

# SHABBOS BUSINESS

*by Rabbi Doniel Neustadt*

**Question:** Does the Halachah permit a business, or a store owned by a Jew and a non-Jew in a partnership, to remain open on Shabbos?

**Discussion:** Shulchan Aruch rules that it is permitted for a Jew and a non-Jew to form a business partnership if they stipulate at the outset that any work done on Shabbos is totally under the non-Jew's jurisdiction, i.e., that only he is responsible for the work done on Shabbos and that he is the sole recipient of that day's profits. To offset the Jewish partner's loss of profit made on Shabbos, he will receive the profits of a corresponding weekday. Entering into such an agreement is permitted even l'chatchilah, as long as these stipulations are spelled out in a legally binding contract and not merely agreed upon verbally by the two parties.[1]

Mishnah Berurah (note 6) adds that if, at the end of the accounting period, the partners are unable - or unwilling - to determine the respective profits and losses of each day, they may divide the profits and losses equally between them. It is important to stress that this leniency may be relied upon only in the exact scenario described by Mishnah Berurah - that they were unable or unwilling to determine the daily profits when it came time for an accounting. But if the business was set up in a manner in which it would be impossible to determine the profits and losses of each day, then it is evident that the entire agreement is a hoax and it is not valid.[2]

A slightly different type of partnership permitted l'chatchilah, and mentioned by Rama, is based on the principle that the non-Jewish partner assumes no obligation to work on Shabbos. He may still elect, of his own free will, to work on Shabbos anyway. Once he does so, it is permitted for his Jewish partner to split the Shabbos profits with him. This holds true even if the non-Jewish partner understands that the Jew will be displeased if he fails to work on Shabbos and might even end the partnership. As long as the non-Jewish partner is not contractually obligated to work, such a partnership is permitted.[3]

But this type of arrangement is allowed only if the non-Jewish partner does the work himself. If, however, the partners employ another non-Jew to do the work on Shabbos, and he is paid with the joint funds of the partnership, he would essentially be working for the Jew as well and that would be forbidden. The only way a non-Jew could be hired to work on Shabbos for the partners would be for him to work for them during the week, get paid for a week's work, and not suffer a cut in his salary should he refrain from working on Shabbos.[4]

One additional note: When a Jew and a non-Jew enter into one of the partnerships described above so that their business may remain open on Shabbos, it is vital that the Jewish community be aware that the business is owned - at least partially - by a non-Jew. If the community is not aware of the non-Jew's stake in the business, it is forbidden to keep the business open on Shabbos[5].

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Until now, we have discussed legitimate, l'chatchilah partnerships which would allow businesses to remain open on Shabbos. But in addition to these, there are many other types of b'diavad arrangements that have been formulated over the years. In the responsa of some of the great poskim of yesteryear, we find many different types of "sale documents" and other arrangements which permit a Jewish business to remain open on Shabbos under certain, limited conditions. It cannot be stressed enough, however, that many of these loopholes and creative halachic solutions were formulated under duress, in response to the dismal conditions that existed in earlier times, when many governments did not allow Jews to own their own businesses. Grinding poverty and limited parnassah options motivated the poskim to find temporary solutions for an intolerable situation.[6] Today, when conditions are altogether different, it is disingenuous to cite such halachic precedents[7]. In addition, contemporary poskim are in agreement that one should do his utmost to avoid entering into any type of a "Shabbos partnership" with a non-Jew, since such arrangements are exceedingly complex[8] and tend to lessen sensitivity towards Shabbos observance.[9] The ones affected the most are often the members of the owner's family, who are confused about their family's operating a business on Shabbos.[10] As the Chafetz Chayim himself writes in Beur Halachah,[11] those who are careful to keep Shabbos in its pristine form and do not look for any leniencies or loopholes, will surely be blessed with great financial success during the rest of the week. One need not rely on "Shabbos profits" to make a living.

Question: Is it permitted to buy stock shares in a public company whose board members are non-Jews who operate the company on Shabbos and Yom Tov?

Discussion: Yes, it is permitted. The poskim explain that buying shares in a company is not the same as becoming a partner in the company. Buying shares is merely a method of investing. The buyer hopes that the value of his shares will rise and enable him to turn a profit when he sells them; he has no intent or interest in becoming an owner or a manager of the business. Although all publicly traded companies must have an annual meeting where officers are elected by the shareholders, it is well known that this is merely a formality, and after all is said and done, the power to run the company remains in the hands of the board; the individual minority shareholders have no say or power to speak of. Thus, buying minority shares in a non-Jewish company which operates on Shabbos and Yom Tov is not considered as if one is becoming a partner with a non-Jew and is permitted[12].

What about buying stock shares in a public company whose board members are non-observant

Jews who operate the company on Shabbos and Yom Tov? Is that considered as if the investor is contributing to the company's finances and thereby aiding and abetting Shabbos desecrators? Most contemporary poskim rule that buying stock shares is not considered to be aiding and abetting Shabbos desecrators as there is no shortage of investors who are ready and able to buy shares. Anyone who buys shares does so for his own investment purposes and not for the purpose of financing the company.[13]

Question: Many banks offer a service whereby customers may instruct the bank to pay their utility or other bills on a specific date of the month. Should one refrain from using this service since a payment may be made on his behalf on a Shabbos or Yom Tov?

Discussion: There is no halachic reason not to use this service. While it is true that a payment date may fall on a Shabbos or Yom Tov, and one may not instruct a non-Jew — even before Shabbos — to perform a service on his behalf on Shabbos[14], in this case there is no action performed by a non-Jew on Shabbos; the entire process from beginning to end is automated. The bill is actually paid through a computer transaction from one account to the other. There is no halachic restriction on having a machine perform a service on Shabbos on behalf of a Shabbos-observant Jew, if the machine is programmed in advance to do so[15].

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1. Igros Moshe, O.C. 1:90.
  2. Igros Moshe, O.C. 1:90; 2:65. See Cheshev ha-Eifod 2:6 for a dissenting opinion.
  3. Igros Moshe, O.C. 1:90.
  4. Igros Moshe, O.C. 2:65; Shevet ha-Levi 5:26.
  5. Koveitz Teshuvos 3:37; Shevet ha-Levi 3:23. See Mishnah Berurah 245:10 and 15.
  6. Seridei Aish, O.C. 23, relates that implementing these various lenencies was subject to controversy among the Rabbis of his time. He asked the Chafetz Chayim for his opinion on the matter. The Chafetz Chayim replied that since there are such serious pros and cons, he preferred to avoid taking a stand.
  7. See Yeshurun, vol. 19, pg. 614.
  8. Minchas Yitzchak. 9:24.
  9. Igros Moshe, O.C. 4:55; Chelkas Yaakov 3:29, 32.
  10. Cheshev ha-Eifod 2:6.
  11. 246:5, s.v. rak.
  12. Igros Moshe, E.H. 1:7; Minchas Yitzchak 1:72; 3:1-27; Rav Y.S. Elyashiv (written ruling, published in

Mamon Yisrael, pg. 32). For a dissenting opinion, see Bris Yehudah, pg. 43. [Whether or not it is also permitted to buy enough shares that the board must would have to take his opinion into consideration is questionable: Although Igros Moshe, E.H. 1:7 clearly forbids doing so, he seems to have recanted in Igros Moshe, O.C. 4:54.]

13. Igros Moshe, E.H. 1:7; Minchas Yitzchak 5:18.

14. O.C. 307:2. [Although in our case there is no direct command to pay the bill on Shabbos but rather to do so on a specific date of the month, it still would be prohibited to specifically tell a non-Jew to do so, since that date will, at one time or another, fall out on Shabbos. This is halachically considered as if he instructed the non-Jew to make payment on Shabbos; based on Igros Moshe, O.C. 3:44, s.v. aval.]

15. O.C. 252:1.

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