

# In Hilchos Shabbos

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## Internet Business

The Prohibition of *Mekach uMemkar*

A summary of the weekly Wednesday night shiur by Rabbi Shmuel Stein at the Miami Beach Community Kollel / To receive a copy send an email to [InHilchosShabbos@gmail.com](mailto:InHilchosShabbos@gmail.com)

As technology advances it is becoming more commonplace for consumers to go online for their purchases. The question arises as to whether it is permissible for a business owner to allow his internet business to operate on Shabbos. In this chapter we will discuss the prohibition of *Mekach uMemkar* and whether it applies to online businesses on Shabbos

### The Prohibition of *Mekach uMemkar*: Buying and Selling on Shabbos

The Gemara<sup>1</sup> writes that *Mekach umemkar*, buying and selling, is prohibited *mid'Rabbanan* on Shabbos. Chazal were concerned that allowing people to be involved in business might lead to inadvertently writing on Shabbos, as it is common during a sale to write down the details of the transaction, violating the *melacha* of *Koseiv* (writing).<sup>2</sup> For example:

- One may not purchase an item in a store, even if no money is given at the time of the sale, as it would violate the rabbinical prohibition of *Mekach umemkar*.<sup>3</sup>
- The *Mishna Berura*<sup>4</sup> writes that one may not purchase seats in shul for the *Yamim Nora'im* on Shabbos, as this violates the prohibition of *Mekach umemkar*.
- The *Mishnah Berura*<sup>5</sup> writes that there is a discussion among the *poskim* as to whether one may buy and sell *aliyos* in shul on Shabbos and Yom Tov. Some *poskim* allow the buying and selling of *aliyos* because an *aliya* is an intangible item, and they maintain that therefore the prohibition of *Mekach umemkar* cannot apply. The *Mishnah Berura* concludes that those who have the custom to sell *aliyos* should not be admonished.

### Running a Business on Shabbos

The Chasam Sofer<sup>6</sup> clarifies that buying and selling on Shabbos is prohibited *mid'Rabbanan* only in a situation where the transaction is performed randomly and irregularly. But, someone who keeps his business running on Shabbos in its regular manner violates a Torah prohibition. The Torah<sup>7</sup> states, "וביום השבת - On the seventh day (of the week) you shall rest." The Ramban<sup>8</sup> explains that this verse instructs us to treat Shabbos differently than the other days of the week. Although it is technically possible to run a business on Shabbos without violating any of the thirty-nine *melachos*, the Torah states that Shabbos must be a day of rest, and not a day of exertion and labor. The Chasam Sofer therefore concludes that "someone who runs his business on Shabbos in its regular manner violates this Torah prohibition and is considered a *Michallel Shabbos b'Farhesia*

(someone who publicly desecrates Shabbos)."

We will now discuss whether keeping an Internet business running on Shabbos violates the prohibition of buying and selling on Shabbos but first we will discuss some important background halachos which pertain to this question.

### Performing an Activity before Shabbos which Will Cause a *Melacha* to Occur on Shabbos

There is a general principle regarding the *halachos* of Shabbos: One can violate a *melacha* only if he performs it on Shabbos. Performing an activity on Friday which results in a *melacha* occurring on Shabbos does not violate the *melacha*.<sup>9</sup> For example, the Gemara<sup>10</sup> gives the following ruling:

*It is permissible to open a water passage from a spring on Friday just before Shabbos begins so that it waters a field on Shabbos. Since he did not perform the "act of watering" on Shabbos, he does not violate the melacha of Zorei'a (planting).*

Similarly, nowadays, one would be allowed to turn on a hose on Friday with the intention of letting it water his yard over Shabbos. Doing so would not violate the *melacha* of *Zore'a*, because the hose was turned on before Shabbos began and he did not perform the act of watering on Shabbos.

In light of the Gemara's ruling, it would seem that allowing an Internet business to run on Shabbos would not pose any halachic concerns. Since the business is set up before Shabbos, any business transactions which occur over Shabbos happen on their own and therefore should not be prohibited on Shabbos. Nevertheless, allowing an Internet business to run on Shabbos may be prohibited on Shabbos due to a ruling given by Rabbi Akiva Eiger.

### The ruling of Rabbi Akiva Eiger: *Mekach uMemkar* is different than other Shabbos prohibitions

Rabbi Akiva Eiger<sup>11</sup> (1761–1838) rules that the prohibition of *Mekach umemkar* is unique in that one can violate it even if the transaction is set up before Shabbos. Even if one were to put all the payment and acquisition issues in place before Shabbos, if the transaction becomes *final* on Shabbos, he would violate the prohibition of *Mekach umemkar*. The Avnei Neizer<sup>12</sup> explains that the prohibition of *Mekach umemkar* differs from other prohibitions, because unlike other prohibitions where once one "sets up"

1 Beitza 37a, Rashi there *d'h mishum mekach umemkar*; Rambam Shabbos 23:12 2 Rashi Beitza 37a *d'h mishum mekach umemkar*; Rambam ibid; Mishnah Berura 306:33. Rashi adds that buying and selling on Shabbos is also prohibited under the prohibition of *mimtzo cheftzecha* – involving oneself in business-like pursuits. 3 See Mishnah Berura 323:1. There are instances where Chazal allow someone to "purchase" on Shabbos an item he needs for Shabbos — such as Shabbos meals — as long as certain conditions are met; see Shulchan Aruch 323:1-4, Mishnah Berura there; Shmiras Shabbos k'hilchaso 29:17-25; Orchos Shabbos 22:37-38 4 Mishnah Berura 306:33 5 Mishnah Berura 306:33. However, the Mishnah Berura cites others who prohibit selling *aliyos* on Shabbos. The Mishnah Berura concludes that those who have the custom to sell *aliyos* should not be admonished. 6 Choshen Mishpat siman 195 7 Shemos 23:12 8 Vayikra 19:2 *d'h Kedoshim* (paragraph beginning with *v'zeh derech*) where he writes "someone who exerts himself on Shabbos violates this positive commandment." The Ramban expounds on this idea in Vayikra 23:24 regarding running a business on Yom Tov (and Shabbos). 9 Rambam Shabbos 3:2 10 Shabbos 18a 11 Shaylos u'Teshuvos 159. Rav Moshe Feinstein [Igras Moshe O.C. Vol. 3:44] writes that "[it seems that] although we have no proof to support the ruling of Rabbi Akiva Eiger one should still be stringent in this halacha, especially since Rabbi Akiva Eiger ruled stringently on this matter." However, many other *poskim* disagreed with this ruling of Rabbi Akiva Eiger: *Shu"t Toras Chesed* Vol. 1:13-14; *Shoel u'meishiv* (6)50; *Daas Torah* beginning of 444; See *Chazon Ish Dmai* 9:12; *Maharshag* 2:117 *Shu"t Minchas Chaim* 3:22. Rav Shlomo Miller is quoted [in *sefer Commerce and Shabbos* pg. 185 note 2] that the *halacha* follows the opinion of the ones who are lenient. 12 The Avnei Neizer explains [O.C. 51] that the reason why the prohibition of *Mekach umemkar* always needs a person's involvement to occur is because if the seller were to pass away before the object transfers to the other person's ownership, the transaction cannot be completed as the transaction can occur only through the knowledge and willingness of the seller. Therefore, one may not set up a transaction that is completed on Shabbos even if it was set up before Shabbos, because the seller partakes in the transaction that occurs on Shabbos. 13 Vol. 2:117. The *Chelkas Yaakov* O.C. 67 also permits the use of vending machines on Shabbos based on this reasoning. See also *Shmiras Shabbos k'hilchaso* 29 note 76, *Orchos Shabbos* 22:41 footnote 55, and *sefer Commerce and Shabbos* pg. 185 who follow this opinion. There is another problem that may be involved with allowing a vending machine to operate on Shabbos that is addressed by the *poskim*, the prohibition of *S'char Shabbos* (earning money on Shabbos): The *poskim* rule that operating a vending on Shabbos does not violate this prohibition. The prohibition of *S'char Shabbos* only applies when someone is paid for a service he provides on Shabbos, if the money he is given in exchange for an item that he sells on Shabbos (such as in the case of the vending machine), the prohibition of *S'char Shabbos* does not apply. [Nodeh b'Yehuda (Tinyana O.C. end of 26); *Tehila l'David* 244:11; *Shmiras Shabbos k'hilchaso* 29 note 75 from Rav Shlomo Zalman Aurbach]. The reason for this is as follows: The prohibition of *S'char Shabbos* applies only to money that was earned for the time one spent performing the service on Shabbos (e.g. babysitter, caterer). Since the money is given in exchange for the "Shabbos-time" that one worked, it is prohibited. However, if the money is given in exchange for an item that was purchased on Shabbos, the prohibition of *S'char Shabbos* does not apply, because the money is not given in exchange for the time that one worked on Shabbos but for the item being purchased. [Aura of Shabbos pg. 90 in footnote 1; *Commerce and Shabbos* pg. 186 footnote 6]

the *melacha* to take place on Shabbos it then occurs on its own, *Mekach umemkar* always needs a person's involvement for the transferring of ownership to occur.<sup>13</sup> For example, if the seller were to pass away before the object transfers to the other person's ownership, the transaction cannot be completed as the transaction can occur only through the knowledge and willingness of the seller. Therefore, one may not set up a transaction that is completed on Shabbos even if it was set up before Shabbos, because the seller partakes in the transaction that occurs on Shabbos.

Based on the ruling of Rabbi Akiva Eiger, there would seem to be a halachic problem with keeping a business website running on Shabbos. Although the website was set up before Shabbos, since the object transfers ownership on Shabbos, keeping the website open on Shabbos would violate the prohibition of *Mekach umemkar*. Nevertheless, some *poskim* permit keeping a website running on Shabbos, based on a ruling of the Maharshag, as we will explain below.

### The leniency of the Maharshag: Allowing a Vending Machine to Operate on Shabbos

The Maharshag<sup>14</sup> (1860–1930) was asked if a Jew who owns a vending machine may allow it to operate on Shabbos. According to the opinion of Rabbi Akiva Eiger, it would seem to be prohibited, because although the vending machine is set up before Shabbos, since the transaction occurs on Shabbos (when an item is purchased from the machine), allowing the vending machine to operate on Shabbos would seemingly violate the prohibition of *Mekach umemkar*. The Maharshag ruled that it is permitted to allow a vending machine to operate on Shabbos. He maintains that even Rabbi Akiva Eiger only gave his stringent ruling when one sets up a transaction on Friday to occur *specifically* on Shabbos. However, if the transaction is not specifically set up to occur on Shabbos, one may allow the transaction to occur on Shabbos. Accordingly, the Maharshag rules that one may allow a vending machine to operate on Shabbos since the owner does not have in mind for the items to be sold *specifically* on Shabbos – as they can be sold after Shabbos as well.<sup>15</sup>

Based on the Maharshag's leniency, one may allow his Internet website to operate on Shabbos, since the website was not set up before Shabbos with the specific intention to sell the merchandise on Shabbos.<sup>16</sup>

However, there are other *poskim*<sup>17</sup> who disagree with the leniency of the Maharshag and accordingly rule that one may not allow an Internet business to operate on Shabbos based on the ruling of Rabbi Akiva Eiger which prohibits allowing *Mekach umemkar* to occur on Shabbos even if it is set up before Shabbos begins. Accordingly, a Rav should be consulted regarding operating an Internet website on Shabbos.

### A permissible way to operate a website on Shabbos

Rav Yisroel Belsky<sup>18</sup> writes that there is a permissible way to operate a website on Shabbos according to the opinion of all the *poskim*: If one adds a stipulation on the website which states that any transaction made from Friday night until *motza'ei Shabbos* is not binding until after Shabbos ends, it would be permitted to allow the website to run on Shabbos. Since the transaction becomes binding only after Shabbos ends, no form of *Mekach*

*umemkar* has occurred on Shabbos, and accordingly there would be no prohibition involved in allowing the website to remain operational on Shabbos.

### Third Party Fulfillment centers

If fulfillment of one's Internet business is done through a non-Jewish, third-party fulfillment center, there is an additional difficulty in running an Internet business on Shabbos, as there can be an issue of *Amira l'akum*. See footnote<sup>19</sup> for a discussion on the subject.

### Zilzul Shabbos – Degrading the Honor of Shabbos

Another issue which may be involved in running an Internet business on Shabbos is that of *Zilzul Shabbos*, the prohibition against degrading the honor of Shabbos. Although according to many opinions one might not technically violate the prohibition of *Mekach umemkar* by keeping his website open on Shabbos, it may be degrading to the honor of Shabbos to keep the site open on the holy day.<sup>20</sup> The parameters of *Zilzul Shabbos* are not clearly defined, and it is left to the Torah leaders of each generation to determine which activities constitute an act of *Zilul Shabbos*. Accordingly, one should consult a Rav for a final ruling on this issue.

### Worrying about One's Business

The *Shulchan Aruch*<sup>21</sup> writes, "Although there is no prohibition against thinking about one's business on Shabbos, there is a *mitzva* for one to totally remove his thoughts from his business. Once Shabbos arrives it should be as if all of his work has been completed." The *Mishna Berura*<sup>22</sup> adds, "If one is thinking about his business to the point where he becomes bothered and worried, he should refrain from thinking about it." Accordingly, if one's Internet business is running on Shabbos, he must be careful not to have it on his mind on Shabbos, in fulfillment of what the *Shulchan Aruch* writes: "Once Shabbos arrives it should be as if all of his work has been completed."

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Although keeping a website open on Shabbos may be permissible, someone who does close his website on Shabbos performs a great show of honor to Shabbos.<sup>23</sup> The Gemara relates many stories of great people who went beyond the strict letter of the law in order to raise the honor of Shabbos.

The Gemara<sup>24</sup> tells the story of Yosef ben Simai, whose property caught fire on Shabbos. When the non-Jewish firemen came to extinguish the fire, Yosef ben Simai did not allow them to save his property. As a result, a miracle occurred: it began to rain and the fire that engulfed his property was extinguished. Although it was permitted on Shabbos to allow the non-Jewish firemen to extinguish the fire, Yosef ben Simai maintained a stricter level of Shabbos observance to raise the honor of Shabbos and was consequently worthy of meriting a miracle.

Accordingly, although there may be strong basis to permit operating a website on Shabbos, someone who decides to close his website on Shabbos would be justified in doing so, as it is a great act of honoring Shabbos.<sup>25</sup>

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<sup>14</sup> *Shmiras Shabbos k'hilchaso* 29:29, *Orchos Shabbos* 22:41 footnote 54. One does not violate the prohibition of *lifnei iver* (placing a stumbling block in front of another Jew), by allowing the vending machine to operate on Shabbos, since there are other places where a non-observant Jew can buy food on Shabbos, without purchasing it from the vending machine [see *Rama Y.D.* 151:1]. Furthermore, it is not certain that a Jew will actually purchase an item from the vending machine on Shabbos [*Shmiras Shabbos k'hilchaso* 29 note 75]. However, in a situation where the machine is set up in a neighborhood that the majority of people that would use the machine on Shabbos are non-observant Jews it is appropriate not to allow ones vending machine to operate on Shabbos [Rav Shlomo Zalman Aurbach quoted in *Shulchan Shlomo* 306: *haarah* 8; *Shmiras Shabbos k'hilchaso* 29:29; *Orchos Shabbos* 22:41]. <sup>15</sup> Commerce and Shabbos pg. 187; The Aura of Shabbos pg. 93. In regard to why the money which is made in exchange for the merchandise sold on Shabbos does not violate the prohibition of *S'char Shabbos* see footnote 13, above. <sup>16</sup> Regarding the use of a non-Jewish fulfillment center on Shabbos or Yom Tov: Some online retail websites process their orders through a fulfillment center. These fulfillment centers are companies that provide many services for the online retail websites, such as storing the merchandise and shipping them. If the non-Jews who work in these centers ship out merchandise on Shabbos on behalf of the Jewish retail business, there may be a problem of *Amira l'Akum* (instructing a non-Jew to perform a *melacha* on Shabbos). Since the non-Jews that working in the fulfillment center are doing so on behalf of the Jewish website owner it is considered as if the non-Jew is processing the merchandise on Shabbos on behalf of his Jewish client, violating the prohibition of *Amira l'Akum*. There is however, a simple solution to this problem: so long as the Jewish website owner gives instructions to the fulfillment center that they do not need to fill the orders on Shabbos but they can wait until after Shabbos, the prohibition of *Amira l'Akum* is avoided. Since the non-Jew is not obligated to fill the orders on Shabbos, even if he does fill them on Shabbos he is doing so for his own convenience and not for the benefit of the Jewish website owner, and the prohibition of *Amira l'Akum* is not violated. <sup>17</sup> *Minchas Yitzchak* Vol.3:34. See also *Shulchan ha'Levi* pg. 42, where Rav Yisroel Belsky rules that allowing an Internet business to run on Shabbos violates the prohibition of *Mekach umemkar* even according to the opinions that disagree with the ruling of Rabbi Akiva Eiger, see *Shulchan ha'Levi* ibid for explanation. <sup>18</sup> Although it is possible that even according to Rabbi Akiva Eiger's opinion there may be room to be lenient with regard to owning vending machines that operate on Shabbos, it is still prohibited to allow an Internet business to operate on Shabbos (See *Shulchan ha'Levi* pg. 42). <sup>19</sup> *Shulchan ha'Levi* pg. 42, Commerce and Shabbos pg. 187 footnote 8 <sup>20</sup> See *Igros Moshe* O.C. Vol. 4 *siman* 60, where he writes that it is prohibited to use a timer on Shabbos due to the prohibition of *Zilzul Shabbos* (degradation of the honor of Shabbos). By setting up a timer to perform *melacha* on Shabbos one causes the *melacha* to occur in his home or at work and "there is no greater degradation to the honor of Shabbos greater than this." Similarly, and perhaps even more so, allowing a website to operate on Shabbos may involve the prohibition of *Zilzul Shabbos* [See The Aura of Shabbos pg. 95]. However Rav Shlomo Miller rules that allowing a website to operate on Shabbos does not involve the prohibition of *Zilzul Shabbos* (heard from his son-in-law, Rav Yosef Kushner, author of Commerce and Shabbos). <sup>21</sup> 306:8 <sup>22</sup> 306:28 <sup>23</sup> Rav Shlomo Miller cited in Commerce on Shabbos <sup>24</sup> Shabbos 121a <sup>25</sup> Commerce and Shabbos pg. 188; see footnote 23