

ליקוטי ופסקי הלכות "חוקי חיים"

ותלמוד
"תקופת התנאים"
לעשות רצונך
בלבב שלם



שע"י "חדר הוראה" שבגנת מנחת יצחק פעה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

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Halachos of S'char Shabbos

Parshas Toldos 5783

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Principles about the Issur of S'char Shabbos

Source, Reason

- Source.** Chazal forbade taking payment for work done on Shabbos even if the work itself was permissible, e.g., the work of a guard, waiter, or babysitter. Even if the money is given before or after Shabbos, the very accepting of payment for work done on Shabbos is assur (ב"מ נ"ח ע"א). This is what the poskim call "s'char Shabbos."
- Reason.** This issur is a gezeirah derived from the issurim of business and renting (רש"י כתובות דף ס"ד ע"א).
- Renting item, home.** The issur of s'char Shabbos is not limited to paying for human labor; it is also assur to pay money as rent for an item, home, or hall (תוס' שבת דף י"ט ע"ד ד"ה לא, רא"ש שם סי' ל"ו).
- Selling items.** This issur only pertains to hiring a person or renting something. There is no issur to take payment for items sold on Shabbos in a permissible manner. One may sell these, profit from them, and take payment after Shabbos (ש"ע סי' שכ"ג ס"ד).
- Hiring on Shabbos.** Even when there is a heter to take payment, e.g., for a mitzvah matter (below, 12), one may not hire someone on Shabbos itself. That must be done before Shabbos (מ"ב שו"ת סק"ג).

Issur Is on the Recipient

- The Acharonim explain that the issur of s'char Shabbos is on the one receiving payment, not the one paying. The person receiving payment is the one who violates the issur of taking s'char Shabbos, and money he takes is wrongfully in his possession. However, the one who pays violates the lav of לפני עור (מ"ב סי' ש"ו סק"א) לפני עור ע"ד).
- Non-Jewish worker.** Because the issur is only on the recipient, if one hired a non-Jew to do work for him – obviously only work that may be done by a non-Jew on Shabbos – paying the non-Jew's wages after Shabbos is not a problem of s'char Shabbos (גמ' שבת דף קכ"א ע"א לגבי תשלום לנכרי על כבוי דליקה, ש"ע סי' של"ד ס"ו).
- Jewish worker.** However, if a Jewish worker does permissible work for a non-Jew on Shabbos, he may not take payment from the non-Jew, as the issur is on the recipient. Thus, due to the issur of s'char Shabbos, one may not rent an item to a non-Jew and take payment from him, unless it is done in a permissible way, as we will explain below (ש"ע סי' רמ"ו ס"א).
- Even b'dieved.** The issur of s'char Shabbos is even b'dieved. I.e., even if one already took payment, that money is still forbidden to him and to others; it must be destroyed or thrown into the sea (ריטב"א ע"ז כ"ו, ש"ע רמ"ה ס"ו, ש"ע הגר"ז רמ"ה ס"יט, וע' ביאה"ל שם ד"ה אסור).

"Havla'ah"

- S'char Shabbos is only assur when the payment is solely for work done on Shabbos. If, however, a worker is not hired by the day, but for an extended period, e.g., by week or by month, Chazal allow him to take payment even for the work he does on Shabbos (ב"מ שם). That money is subsumed, or "swallowed," within the wages for the other days; it is not explicitly for Shabbos (רש"י שם). The poskim call this heter "havla'ah"; below we will go through the relevant halachos.

S'char Shabbos for a Mitzvah Matter

- The poskim argue whether one may take s'char Shabbos for mitzvah work, e.g., serving as chazan or baal korei on Shabbos and Yom Tov, etc. Some say one may not take s'char Shabbos even for a mitzvah (רבינו ברוך, טור סי' תקפ"ה, סתימות המחבר ש"ע סי' ש"ו ס"ה) unless it is done in a permissible way.
- Others say Chazal did not forbid s'char Shabbos for mitzvah work (רבינו שמואל הובא במרדכי כתובות סי' קפ"ט הובא בב"י סי' ש"ו, י"א בש"ע שם).

- Siman brachah.** The poskim write that even according to those who allow taking s'char Shabbos for mitzvah work, the recipient will not "see a siman brachah" from it (מ"ב סי' ש"ו) (סק"ג), i.e., even if he profits, he may lose money elsewhere (מ"ב סי' רנ"א סק"ב). This is true in a case where it is not done in a completely mutar way like havla'ah; if it is, we do not say the recipient will not see brachah (ארחות שבת פכ"ב הע' קס"ו).
- Some hold that only someone well-off will not see brachah. However, needy people who struggle to make a parnassah do not need "siman brachah"; they are just seeking to satisfy their hunger (ארחות חיים ספינקא סי' תקפ"ה סק"ג הובא באלף המגן שם סק"ג).

Heter of Havla'ah

One Unit of Employment

- Hired for individual days.** The heter of havla'ah is only when the employment for the entire period is a single unit, and the employer cannot back out in the middle of the employment period. In such a case, we view it as if the payment is for the entire period, which Shabbos is a part of. However, if one was hired for individual days and the employer can back out from hiring him the next day, that is not havla'ah. Payment may not be given for work done on Shabbos in this way even if the employer wants to give it to him together with his wages for the other days (מ"ב סק"ב ס"ד, רמ"א סי' ש"ו ס"ד).
- Subtracting for absence.** If the whole period of employment is one unit and the employer cannot back out, s'char Shabbos may be paid through havla'ah even if the employee's wages will be deducted for a day of absence from work. Such a deduction is accepted even for monthly employees; it does not contradict the classification of the work as one extended unit of employment (מ"ב שם סק"ב).
- Daily payment.** As long as a hiring agreement is for a period that includes several days, the fact that in practice the employer pays at the end of each day does not contradict the nature of the employment. Such payment still fits under havla'ah as long as the wages for Shabbos are given together with another day's wages.

Claiming Payment through Havla'ah

- Even if wages are paid through havla'ah, there is no heter for the employee to claim his Shabbos wages from his employer. He must word his claim using havla'ah as well, e.g., "Give me my weekly/monthly wages" (ש"ע סי' ש"ו ס"ד).

Main Work Is on Shabbos

- The poskim write that even if an employee's main work is on Shabbos, it can be under the heter of havla'ah if he is also hired for some time before or after Shabbos (ח"י אדם הובא במ"ב שם סק"א).
- An amount of time that people pay for.** It would seem that to take s'char Shabbos, one must also work outside of Shabbos for an amount of time that people would employ and pay a worker for. E.g., if people would hire and pay a worker for an hour of work, it suffices to add an hour to his work and then also pay for the work he did on Shabbos through havla'ah. However, it obviously does not help to add, say, ten minutes, and rely on that to receive all the wages, as people do not employ a worker for ten minutes; accordingly, the payment is not for that work.
- Extra work before Shabbos.** For wages to be through havla'ah, one does not need to do extra work both before and after Shabbos. It is enough only to add [a significant amount of] work before Shabbos (תוספות שבת סי' רמ"ד סק"ז, ש"ת מנחת שלמה ח"ב סי' ל"ה אות ט').
- Extra work after Shabbos.** Even if one starts working on Shabbos and only adds [a significant amount of] extra work after Shabbos, he may take payment for the whole period, which includes wages for Shabbos, through havla'ah (מנחת שלמה שם).

Common Examples

Waiter

23. If one hires a waiter to help him with Shabbos seudos, he should make sure to stipulate that the waiter will do some work before or after Shabbos. It is not enough for him to do some minor job; he must do something significant that people are paid for (above, 20), e.g., cleaning the place after Shabbos or setting the tables with cutlery, cups, and plates before Shabbos, etc. Even if the waiter is secular ר"ל and does not care about the issur of s'char Shabbos, the employer violates עור לפני עור if he pays in a forbidden way (above, 6).

Doctor, Midwife

24. **Doctor.** Doctors involved in issues of pikuach nefesh on Shabbos may take payment for work on Shabbos even without havla'ah (ש"ת מהר"י ברונא סי' קי"ד, מ"ב סי' ש"ו סק"ד) because it is a mitzvah matter. Even according to the poskim who do not give this heter (above, 11), this can be allowed due to sakanah – perhaps the doctor will be lax if he knows he is not getting paid (שם). Additionally, the payment is for the mitzvah of pikuach nefesh, not s'char Shabbos (פמ"ג משב"ז סק"ד).

25. Based on this, the poskim write that there is no heter to take s'char Shabbos from a non-Jewish patient on Shabbos since his needs do not override Shabbos and the issur is on the doctor taking payment (above, 6). If the doctor is given money, he should not derive benefit from it; he should throw it into the sea (ריטב"א ע"ז דף כ"ו ע"א).

26. **Midwife.** A midwife may also take s'char Shabbos (מ"ב שם) for the above reasons.

27. **Doula.** A doula may also take s'char Shabbos for the above reasons. However, she has an additional reason: doulas usually give a series of classes to their clients that are an inseparable part of the service. She receives payment for those, and the s'char Shabbos is done through havla'ah.

Chazan

28. According to the poskim who give a heter for a mitzvah matter (above, 12), a chazan can take s'char Shabbos since his job is considered a mitzvah matter. According to the poskim who argue, a chazan cannot take s'char Shabbos without havla'ah, i.e., he should also serve as chazan for a weekday tefilah as part of his service (above, 19). It should be a significant tefilah that people pay money for (above, 20), and he should take payment for both together. E.g., during the Yamim Nora'im, he can take money for davening selichos during the week (הגרשו"א, ש"כ פכ"ח הע" קמ"ה). However, during the rest of the year, there are no weekday tefilos chazanim are paid for to facilitate havla'ah for s'char Shabbos.

Baal Tokeia

29. A baal tokeia may take money for blowing shofar according to the poskim who allow payment for a mitzvah. Still, he will not see brachah from it (ש"ע סי' תקפ"ה ס"ה). According to the poskim who argue, there is no heter. Also, there is no way to pay through havla'ah. Even if he will blow shofar after Shacharis during Elul, people do not pay for that job, so it is not considered havla'ah.

30. **In practice.** Still, the poskim say that the minhag is for chazanim and baalei tokeia to take payment even for just Shabbos or Rosh Hashanah. If they want to be machmir to satisfy all poskim, they should not give a price for their job in advance; rather the money should be given to them after Shabbos as a gift (מ"ב שם סק"ד).

Mohel

31. A mohel may take payment for a Shabbos bris even according to the poskim who do not give a heter for mitzvah matters. Since a mohel visits and checks the baby before Shabbos and also comes after Shabbos to change the bandages, he receives payment for those visits (ע"פ ש"ת תשב"ץ ח"א סי' קמ"ה). It is certainly mutar if he does not set a price in advance for the bris; in that case, the money he receives is a gift, not a fixed payment for a job.

Babysitter

32. It is an issur of s'char Shabbos for a babysitter hired to watch children to take money, even if she is not a bas mitzvah. Even if the payment for Shabbos is given together with payment for a weekday, it is assur. That is not havla'ah, as the employer can back out on any individual day (above, 15).

33. The permissible way to do it is by making up that the babysitter will work two days – Shabbos and a weekday – and get paid in such a way that even if she does not end up working on one of the days, she will receive money for both days. That way, the entire service is through havla'ah.

Hotel Room

34. **Eating in the hotel.** The issur of s'char Shabbos also applies when renting a home or a room. Obviously, if one rents a house for multiple days, the s'char Shabbos is through havla'ah, even if the rent is calculated per day with Shabbos included. However, even if one stays at a hotel just for Shabbos and eats there, the hotel may take payment, and it is not a problem of s'char Shabbos. Since the guest is also paying for the food – which is like a sale – he can use havla'ah to also pay for sleeping and spending time in the hotel (ש"ת נודב"י א"ח סוף סי' כ"ו, ש"ת בית שלמה א"ח סי' ל"ו).

35. **Not eating in the hotel.** Even if one is not eating in the hotel, there is no issue of s'char Shabbos involved since guests usually get their rooms before Shabbos and remain after Shabbos is over; that is an inseparable part of renting a room for Shabbos itself. Thus, the rent is paid through havla'ah (see above, 19).

36. **Guest house.** Similarly, one may pay for renting a house or room just for Shabbos since he comes on Erev Shabbos and stays a bit into Motzei Shabbos. Thus, the rent is paid through havla'ah.

Using a Mikvah on Shabbos

37. Payment may be accepted for use of a mikvah on Shabbos. The poskim give two reasons for this (נודב"י א"ח סוף סי' כ"ו).

38. **Mitzvah matter.** One reason is that it is a mitzvah matter (above, 11).

39. **Paying for expenses.** Another reason is that the one running the mikvah assumes the costs of heating it before Shabbos [and nowadays there are also the expenses of electricity, towels, etc.]. He may take money for this, so he also takes money for the tevilah on Shabbos through havla'ah along with payment for the heating (נודב"י שם, ש"ת שבט ה"ט סי' ל"ו).

Baal Korei

40. A baal korei may take s'char Shabbos even according to the poskim who are machmir on payment for a mitzvah (11). This is because part of his service is preparing before Shabbos. Even an experienced baal korei normally reviews the parshah each year to refresh his memory and lein with precision and without mistakes. Thus, the payment is through havla'ah.

41. **Leining in two places.** However, if a baal korei already leined the parshah in one place and then goes to a second shul to lein again, it is unclear whether he may take payment for the second leining. He is already taking payment from the first place using havla'ah with his pre-Shabbos preparation, and he does not need more preparation to lein in the second place. It could be he can divide up the cost of his effort before Shabbos between the two places and take payment from both, especially considering the fact that it is for a mitzvah matter. One may be meikel.

Shabbos Kollel

42. Avreichim often learn in a Shabbos kollel. There is seder on Erev Shabbos and on Shabbos itself, and they receive a stipend for this. The poskim write that even according to those who do not allow payment for a mitzvah matter, there is no issue of s'char Shabbos. The arrangement is not made in the manner of hiring a worker, but rather as a reward or incentive money to learn on Shabbos, just like the candies children get at the end of "Avos uBanim" is not payment for their learning. Additionally, if there is a learning seder on Erev or Motzei Shabbos, any potential s'char Shabbos is through havla'ah (תשובות והנהגות ח"א סי' ר"ד).

Caregiver for the Elderly

43. Serving as a caregiver for an elderly person is considered a mitzvah matter. Thus, a caregiver may take money according to the poskim who give the heter for a mitzvah matter. Still, it is best to do extra work before or after Shabbos so that the payment is through havla'ah.

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