done by the Jew; thus, it is forbidden to have him do *melachah* on Shabbos even by instructing him on a weekday.

5. רמב"ם (הל' שבת ו:א).

6. רש"י (שבת דף קג. ד"ה מאי טעמא, וע"ז דף כב. ד"ה לא) ועוד כמה ראשונים; וההסבר הוא בשלחן ערוך הרב (סי' רמג ס"א). וע"ע הגהות רעק"א לשו"ע (או"ח סי' שז, למג"א סקכ"ט).

On the other hand, according to the reason of “agency,” it would be forbidden only to have the non-Jew perform *melachah* on Shabbos, but it would not be forbidden to instruct him on Shabbos to do *melachah* after Shabbos. Based on the reason of speech that infringes on the honor of Shabbos, however, it is prohibited to tell a non-Jew on Shabbos to perform *melachah* on a weekday.

The halachah takes all of the above reasons into account. Thus, it is forbidden to tell a non-Jew before Shabbos (i.e., on a weekday) to do *melachah* on Shabbos, and it is also forbidden to tell him on Shabbos to do *melachah* after Shabbos.⁷

II. Scope of the Prohibition

A. When, and to What, Does It Apply?

The prohibition of *amira l'akum* applies on Shabbos, as well as Yom Tov and Chol Hamoed.⁸ It is forbidden to instruct a non-Jew to do that which is prohibited for a Jew to do either *mid'Oraisa* (from Biblical law) or *mid'Rabbanan* (from Rabbinic law). [There are cases of great need where a non-Jew may be instructed on Shabbos to do *melachah*. The details of this will be discussed below, in section D.]

B. A Non-Jew Doing *Melachah* on His Own

Even if a non-Jew does *melachah* without being instructed, if he does it for the sake of a Jew — and the Jew is aware of this — the Jew is obligated to stop him (in many cases). If the Jew does not

7. עיין שו"ע (או"ח סי' שז ס"ב), ומשנה ברורה (שם ס"ק ט). וההסבר הוא בשו"ת הרדב"ז (ח"ב סי' תרפד), שו"ת חתם סופר (או"ח סי' ס, וסי' רא), שו"ת אבני נזר (או"ח סי' מג סק"ו), שו"ת שבט הלוי (ח"ג סי' כב), קהלות יעקב (ע"ז סי' ח).

8. כן מבואר בשו"ע, לענין שבת (סי' רמג-רמז, וסי' שז), לענין יום טוב (סי' תקטו), ולענין חול המועד (סי' תקמג).

stop him, he is considered to be acting as the Jew's agent in the forbidden act.⁹

C. Benefiting from *Melachah* Done by a Non-Jew

After the fact, if a non-Jew performed a Biblical *melachah* on a Jew's behalf on Shabbos or Yom Tov, it is forbidden for any Jew to derive benefit from that *melachah*. This applies whether the non-Jew was instructed to do the *melachah* or he voluntarily did it on behalf of a Jew.¹⁰

If the non-Jew performed a *shvus* (a Rabbinically prohibited act) on a Jew's behalf, it is forbidden for that Jew and his household to benefit from it, but permitted for other Jews.¹¹

However, if a non-Jew did *melachah* for his own benefit, it is permitted for a Jew to also derive benefit from the *melachah*.

A non-Jew was visiting his Jewish neighbor Friday night and realized that a child had accidentally turned off the lights. He decided to "help" his Jewish neighbor by turning on the incandescent bulb for him. If the Jew sees the non-Jew attempting to turn on the light, he is required to stop him. In the event that the non-Jew does switch on the light, no Jew may benefit from the light that Shabbos, since turning on an incandescent bulb on Shabbos is a melachah d'Oraisa.

A non-Jew turns on the light in a dark room to read a newspaper. A Jew may enter the room and use the light to read. Although the

9. ביאור הגר"א (או"ח סי' רעו ס"א), וכן מבואר במג"א (שם סק"ד וסק"ד), והובאו דבריהם במשנה ברורה (שם סקי"א). והטעם מבואר בשו"ע הרב (סי' רסג קו"א ס"ק ח).

10. שו"ע (או"ח סי' רעו ס"א, וסי' שכח ס"ה). והטעם שאסרו הוא, שאם יהיה מותר ליהנות ממנה אז יבא לומר לנכרי לכתחילה לעשות מלאכה (משנה ברורה שם ס"ק ב).

11. משנה ברורה (שם ס"ק ג).

*non-Jew performed a melachah d'Oraisa, he did the melachah for his own benefit, so the Jew may make use of the light.*¹²

Bringing something from outside the *techum* on Shabbos or Yom Tov is an example of a *shvus*, something prohibited *mid'Rabbanan*. If a non-Jew delivers something from outside the *techum* for the benefit of a Jew, it is prohibited for that Jew and his household to benefit from the item, but it is permitted for other Jews to benefit from it.¹³ The item remains prohibited for benefit even after Shabbos or Yom Tov, until enough time passes for the action to have been done permissibly after Shabbos or Yom Tov (בכדי שיעשו). For example, if the item was transported from a location that was one hour away, the Jew must wait two hours (one hour for the non-Jew to go there and one hour to return) after Shabbos or Yom Tov ends before benefiting from the item.¹⁴

D. Exceptions to the Prohibition

In certain circumstances one may tell a non-Jew to perform *melachah*, however these exceptions are limited and would not allow for the regular operation of a Healthcare Facility.

Certainly, in cases of *pikuach nefesh*, when a patient's life is at stake, the prohibitions of Shabbos are suspended, and all interventions are permitted. However, by and large, the day-to-day operations within the Healthcare Facility, and the majority of the actions performed on behalf of the residents, do not fall under the classification of actions done for life-saving purposes.

12. שו"ע (שם), דלענין הדלקת נר אמרינן נר לאחד נר למאה. ועיי"ש דלענין שאר מלאכות גזרינן שמא ירבה בשביל הישראל. ועיי"ש עוד (סעיף ג) דהיינו דוקא כשעושה בשביל עצמו ממש, אבל אם עיקר הליכת הנכרי לחדר החשון הוא בשביל ישראל, אסור לישראל ליהנות מן הנר שהדליק, דגם ההדלקה נחשבת לצורך ישראל.

13. שו"ע (או"ח סי' שכה ס"ח; סי' תקטו ס"ה).

14. שו"ע (סי' תקטו ס"ה, וסי' שכה ס"ח).

Additionally, even for a sick person who is *choleh sh'ein bo sakanah* (bedridden), it is permissible to tell a non-Jew to do any *melachah* necessary for the sick person's well-being. However, many of the *melachos* performed in a Facility for the patients are unnecessary for the well-being of the patients. For example, the entertainment and snacks provided may not be necessary for the health of the ill patients. Similarly, the services performed by the marketing and billing departments are not necessary for their welfare. Additionally, not all the patients in Facilities [especially in Assisted Living Facilities] are sufficiently ill or elderly to permit telling a non-Jew to do *melachah* for them. Therefore, this exception would not be sufficient to allow normal operations of a Facility on Shabbos and Yom Tov.¹⁵

Since *amira l'akum* is a Rabbinic prohibition, *Chazal* were lenient in certain pressing circumstances, such as in a case of *hefsed merubah* (great financial loss), and permitted a Jew to tell a non-Jew to perform an act that is prohibited *mid'Rabbanan* (but not an act that is prohibited *mid'Oraisa*). This leniency is known as *shvus d'shvus*. However, since many *melachos d'Oraisa* are performed in a Facility, these leniencies would not be sufficient to allow normal operations of a Facility on Shabbos and Yom Tov.

15. כל הנוגע לחולה ישראל שאין בו סכנה ליכא איסור אמירה לנכרי, כדאיתא בשו"ע (סי' שכח סע' יז) ובמשנה ברורה (ס"ק מו). ואפילו לחולי נכרים מתירים לישראל לעבור על איסורים מדרבנן [כגון אמירה לעכו"ם] משום איבה כדאיתא ביו"ד (סי' קנד). אולם העיר הגר"ח קאהן שליט"א במאסף תורני ישורון (ח' יט דף תקצ), דמבואר בחות יאיר דאין מתירין משום איבה אלא כשהוא לא גרם לזה, אבל משום מסחר כשהוא הביא עצמו לידי מצב זה, אסור, עכ"ד. אך יש לדחות, שהרי כמו שהבית יוסף (הובא בחידושי רע"א סי' רמו ס"ו) מצדד להקל לגבי מכס: "אפשר דשרי לקנות לכתחלה מכס, דבשעת קנין לא עביד איסורא וכי מטא שבת כיון דכבר קנה שרי ליה משום פסידא", ה"ה לגבי התיירא דאיבה, ולא דמי לנידון של חות יאיר, עיי"ש.

אבל עיקר המכשול הוא, דהא הפועלים מחויבים לשרת גם את התושבים הבריאים [היהודים והנכרים], ועל זה ליכא שום היתר (ראה בשו"ת אור שמח ח"ב סי' כא, בגדר זקן שמותר לעשות מלאכה ע"י עכו"ם עבורו), וגם עבור החולים עושים כמה מלאכות שאינן נחוצות לבריאותם.

III. Paid Workers

The prohibition of *amira l'akum* applies with regard to paid workers as well as non-Jews who are not in one's employ. With respect to paid workers, there are two primary categories:

(a) שכיר, *sachir* — a hired worker, refers to a non-Jew who is paid for his time, whether the wage is calculated hourly or at a daily rate. Classic examples of *sachir* are a secretary or receptionist, whose salary is based on an hourly scale. Even if they do not “punch a clock,” their wage is based on the assumption that they work a certain number of hours per week.

(b) קבלן, *kablan* — a contractor, referring to someone who is paid by the job regardless of how long it takes. Classic examples of a *kablan* are a landscaper or a dry-cleaner, whose fees are based on the job to be done, and remain fixed regardless of how short or how long it actually takes to complete.

The categories of *sachir* and *kablan* are subject to different laws, as will now be explained.

A. *Sachir* — a Hired Hand

If a person is hired for a set wage per hour or per day, the employee is viewed as an agent of the employer in any task that he (or she) does. Although the employee is working for the sake of his wage, whatever task he is assigned during the hours of employ is ultimately done at the employer's behest. His time belongs to the employer, and during that time he follows the employer's instructions or he fulfills the tasks that he knows the employer needs him to perform. Since he is working for the employer, and not for himself, he is considered the employer's agent. It is therefore prohibited to allow him do *melachah* on Shabbos as part of his job, even if he does the *melachah* without being instructed.¹⁶

16. שלחן ערוך הרב (סי' רמג ס"ד).

In this sense, an employee is treated more stringently than a non-employee. When someone is not an employee, it is permitted to tell him on a weekday to do something that is forbidden on Shabbos, as long as one does not specify that he should do it on Shabbos. In other words, on Friday, one may ask a non-Jew to do a *melachah* for him “over the weekend” if the non-Jew has enough time to do it before, or after, Shabbos (during normal working hours). There is no problem of agency since the terms of the instructions do not specify that the work be done on Shabbos. Thus, if the non-Jew chooses to do the work on Shabbos, he does so of his own volition.

On the other hand, when someone is an employee (a *sachir*), during the time that he works he is *always* viewed as the employer’s agent. Thus, one may not let him do *melachah* on Shabbos even if the job does not require him to do that particular task specifically on Shabbos (i.e., it is a task that can just as well be done another day).

A medical billing company hires a non-Jewish software engineer, who gets paid by the hour. The position requires working at least forty hours per week, but allows for some flexibility. The non-Jew decides to come into the office to work some of those hours on Shabbos, so that he can take some personal time during the week. Although he is choosing to work on Shabbos, that work is considered to have been performed on the employer’s behalf. In the event the Jewish employer knows that he is doing melachah, the employer is obligated to tell him to stop.

A Healthcare Facility employs many hourly workers, such as receptionists, maintenance personnel, nurses and nurses’ aides, kitchen staff, physical and occupational therapists, among others. Since many of their duties involve prohibited *melachah*, it is forbidden to let these employees do work that entails *melachah* on Shabbos in the usual manner, even if they were not specifically instructed to work on Shabbos. Additionally, a Facility might

contract with a therapist to work a predetermined number of hours per month for a certain fee, with the therapist setting the schedule each month. If the therapy involves *melachah*, the therapist may not work on Shabbos. (In Chapter 2, we will discuss methods of arranging for a Facility to operate on Shabbos in a permissible manner.)

It should be noted that the prohibition to hire a *sachir* who works on Shabbos applies even in a situation where no other Jew is aware that this work is taking place (e.g., a Facility with no Jewish residents, in a totally non-Jewish neighborhood). Also, the prohibition applies whether the work is done in the employer's Facility or in another location such as the employee's home. As has been explained, the reason it is prohibited is because the *sachir* is considered the Jew's agent, so it is as if the Jew himself is desecrating Shabbos. Thus, the location of the work, or the presence of other Jews, is irrelevant.¹⁷

B. *Kablan* — a Contractor

When a person is hired to perform a certain task, and is paid for the job rather than for the time worked (the price is fixed for the completed job, regardless of how long it takes), he is considered to be working for himself until he finishes the job. Since he cannot demand payment for his time, completion of the task is his own responsibility. Thus, while working, he is not the agent of the person who hired him. It follows that if he chooses to do the work on Shabbos, one is not required to stop him, since he is doing his own work for which he will later charge the Jew a fixed amount.¹⁸

17. שו"ע הרב (סי' רמג ס"ד; סי' רמד ס"א), משנה ברורה (סי' רנב ס"ק כג). [והיינו, שהדבר אסור מצד עצמו, ולכן נוהג אף במקום שאין חשש מראית עין.]

18. שו"ע הרב (סי' רמד ס"ק א).

Even if the contractor's fee is based on an estimate of how many hours the job is expected to take, he is considered a *kablan*. Ultimately, he is being paid for the completed job, and the estimation of hours is merely a way of calculating a fair price for the job.

Knowing, or Stipulating, That the *Kablan* Will Work on Shabbos

It is permitted for a Jew to hire a non-Jewish *kablan* even if the *kablan* informs the Jew that he intends to work on Shabbos. The fact that the Jew is aware that the work is done on Shabbos makes no difference, since the *kablan* is an independent contractor who works for himself until the job is completed, as has been explained. However, it is prohibited for the Jew to stipulate that the work shall be done on Shabbos.¹⁹

A common application of the concept of *kablanus* is the sending of a letter. It is permitted to send an express letter via a carrier before Shabbos, without stipulating the day of delivery, even though one knows that it will most likely be delivered on Shabbos. The carrier is considered a *kablan*, since it is paid a set fee for delivery, and the fact that it chooses to make the delivery on Shabbos is not the sender's concern. It is forbidden, however, for the sender to specify that the item should be delivered on Shabbos (to request Saturday delivery, or to specify "overnight" delivery on Friday), as this is prohibited even with a *kablan*. (In cases of *hefsed merubah*, a halachic authority should be consulted.)²⁰

19. שו"ע (או"ח סי' רמז ס"א, סי' רנב ס"ב). וכתב במשנה ברורה (סי' רמז ס"ק ג), שאם הנכרי אמר מעצמו שיעשה המלאכה בשבת לית לן בה, כיון שהישראל לא אמר לו את זה והנכרי אדעתא דנפשיה קעביד בשביל שכירותו.

20. בשו"ת שבות יעקב (ח"ב סי' מב) דן לענין שליחת מכתבים בערב שבת, דאם א"א שיגיע למקבל אא"כ ילך בשבת לכאורה היה נראה דאסור, דהוי כאומר לו בפירוש שילך בשבת בשביל ישראל. וכתב בזה"ל: מ"מ נראה לי לצדד היתר, אם אין הישראל עצמו מדבר עם הנכרי שהולך בשליחות רק עם האדון של הבי דואר, נמצא שהשליח עצמו אינו הולך אדעתא ישראל רק בשביל

Even if the Jew does not explicitly stipulate that the work shall be done on Shabbos, if it is not possible for the work to be done on any other day, he may not hire the non-Jew for the job. Hiring a person in this situation is tantamount to stipulating that he shall work for the Jew on Shabbos.²¹

On the other hand, if the work can be done on a weekday but the non-Jew does it on Shabbos because that is the only day that *he* has time for it (e.g., he has another job during the week), the Jew may hire him. In this case, the non-Jew is working on Shabbos for his own benefit and convenience, not on account of the Jew's requirement.²²

A Nursing Home engages the services of a dietitian to work with the residents. In his fee proposal, the dietitian explains that based

אדונו והוי שבות דשבות כו', ועי' בשו"ת חות יאיר (סי' מד) שפסק להדיא שבות דשבות לאמר לנכרי שיאמר לנכרי אחר דשרי כו'.

ובמשנה ברורה (סי' שז ס"ק כד) מביא שדעת בעל העבודת הגרשוני הוא דמה דקי"ל אמירה לא"י שבות הוא אפילו אם אומר לא"י שיאמר לא"י אחר לעשות לו מלאכה בשבת, ושהחות יאיר (בסי' נג) מצדד להקל בזה, וכ"ש בדבר שאינו אלא משום שבות, והביא את דברי ספר החיים שכתב דבמקום הפסד גדול יש לסמוך על המקילין, וכ"ה בשו"ת חת"ס (חו"מ סי' קפה). ראה שו"ת מהרש"ם (ח"ב סי' קלו), שו"ת מנחת יצחק (ח"ו סי' יח), ושו"ת חלקת יעקב (ח"א סי' סו).

אמנם יש שפקפקו אם בזמננו שייך כלל היתר 'אמירה דאמירה' בחבילות שנשלחות בחברות הנ"ל, באופן שהישראל עצמו מדפיס את הוראות השליחה - דהיינו שם וכתובת המקבל כו' - ומדביקו לחבילה כמו שמצוי, דנמצא אפוא שהישראל הוא המצוה את הנכרי המוביל בשבת, כי הרי הנכרי המוביל קורא מתוך הכתב שהדפיס הישראל בעצמו. אמנם אין טענה זו מוכרחת, ואכמ"ל.

21. בשו"ע (או"ח סי' שז ס"ד) היתר לתת לנכרי מעות מערב שבת לקנות לו, ובלבד שלא יאמר לו קנה בשבת. ובבית יוסף שם מבואר דס"ל דמותר אף באופן שאי אפשר לקנות אלא בשבת, כגון שיום השוק הוא בשבת. אבל הרבה אחרונים חלקו על הב"י ודעתם שאם א"א לקנות אלא בשבת, אסור, דהוי כמזכיר לו יום השבת בפירוש, עיין ט"ז (שם ס"ק ג), מגן אברהם (שם ס"ק ג), עולת שבת (שם ס"ק א), אליה רבה (שם ס"ק ט), וכן הכריע במשנה ברורה (שם ס"ק טו). וכתב המשנ"ב, שבאופן שיום השוק הוא בשבת אסור ליתן לו מעות לכך אפילו בתחלת השבוע.

22. עיין שו"ת מהרש"ג (ח"ב סי' קלג), ושו"ת אגרות משה (או"ח ח"ד סי' נג, ד"ה דהנה).

on his estimate that he will be spending approximately twenty-five minutes per resident, he will charge \$30 per resident. Due to his busy practice, which takes up most of his working hours Monday through Friday, he informs the administrator that he will be unable to visit during the week, and will do most of his visits with the residents on Saturday afternoons. This is permissible since the dietitian has the status of a kablán, and has the option of performing the job on days other than Shabbos.



A Facility hires a nursing consultant to improve the policies and procedures for nursing care. The project includes scheduling meetings with the staff nurses to collaboratively work on a comprehensive manual, as well as showing slide shows and presentations to the staff. The consultant agrees to charge a set fee for the project.

Since the employees' workload tends to be lighter on Saturday mornings, the consultant is asked to meet with the staff at that time, because it will result in less disruption to the Facility and its residents.

Although the consultant has the status of a kablán, since she is being asked to specifically do the work on Shabbos, this arrangement is prohibited.

Based on the laws outlined above, it would seem to be permitted to contract with a non-Jewish landscaper to care for the grounds of a Facility, since landscapers get paid by the job (he is a *kablán*) and follow a schedule that they set for their own convenience. If the landscaper then decides to do the work on Shabbos, it should not be the Jew's concern. However, if the Facility is located in a place where other Jews will see the work done on Shabbos, letting the landscaper work publicly would be a degradation of Shabbos and is not permitted.²³ (See Sec. D below regarding *maris ayin*.)

23. עיין לקמן (הערה ל).

C. *Aris* — Profit Sharing

Aside from a *sachir* (hired worker) and a *kablan* (independent contractor), there is another type of worker — an *aris* (sharecropper); this refers to anyone who receives a share of the profit that is generated by his work.

Even if he receives a small share of the profits, and the Jewish owner of the business receives the majority, the *aris* is not viewed as an agent of the Jew. Rather, he is considered to be working for himself, since his intention is to do the work for *his own* benefit, for the share of the profit that is his.²⁴ Thus, an *aris* is essentially treated like a *kablan*. As long as one takes care not to specify (either verbally or implicitly) that the work *must* be done on Shabbos, if the *aris* does work on Shabbos, he does so by his own choice, and the prohibition of *amira l'akum* does not apply, as explained above regarding a *kablan*.²⁵ (Also, see below, Sec. D, regarding *maris ayin*.)

For example: It is permitted to hire a debt-collection agency even if it does collections on Shabbos, since the agency receives a percentage of the collections. It is prohibited, however, to hire the agency if one stipulates that collections shall take place on Shabbos.

24. עיין בגמרא ע"ז (דף כא:), "אריסא אריסותיה קעביד". וכן נפסק בשו"ע (או"ח סי' רמג ס"א). ובשו"ע הרב (סי' רמג ס"ז) ביאר היתר האריסות וז"ל: וליתן השדה באריסות לנכרי אין בו שום איסור כלל, אע"פ שיש להישראל הנאה במלאכה שהאריס עושה בשדהו בשבת שהרי רוב הפירות של השדה הם של הישראל, מכל מקום כיון שהנכרי אינו מתכוין במלאכתו בשביל טובת הישראל אלא בשביל טובת עצמו שיטול חלק המגיע לו מפירות השדה, אע"פ שמאליו נהנה הישראל אין בכך כלום, עכ"ל.

25. שו"ע הרב (סי' רמג ס"ז), וכן מבואר במשנה ברורה (סי' רמה ס"ק יח), וכ"כ בחזו"א (שביעית סי' ד ס"ק כ), וכ"ה בשו"ת מהרש"ג (ח"ב סי' מב וסי' פג), ושו"ת אגרות משה (או"ח ח"ד סי' נד ד"ה ולטעם זה). אבל בשו"ת אבני נזר (או"ח סי' מא) נקט דמותר לקבוע מלאכת אריס בשבת, ולא דמי לקבלן שאסור לקבוע מלאכתו בשבת. ועיין בשו"ת נודע ביהודה תנינא (או"ח סי' כט).

D. The Prohibition of *Maris Ayin* (Appearance of Impropriety)

Until now, we have explained that a *kablan* or an *aris* is considered to be acting independently, and one may allow him to work on Shabbos (as long as the timing was not stipulated by the Jew). Even in the case of a *kablan* or *aris*, though, there is another factor to be considered. *Chazal* prohibited several actions due to *maris ayin*, literally, appearances to the eye, referring to any action that may appear to people as if one performed a forbidden act.

Due to the prohibition of *maris ayin*, even hiring a *kablan* or *aris* who works on Shabbos is forbidden, when people who see him working will think he is the Jew's *sachir* (whom it is categorically forbidden to let work on Shabbos). Thus, the *heter* to hire a *kablan* or *aris* who works on Shabbos, discussed above, is limited to circumstances in which he will not be seen by Jews. This applies to the following cases:

1) The work is done in a neighborhood where there are no Jewish residents, and no Jews reside within the *techum Shabbos* (the boundary within which a Jew is permitted to walk on Shabbos). Or 2) the *kablan* or *aris* does the work outside the Jew's domain (e.g., in his own house or office).

Since in these two situations, no other Jew will see the non-Jewish *kablan* or *aris* working on Shabbos for his Jewish employer, there is no concern of *maris ayin* and it is therefore permitted.²⁶

Another situation in which there is no concern for *maris ayin* is where people are not aware that the Facility hiring the *kablan* or *aris* is under Jewish (or partial Jewish) ownership.²⁷

26. שו"ע (או"ח סי' רמ"ד ס"א, וסי' רנ"ב ס"ב) ובמשנה ברורה (סי' רנ"ב ס"ק יז). וגם באריס איכא משום מראית עין כמבואר בגמרא (ע"ז דף כ"א:) ובשו"ע (או"ח סי' רמ"ג ס"א).

27. עיין משנה ברורה (סי' רמ"ד ס"ק ד).

A *sachir* may not do *melachah* even in these circumstances, since he is considered the agent of his Jewish employer, as explained above. (See above, end of Sec. III, A.)

Where *Kablanus* is the Norm

There is a debate among the *Rishonim* regarding the law in a place where the work performed is normally done with a *kablanus* (contracting) arrangement, rather than a *sechirus* (salaried) arrangement. Nowadays, this would include jobs such as building repairs or landscaping, which are almost always done under a contract that sets a fixed price for the entire job. Some *Rishonim* maintain that since *kablanus* is the norm for this work, there is no concern of *maris ayin*, because people will surely realize that the person doing the work is a *kablan*. Accordingly, they rule that it is permitted to allow a *kablan* to perform this work on Shabbos even in an area frequented by Jews.²⁸

Other *Rishonim* argue that the prohibition of *maris ayin* applies even in this situation, because many people do not understand the distinction between a *kablan* and a *sachir*, and if a *kablan* is allowed to do work in public, people will mistakenly permit hiring a *sachir* as well. These *Rishonim* therefore prohibit a *kablan* arrangement in a Jewish area in all circumstances.²⁹

The majority of *poskim* rule in accordance with the lenient opinion.³⁰ Nevertheless, prominent *poskim* have written that

28. זהו דעת הרמב"ם (הל' שבת ו:יג) ועוד כמה ראשונים, כמבואר בביאור הלכה (סי' רמד ס"א ד"ה או לקצור).

29. זהו דעת הר"ן (ע"ז דף ו ע"ב בדפי הרי"ף) ועוד כמה ראשונים, כמבואר בביאור הלכה (שם).

30. כן מבואר בשו"ע ורמ"א (או"ח סי' רמד ס"א) [כמ"ש בביאור הלכה (שם ד"ה או), שו"ת כתב סופר (או"ח סי' מא אות ה), ושו"ת אגרות משה (או"ח ח"ג סי' לה)], וכן הביא הביאור הלכה משו"ת נודע ביהודה (או"ח סי' יב) [אלא שהג"ב חשש לאורחים שיבאו ממקום אחר שמנהגם לעשות עבודה זו בשכירות, אבל כבר כתב בשו"ת אגרות משה הנ"ל שחשש זה ל"ש במדינתנו]. וכ"ה בחי' רע"א (לשו"ע שם), וכן צידד הפמ"ג (שם משב"ז סק"ב), וכ"מ בשו"ע הרב (סי' רמד), וכן פסקו

nowadays, when so many of our brethren are lax in regard to Shabbos, one should be stringent and avoid allowing a non-Jewish *kablan* to do *melachah* on Shabbos in an area where he may be seen by Jews.³¹

For example: If a non-Jewish *kablan* was hired to do repairs on the exterior of a building, the basic halachah would permit allowing him to do the work on Shabbos even if the building is in a Jewish neighborhood, since nowadays this work is always done by independent contractors. In practice, however, one should not allow this. If, however, the work is done in an area that is not within the *techum Shabbos* of any Jews, it is permitted.

Conclusion

In a standard Healthcare Facility, many of the employees are hourly workers in the category of *sachir*, whom one may not allow to perform any *melachah* on Shabbos or Yom Tov, even if they are not explicitly instructed to do it. A portion of the staff may consist of independent contractors in the category of *kablan*, but their contracts often require them to work specifically on Shabbos, which is also prohibited.

One might think that it is possible to contract with the employees that they should receive a percentage of the profit that accrues on Shabbos, which would place them in the category of *aris*.³² While this arrangement may be possible in other businesses, it is not

בש"ת חת"ס (או"ח סי' ס), שו"ת כתב סופר (שם ד"ה וזאת תורת), שו"ת מהר"ם שיק (או"ח סי' צה), שו"ת מהרש"ם (ח"ב סי' קעב), תהלה לדוד (סי' רמד ס"ק ב), שו"ת מהרש"ג (ח"א סי' יא). וראה שו"ת אחיעזר (ח"ג סי' עא).

31. עיין שו"ת כתב סופר ושו"ת אגרות משה הנ"ל בהערה הקודמת.

32. כמה אחרונים דברו מענין זה, עיין שו"ת נודע ביהודה תניינא (או"ח סי' כט), שו"ת חתם סופר (או"ח סי' נט), שו"ת דברי מלכיאל (ח"ד סי' ד), שו"ת הר צבי (או"ח סי' קכג). וע"ע משנה ברורה (סי' רמג ס"ק י).

practical in a Healthcare Facility where many employees *must* work on Shabbos, and as mentioned above, one may not stipulate with an *aris* that he shall work on Shabbos.³³

It is thus evident that it is practically impossible to operate a Healthcare Facility on Shabbos or Yom Tov without transgressing the prohibition of *amira l'akum*. In Chapter 2, we will discuss what arrangements can be made to allow a Facility under Jewish ownership to continue to operate on Shabbos and Yom Tov.

It should be noted that the *Shulchan Aruch* (Y.D. 157:1) rules that one is required to sacrifice all of his money in order to avoid transgressing any prohibition of the Torah. The *Gra* (there, §4) mentions specifically that this includes Rabbinic prohibitions such as *amira l'akum*.

33. עיין שו"ת מהרש"ג (ח"ב סי' מב).

Chapter 2: Facility Operations on Shabbos and Yom Tov

I. The Problem

The daily operation of a Healthcare Facility is a multifaceted endeavor involving the efforts of a host of employees. Thus, running a Facility on Shabbos or Yom Tov entails constant prohibited actions — both *melachos d'Oraisa* and *issurei d'Rabbanan*.

- **Nurses.** Nurses constantly write — they are tasked with “documentation reports” to be completed after every shift, and must record every time they administer medications. Nurses must use the intercom system to be in touch with residents, and the telephone to contact medical advisors.
- **Maintenance.** The maintenance staff’s responsibilities involve many prohibited acts, such as fixing broken furniture or repairing malfunctioning equipment. The janitorial staff’s duties include the prohibited actions of mopping the floor, which entails *sechitah*, and the use of electrical equipment such as vacuum cleaners. Laundering linens and resident’s clothing is *melabein*, a *melachah d'Oraisa*.
- **Kitchen.** The kitchen staff performs many *melachos d'Oraisa* while cooking and baking.
- **Office staff.** Secretaries write, talk on the telephone, and use computers. Oftentimes, offices (e.g., financial offices) are closed on weekends, but are nevertheless open on Yom Tov.

The primary halachic problem of Shabbos operation is the prohibition of *amira lakum* — instructing a non-Jew to perform prohibited actions.

Although the employees are contractual workers, since they get paid by the hour it is forbidden to contract with them to work on Shabbos and to perform tasks that are prohibited on Shabbos.

In addition, a Jew may not benefit from any activity forbidden on Shabbos that is done on his or her behalf, (as a general rule; see Chapter 1, Sec. II, C).

II. Potential Solutions

There are several possible arrangements that can be made to avoid the problem of *amira lakum*, which would potentially allow a Jewish-owned Healthcare Facility to operate on Shabbos, but which are, at best, impractical to implement:

A. *Aris*

In some businesses, the problem of *amira lakum* can be alleviated if the non-Jewish employee has the status of an *aris*. An *aris* is someone who works in a Jewish business, but is not paid in the conventional sense; rather, his “payment” is his share of the profits generated by the business. Since the non-Jew is essentially working for himself, he may choose to do his share of the work on Shabbos. When utilized correctly, the law of *aris* can be used to enable a Jewish business to remain open on Shabbos.¹

This arrangement is **not practical** in a Healthcare Facility:

(1) Many employees *must* work on Shabbos, and one may not stipulate with an *aris* that he shall work on Shabbos.²

1. כמה אחרונים דברו מענין זה, עיין שו"ת נודע ביהודה תניינא (או"ח סי' כט), שו"ת חתם סופר (או"ח סי' נט), שו"ת דברי מלכיאל (ח"ד סי' ד), שו"ת הר צבי (או"ח סי' קכג). וע"ע משנה ברורה (סי' רמג ס"ק י).

2. עיין שו"ת מהרש"ג (ח"ב סי' מב). ועיין לעיל (עמ' מ).