

# SNOW REMOVAL CONTRACTS: WHAT ABOUT SHABBOS?

by Rabbi Doniel Neustadt

*The following is a discussion of Halachic topics related to the Parsha of the week. For final rulings, consult your Rav.*

*Remember the Shabbos day (20:8)*

**QUESTION:** A snow removal contract is an agreement, either verbal or written, to plow a driveway, parking lot, etc., whenever a specified amount of snows accumulates. Is it permitted to enter into such a contract which, in effect, asks a non-Jew to perform a forbidden Labor on Shabbos?

**ANSWER:** It is difficult to give a definitive answer to this question. Let us rather explain the pros and cons so that the reader will be able to present his individual case to a rav for a final ruling.

## THE PROHIBITION: AMIRAH L'AKUM

It is Rabbinically(1) prohibited(2) to instruct a non-Jew to perform a forbidden - either Biblical or Rabbinic - Shabbos Labor. It makes no difference if the instructions are given on Shabbos or before Shabbos(3). This strict prohibition is known as amirah l'akum(4).

Generally, a snow removal contract calls for snow to be removed whenever a specific amount accumulates. It follows, therefore, that if that specific amount has accumulated on Shabbos, then it is as if the non-Jew was "commanded" to remove it on Shabbos, which is amirah l'akum.

We will now consider three possibilities for mitigating the restriction of amirah l'akum:

## NO DIRECT INSTRUCTIONS:

An argument may be made that a snow-removal contract does not constitute amira l'akum since there is no direct command to remove the snow on Shabbos. Since the contract calls for snow removal whenever a certain amount of snow falls, without explicitly mentioning that Shabbos is included, one may argue that amirah l'akum is only prohibited when there is a specific command to do work on Shabbos. Since, however, there is no clear source in the poskim which indicates that this type of "command" is not considered amirah l'akum(5), it is difficult to rely on this argument as grounds for leniency(6).

## PERMISSIBLE MANNER:

Another possible argument for leniency may be based on a ruling of the Rama(7) who states that although holding a lit candle is strictly forbidden because of muktzeh, still it is permissible to instruct a non-Jew to hold a lit candle so that a Jew can see where he is going. Why does amirah l'akum not apply? The Rama explains that amirah l'akum is only prohibited if otherwise the act in question could not be accomplished. In this case, though, there are permissible methods for the Jew himself to hold the candle, e.g. indirect movement (tiltul min ha-tzad) or movement via body(8) (tiltul b'gufo). Thus the Rama establishes the principle that whenever an act could possibly be done by a Jew in a permissible manner, a non-Jew may be instructed to do that same act even in a prohibited manner.

Snow removal can be accomplished in one of two ways: by plowing, clearly a forbidden Shabbos Labor, or by shoveling, which may be permitted on Shabbos. Based on the ruling of the Rama, it should follow that amirah l'akum does not apply and the non-Jew could be instructed to plow the driveway since the Jew can choose to shovel his own driveway. Of course, this leniency would only apply in an area which has a kosher eiruv; otherwise there would be no permissible way for the Jew to shovel his own driveway because of the forbidden Labor of Carrying.

But this argument, too, is not strong enough to rely upon. First, Rama himself - discussing a similar case - does not recommend relying on this leniency(9). Secondly, it is unclear if it is permitted for a Jew to shovel his driveway even where an eiruv exists. One possible problem could be the ruling of the Shulchan Aruch(10) which prohibits removing bundles of wheat or pitchers of wine from one's yard or basement on Shabbos, as this is considered a weekday activity, uvda de'chol. Similarly, shoveling one's driveway may be considered a weekday activity(11). Another issue is the opinion of some poskim(12) who hold that snow which fell on Shabbos is severe muktzeh.

## **FOR THE BENEFIT OF THE NON-JEW**

Yet another argument for leniency can be made based on the ruling of the Taz(13). The Taz rules that one may instruct a non-Jewish maid to wash the dishes on Friday night even if he knows that she will turn on the lights(14) in order to be able to wash the dishes. He explains that the Jew gains no benefit from the light, since the Jew's only concern is that the dishes be washed. The light is being turned on not for the Jew, but for the sake of the maid. This is not amirah l'akum, since a non-Jew may perform a Shabbos Labor for himself on Shabbos.

Since the non-Jew could - if he wanted - remove the snow manually and not with a plow, it may be argued that the Jew's instructions to "clear the driveway" are not instructions to use the plow. All the Jew cares about is the clear driveway; how the job gets done is not his concern. Amirah l'akum may not apply so long as no explicit instructions to perform a prohibited Labor, e.g., "Plow my driveway," are given.

But it is highly questionable if these two cases are indeed similar, since there are marked differences between them that outweigh the apparent similarity. In the Taz's case, washing dishes is clearly permissible on Shabbos. Indeed, when the maid is actually washing the dishes she is performing no

forbidden Shabbos Labor. It is only when preparing to wash the dishes by turning on the kitchen light that a prohibited Labor is performed<sup>(15)</sup>. We thus understand what the Taz means when he defines turning on the light as being of "no benefit to the Jew" and completely "for the sake of the maid". But concerning snow removal, the actual removal of the snow is accomplished by means of a forbidden Labor, driving a snow plow. The Jew is benefiting directly from the prohibited Labor performed by the non-Jew, and it is as if the Jew is instructing the non-Jew to use the plow for the snow removal. It is markedly different from the case of washing dishes<sup>(16)</sup>.

## CONCLUSION:

While we are forced to conclude that it is not a simple matter to permit an unconditional seasonal snow contract<sup>(17)</sup>, it is, however, permitted to sign such a contract as long as it is clearly stipulated that the homeowner does not want his driveway plowed on Shabbos. If this condition is made, then even if the non-Jew shows up on Shabbos, there is no violation of amirah l'akum<sup>(18)</sup>.

Some have suggested that signing even such a contract should be discouraged. Their objection is based on a ruling of the Rama<sup>(19)</sup> that prohibits a Jew to have his windmill - or any other noisy machine - operate on Shabbos because of zilzul Shabbos, degradation of the Shabbos. The Rama is concerned<sup>(20)</sup> that running a noisy machine on Jewish owned premises on Shabbos casts a suspicion on the owner of the premises: Is he operating the machine? For this reason some poskim forbid a non-Jewish maid to operate a dish washer or a vacuum cleaner inside a Jew's home, since it may lead to suspicion of the Jewish owner if the noise is overheard<sup>(21)</sup>. But when a truck is plowing a driveway, and it is clear as day that a non-Jew is driving the truck, we need not be concerned about zilzul Shabbos.

## FOOTNOTES

1. A minority view maintains that amirah l'akum is Biblically forbidden. While the poskim generally reject this approach, it is an indication of the severity of the prohibition; see Sha'ar ha-Tziyun 253:7.
2. There are several reasons given for this prohibition; see Rambam Hilchos Shabbos 6:1; Rashi, Avoda Zarah 15a and 22a.
3. O.C. 307:2.
4. To reinforce this prohibition, the Rabbis forbade one to derive direct benefit from a non-Jew on Shabbos even if the non-Jew performed the Labor on his own without being told; O.C. 276:1.
5. See Melachim Omnaiych (Chapter 9) who discusses a somewhat similar case concerning a non-Jewish stockbroker who was instructed to sell a stock when it reaches a certain price, and that price was reached on Shabbos. This may be a violation of amirah l'akum.

6. See also Mishnah Berurah 244:30.
7. O.C. 276:3. See also Taz 307:4.
8. These concepts were explained at length in a previous column (Vayeitze 5759).
9. See Rama 325:10 and Mishnah Berurah 57 and 62 who discourages relying on his leniency. See also Aruch ha-Shulchan 276:17 who opines that this leniency may only be relied upon in the privacy of one's home. See also Mishnah Berurah 276:29.
10. O.C. 333:1. See Mishnah Berurah 11 that this is prohibited even through the agency of a non-Jew.
11. Teshuvos Lev Avraham 49. See also Machazei Eliyahu 68.
12. Minchas Shabbos 88:20 quoting Pri Megadim; Igros Moshe O.C. 5:22-37; Harav S.Z. Auerbach, Sefer Tiltulei Shabbos, pg. 13. Many other poskim, though, maintain that snow is not muktzeh, see Har Tzvi, Soser; Harav S.Y. Elyashiv, Shalmei Yehudah, pg. 203; Shemiras Shabbos K'hilchasah, pg. 190. [See also Mishnah Berurah 310:32 and 338:30 concerning rain.]
13. Quoted by Mishnah Berurah 276:27.
14. Or use hot water - Shemiras Shabbos K'hilchasah 30:23.
15. Turning on the lights is comparable to the non-Jewish maid driving from her home to her job, which is permitted since the driving has nothing to do with the job which is being done for the Jew. The driving is completely for the sake of the non-Jew.
16. See a similar idea in Minchas Yitzchak 4:25 concerning a different case. An additional argument against this leniency is the opinion of some poskim that amirah l'akum applies to an act which is forbidden merely because of u'vda de'chol.
17. When the question on a contract applies to a shul, etc., there is more room for leniency, since there are some authorities who permit amirah l'akum in order to avoid a public hazard. Since each case is different, a rav must be consulted.
18. Although it is prohibited to allow a non-Jew to do work on a Jew's premises even without instructing him to do so (Mishnah Berurah 252:17; 276:11), we have established elsewhere (see Hebrew Notes to The Weekly Halachah Discussion, vol. 1, pg. 244-248) that this prohibition applies only when the Jew has direct benefit from the non-Jew's work, such as putting on a light for the benefit of the Jew. Snow removal, however, is not a direct benefit; rather, it is removal of a potential hazard. It is similar to a non-Jew extinguishing a light for a Jew, which is permitted as long as no actual command to do so was made (see Mishnah Berurah 207:11 and 207:76.)
19. O.C. 252:5. See Pri Megadim 21 that this is only a chumrah.
20. As explained in Darkei Moshe and Shulchan Aruch Harav and as evident from the Rama himself

who permits a clock to chime on the hour since everybody knows that it can be set before Shabbos.

21. See Igros Moshe O.C. 4:70-6 (concerning an alarm clock) and Minchas Shelomo, pg. 81 (concerning a washing machine). See also Kol ha-Torah # 42, pg. 255, about a dish washer.

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