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***Amira L'akum* – Instructing a Non-Jew to Perform *Melacha* on Shabbos**

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“Kol melacha lo yai’aseh,” “All work shall not be done (on Yom Tov).” (Shemos 12:16)

Our Sages, quoted by Rashi, interpret this verse to mean that not only may a Jew not do work himself on Shabbos and Yom Tov, but he also may not have others, i.e., non-Jews, perform *melacha* (forbidden labor) on his behalf.

This is the Biblical source for the prohibition of *amira l'akum*, telling a non-Jew to do forbidden work on Shabbos and Yom Tov. According to some authorities, this is an *issur d'Oraisa*, a Biblical prohibition, derived from the aforementioned verse (Smag as quoted in Bais Yosef Orach Chaim 244 and others).

The generally accepted opinion, however, is that although this prohibition is alluded to in the aforementioned verse, that allusion is of the type called an *asmachta*, an allusion, and thus the prohibition of *amira l'akum* is essentially *mid'Rabanan*, a Rabbinic enactment, albeit a particularly stringent one because it is hinted to in the Torah. (See Mishna Berura 243:5)

Various reasons are given for this prohibition. The Rambam (Hilchos Shabbos 6:1) writes that it was enacted in order to prevent Jews from being casual with the laws of Shabbos. Rashi (Shabbos 153a s.v. *Mai ta'ama*) writes that the prohibition is due to the concept of *shlichus*, agency; the non-Jew is viewed as the Jew's agent and, thus, the work done by a non-Jewish agent on his behalf is considered as having been done by the Jew himself. In another place (Avoda Zara 15a s.v. *Kivan*), Rashi says that *amira l'akum* is prohibited because of the Prophet

Yeshaya's (58:13) warning against “*daber davar*,” speaking of forbidden work on Shabbos.

Regardless of the reason, the prohibition of *amira l'akum* is a very strict one. Even if one stands to lose a great deal of money, it remains prohibited to instruct a non-Jew to perform a *melacha d'Oraisa*, Biblically prohibited work, for a Jew. Similarly, according to most authorities (see Rama 276:2), the prohibition applies even if one were to lose the opportunity to perform a mitzvah. (Regarding instructing a non-Jew to perform a *melacha deRabanan*, work that is Rabbinically prohibited, see below number 4.)

Hiring a non-Jew to do *melacha* on Shabbos is included in this prohibition and is prohibited even to prevent significant financial loss. However, the issues involving non-Jewish employees on Shabbos are complex and are dependent on the exact nature of the terms of employment and the work involved. (See Shulchan Aruch Orach Chaim 244 247, 252, elsewhere). There are halachically acceptable arrangements that can often be utilized to prevent financial loss. An expert halachic authority should be consulted.

There are a number of exceptions that our Sages made to the prohibition of *amira l'akum*. The proper application of these exceptions depends on the exact circumstances. Here we will give a basic overview. A halachic authority should be consulted when a practical question arises. These exceptions include the following:

1. Cases of non-life-threatening illness. (Shulchan Aruch 328:17) This includes three categories:

A. If someone is ill, e.g., bedridden with fever, severe migraine, etc., it would be permitted to ask a non-Jew to buy or administer medicine or call a

doctor, even if doing so would involve the non-Jew performing a *melacha d'Oraisa*.

B. The significant health needs of a young child (under age 3, or, according to some opinions, under 9), even if he is not ill, are included in this exemption. (Rema *ibid.*)

C. In order to avoid severe cold, one may ask the non-Jew to turn on the heat in one's home if the house is very cold (Shulchan Aruch 276:5). According to many opinions, it would similarly be permissible to ask a non-Jew to put on the air conditioner in one's home in case of severe heat (Shu"t Minchas Yitzchak 3:23 and others).

2) **To avoid public transgression.** For example if the neighborhood *eiruv* is down, it is permitted to ask a non-Jew to fix it, even if it would involve *melacha d'Oraisa*, in order to prevent people from carrying without a kosher *eiruv* (Mishna Berura 276:25).

3) ***Bain Hashmoshos (Twilight)*** (Shulchan Aruch 261:1). Under certain circumstances, it is permitted to ask a non-Jew to perform *melacha d'Oraisa* during the *bain hashmoshos* period from the start of Shabbos at sunset until approximately 30 minutes after sunset. (The exact end length of time varies by location. See Igros Moshe Orach Chaim 4:74, *ibid.*:62.). Although all Shabbos prohibitions generally take effect before sundown, our Sages allowed *amira l'akum* during the "twilight" time under certain conditions. One example is the following:

A. **Shabbos needs.** During *bain hashmoshos*, one may ask a non-Jew to turn on a light or an appliance or to wash clothing that's needed for Shabbos. Also, in case one did not light Shabbos candles on time, one is permitted to ask a non-Jew to light the candles during *bain hashmoshos*.

4) ***Shvus Dishvus*** (double *deRabanan*). The Rabbinic enactment of *amira l'akum* prohibits telling a non-Jew to do any kind of forbidden *melacha* including *melachos deRabanan*. Under certain circumstances, however, the Sages permitted telling a non-Jew to perform a *melacha deRabanan*. This situation,

called a *shvus dishvus*, occurs when there are two Rabbinic prohibitions. In the case of *amira l'akum*, asking the non-Jew in the first place is *mid'Rabanan*, and, if the *melacha* one is instructing the non-Jew to do is also *mid'Rabanan*, it is considered a *shvus dishvus*. (Obviously, in order to properly apply this rule, one must be knowledgeable as to which prohibitions are *mid'Oraisa* and which are *mid'Rabanan*. A qualified authority should be consulted.)

The circumstances where *shvus dishvus* is allowed include the following (Shulchan Aruch 307:5):

A. **Mitzvah/Seudas Shabbos.** If someone doesn't have wine or challah or basic food for his Shabbos meal, it may be permitted for him to instruct a non-Jew to bring some even though it would involve carrying it through an area with no *eiruv*. This would be considered a *shvus dishvus* if the non-Jew would not need to do any *melacha d'Oraisa* to bring those items.

B. ***Hefsed Merubah (Substantial financial loss)***. According to the Shulchan Aruch, a *shvus dishvus* is allowed in order to avoid substantial financial loss. What constitutes a "substantial loss" depends on many factors and needs to be evaluated by a halachic authority on a case-by-case basis. One possible example would be to ask a non-Jew to replace the plug of a freezer into the socket (which, in this circumstance, may be considered a Rabbinic prohibition) if it is full of expensive meat so that it not spoil.

In conclusion, there are specific circumstances where the Sages allowed instructing a non-Jew to do *melacha*. With proper care and guidance from a halachic authority, these allowances can enhance our positive Shabbos experience without, *chas vishalom*, violating it. However, we must always keep in mind that in general, instructing a non-Jew to do any prohibited *melacha* is a very serious *issur d'Rabanan*, a Rabbinic prohibition which must be treated with extreme caution, as is true with all the words of our Sages.