Jobs that are Rabbinically Forbidden to Ask a Non-Jew to Perform, Because of marit ayin

In the first half of the last shiur, we discussed situations where one may assign melacha to a non-Jew before Shabbat, even though it is likely that he will perform it on Shabbat. We saw that if the fee for the job is set in advance, then it is permitted. We will now see that there are some exceptions to those rules; some situations are forbidden de’Rabanan because they create a false impression that a Jew has performed melacha. This concept is called marit ayin in Hebrew.

From the commentaries of the Rishonim below, we see that the case of the Gemara is fundamentally permitted, but it is prohibited de’Rabanan under certain circumstances due to marit ayin. The Gemara therefore distinguishes between situations where the non-Jew will be working close and working far from the Jewish community.

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**רש”י מסכת מועד קטן דף ד עי

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Shiur number 7- Jobs that are Rabbinically Forbidden to Ask a Non-Jew to Perform, Because of Marit Ayin

According to Rashi: The workers may not work on Shabbat because of marit ayin – that is, the topic here is the laws of Shabbat.

According to the Rosh: The workers may not work for a mourner during the week, but to do so on Shabbat is less problematic.

As was mentioned previously, in the first half of the last shiur we learned that it is permitted to assign a specific job to a non-Jew before Shabbat if his fee is fixed in advance. Here, at least according to Rashi’s understanding, there are some jobs that are forbidden to give over to a non-Jew because of marit ayin.

Before we continue, some terms must be defined:

Sechirut Yom/sachir yom: A situation where the employer pays the employee by hour, not by job.

Sechirat Esek: A person (in the context of this discussion, a non-Jew) pays the owner of a business (in the context of this discussion, a Jew) for the right to run the business as his own and to receive the profits in exchange for a fee that was established in advance.

Kablanut: The owner (in the context of this discussion, a Jew) pays a worker (in the context of this discussion, a non-Jew) to do a specific job. The worker is paid a fixed amount for the finished product.

Arisut: The owner (in the context of this discussion, a Jew) gives the management of his business over to a worker (in the context of this discussion, a non-Jew), and they split the profits according to their predetermined arrangement.
In the previous shiur we concluded that it is permitted to assign a job to a non-Jewish worker, even if he will end up choosing to do it on Shabbat. Based on this logic - that whatever \textit{melacha} the non-Jew does for his own sake is permitted - it is certainly permitted to rent out a field to a non-Jew even though he will work in it on Shabbat, since he is the sole recipient of the profits of his labor.

The aforementioned Gemara contains two additional important points:

1) \textit{Arisut} is also permitted even though the Jew receives a portion of the profits, even though one might have assumed that this would be considered working on the Jew’s behalf. The Gemara teaches that since the non-Jew is ultimately working for his own profit, it is permitted even though the Jew is also benefitting.

2) In a business where a \textit{sachir yom} is generally hired, it is forbidden to rent the business to a non-Jew, as people who see the business running on Shabbat will think that the worker is a \textit{sachir yom}. However, a field where workers are generally hired through \textit{Arisut} may be rented out to a non-Jew on Shabbat as people who see people working in the field on Shabbat will assume that the workers are \textit{Arisim}, which is permitted.

Rabbeinu Tam learns additional leniencies from the fact that one is permitted to give a field to a non-Jewish \textit{aris}, even though he will be doing work publicly on Shabbat:

Rabbeinu Tam learns from the Gemara that it is permitted to allow a non-Jewish \textit{kablan} to build a house on Shabbat in public. The Gemara explains that an \textit{aris} focuses on his \textit{Arisut}: that even though the Jew also profits from his work, the non-Jew is primarily working for his own benefit. If so, Rabbeinu Tam suggests that it should certainly be permitted to allow a \textit{kablan} to build a house on Shabbat, even in public, since the Jew does not receive any profit from the non-Jew’s choice to build the house on Shabbat as opposed to a different day.

Rabbi Tam’s opinion, then, highlights the contradiction between the two aforementioned Gemara
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Tosafot offer three answers to this question. The first one is suggested by Rabbeinu Tam:

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According to Rabbeinu Tam, the Gemara in \textit{Moed Katan} (12) is discussing mourning, not Shabbat. Only the Gemarot in Shabbat (17) and \textit{Avodah Zara} (21) are relevant to Shabbat, and the Halacha for Shabbat therefore follows those Gemarot.
From the fact that Rabbeinu Tam explains that the Gemara in Moed Katan is discussing Aveilut, one might think that he believes that there is no issue of marit ayin for a non-Jewish worker to work on Shabbat. However, this is unfeasible because Rabban Shimon Ben Gamliel explains in Avodah Zara that it is forbidden to rent out a bath house (on Shabbat, not in context of aveilut) due to marit ayin. How, then, can we define Rabbeinu Tam’s opinion?

The Ketav Sofer explain that regarding construction, although most workers are paid for their time (at least that was the reality in the time of the Gemara, as we will discuss later), there is no inherent reason why the workers could not work through kablanut, where they would be paid by the job. Therefore if someone sees a worker building a Jew’s house on Shabbat, he will assume that that worker is a kablan. Unlike construction workers, no one hires workers for a bathhouse through an arrangement of Arisu (for practical reasons), and there is therefore a problem of marit ayin, as an observer will assume that the worker is a sachir yom working for the Jew.

To summarize Rabbeinu Tam’s opinion:
The prohibition against Kablanim working publically was made only regarding aveilut, and not Shabbat. Regarding Shabbat, Rabban Shimon Ben Gamliel in Masechet Avodah Zara explains that it is fundamentally permitted to have a non-Jew work publically on Shabbat if he is a kablan, aris, or a renter, but only for types of work that are sometimes performed in that kind of arrangement. However, it is forbidden to rent out a bathhouse or give it to an aris, as bathhouse workers are exclusively Sechirei Yom. Regarding construction, however, since it is reasonable (albeit unusual) to have a worker who is a kablan, there is no problem of marit ayin.

Next, Tosafot discuss Ri’s opinion:
Ri suggests that there is no disagreement between the different Gemarot. The Gemara in Avodah Zara explains that a field and bathhouse are different from each other, as it is common to have an aris work in a field, as opposed to in a bathhouse. Ri explains that this distinction explains why the Gemara in Moed Katan is stringent regarding the construction of a house. It is common to pay builders per hour, and there is therefore a problem of marit ayin to have him build on Shabbat even if he is a kablan.

[It is interesting to note that nowadays, the situation is reversed. Farmers generally work their own fields with the assistance of workers who are paid per hour, and people almost exclusively hire builders who are kablanim, paid by the job. We will discuss this further below]

The Rishonim point out that the Yerushalmi appears to contradict Rabbeinu Tam:
Rabbi Shimon Ben Elazar explains that even a *kablan* may work on Shabbat on the condition that he is working in his own home, or outside of the city where the Jews live.

The Rosh rejects Rabbeinu Tam’s opinion due to this Yerushalmi. [Even though the Rosh explains that the Gemara in *Moed Katan* was referring to *aveilut*, not Shabbat, that does not mean that he accepts Rabbeinu Tam’s opinion regarding Shabbat.] He writes:

> ר”ש בר כרסנה

What exactly is the significance of the factor of “*מחובר לקרקע*,” connected to the ground? It seems that working with something attached to the ground is more public in two senses:

1) The work must necessarily be done outside and cannot be brought into the non-Jew’s house.
2) When work is done outside, it is clear whose property is being worked on, as opposed to movable property, where the item being worked on could belong to anyone.

According to Ri and The Rosh, we must be stringent and forbid the non-Jewish construction worker to work on a house in a Jewish area on Shabbat, since there is *marit ayin* that the workers are being paid per hour, and are therefore considered to be working on the Jewish employer’s behalf. The *marit ayin* stems from the reality that builders in the Gemara’s time practically never worked through *kablanut*.

What if that reality changes (as it has today)? The Ritvah writes:

The Ritvah accepts the understanding of the Ri and Rosh, adding that the practical Halacha depends on the customary modes of employment in each place and time.

To summarize the Ri and Rosh’s approach: it is forbidden to allow a non-Jew to work on Shabbat, even as a *kablan*, if it is done publically (see further discussion regarding the Yerushalmi’s factor of *מחובר לקרקע*, in the Harchavot), and it is work that is customarily done through *Sechirus Yom*. If the kind of work that is customarily done through *kablanut* or *Arisut*, it is permitted for the worker to work as a *kablan*, *aris*, or renter, as there is no *marit ayin* in these situations and the non-Jew is working for his own interests. The Ritvah adds that the permitted modes of employment may vary in different times and places.
This Halacha, regarding assigning a job to a non-Jew when his fee was fixed, was discussed in the previous shiur.

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In this Halacha the Rambam quotes the Halacha from the Gemara in Moed Katan without any emendations: the Gemara states that it is forbidden to give work over to a kablan if it will be done publically, and that is what the Rambam rules.

"In Halachot 13-14, the Rambam quotes the Halacha from the Gemara in Moed Katan without any emendations: the Gemara states that it is forbidden to give work over to a kablan if it will be done publically, and that is what the Rambam rules."

So we see that the Rambam learned two rules from the two Gmarot:

1. Based on Moed Katan: not even a kablan can do the work in public.
2. Based on Avodah Zara: a Sachir or aris may do work even in public, assuming that that is a common mode of employment for that kind of work.

This is how the Ran explains the Rambam:

We can now understand that in Halacha 14, the Rambam is relating to the issue of marit ayin regarding the method of payment (people don’t know if the fee was set in advance or not), while in Halacha 15 the Rambam is relating to marit ayin of the mode of employment (people don’t know if he is an aris/renter or sachir yom).
The Poskim (Magen Avraham Seif Katan 5, Mishna Berura Seif Katan 7) explain the Shulchan Aruch the same way that the Ran explains the Rambam.

To summarize the opinions:
Masechet Shabbat (17) states that one can give a job to a non-Jew, even if it is reasonable that he will work on Shabbat, as long as his fee was fixed in advance. We analyzed this issue and its parameters in the last shiur.

In Masechet Moed Katan (12), Shmuel states that it is permitted to assign job to a kablan (that is, he is paid by job, not by hour) as long as there is no issue of marit ayin.

Masechet Avodah Zara (21) states that it is forbidden to rent out one’s bathhouse on Shabbat as there is marit ayin that the renter is actually a sachir yom hired by the Jewish owner. However, it is permitted to give a field over to an aris, or to rent the field to him, even though he will work on Shabbat, and seemingly even though it is in public!

In light of these sources, Rabbeinu Tam explains that the Gemara in Moed Katan is discussing marit ayin in the context of aveilut, not Shabbat. Regarding marit ayin on Shabbat, Rabbeinu Tam differentiates between a bathhouse where the employers are obviously paid by hour, and construction work, where a kablan may be used. Since a kablan is sometimes used for building, even if a sachir yom is a more typical standard arrangement, there is no marit ayin.

Ri writes that the critical factor is what the standard mode of employment is for that particular field. A bathhouse usually employs a sachir yom, leading to an issue of marit ayin when the bathhouse is rented by a non-Jew. Field workers, however, were generally hired as kablanim, and there is therefore no marit ayin when it is given to an aris or renter, even if he works there publically on Shabbat. A house was usually built by a sachir yom, and therefore there is marit ayin when the non-Jew builds on Shabbat, even if he is actually a kablan. Based on the Yerushalmi’s implications, the Rosh accepts Ri’s opinion.

The Ran explains that the Rambam understands that there are two types of marit ayin.
1. If the accepted mode of employment for that job is Sechirut Yom, then it is forbidden for the non-Jew to work in public, even if the work is actually being done by a kablan, which is theoretically permitted (based on the Gemara in Avodah Zara).
2. It is forbidden for a kablan to work in public, since there is marit ayin regarding the payment, which looks the same as for a sachir yom. The Magen Avraham and Mishna Berurah explain the Shulchan Aruch similarly to the Rambam.
1. **The appearance of being a sachir yom**

The Ran explains that the Rambam forbids having a *kablan* work in public due to the problem of "מיחזי להו לאינשי כשכירי יום": it seems the same as a *sachir yom*. This problem can be understood in two ways:

1. People watching are not aware of the difference between a *Sachir* and *kablan*, and therefore, even if they realize that this worker is a *kablan*, it is still forbidden, as people may think that it is forbidden, or it could lead to the hiring of a *sachir yom* on Shabbat.

2. Despite people’s awareness of the Halachic difference between a *sachir yom* and *kablan*, they do not know whether the person they see working is a *sachir yom* or a *kablan*.

This distinction is significant in a situation where everyone works as a *kablan* – in such a case, what is the Halacha? The Pri Megadim writes:

The Pri Megadim explains that most *Rishonim* understand that the *marit ayin* is that people will believe that he is employing a worker not through *kablan*, but for an hourly wage. However, the Ran holds that even if people are aware that the worker is a *kablan*, the typical lack of expertise in these halachot may lead to the hiring of a *sachir yom* on Shabbat.

Note that the Pri Megadim brings the prominent example from the Rambam: that it is forbidden to have a *kablan* harvest one’s field. The Gemara, however, states that field hands are generally hired through *arisut*, so why is it forbidden to have a *kablan* harvest it? While Tosafot does hold that this is permitted, according to the Rambam there is an additional issue of *marit ayin* for a *kablan*. The Rambam’s ruling in Halacha 15 that it is permitted to give one’s field to an *aris* or renter implies that it is forbidden to give it to a *kablan*. The Pri Megadim explains that this is because the payment to a *Sachir* and *kablan* look similar. Therefore, there is concern that people may come to hire a *sachir yom* to work in the field on Shabbat, so it is forbidden even if everyone knows that this particular worker is a *kablan*.

It appears that the Pri Megadim understands the Rambam’s phrase "מיחזי להו לאינשי כשרי יום" as our first suggestion: even if it is clear that this worker is a *kablan*, it may lead to people hiring a *sachir yom* on Shabbat.

The Biur Halacha limits, slightly, the Pri Megadim’s stringency:

The Biur Halacha understands that the Pri Megadim did not mean to suggest that if people see that a *kablan* is allowed to work on Shabbat for one type of job then they will come to have a *sachir yom* work in a different type of job. Rather, he understood that the Pri Megadim is stringent only if there is the possibility that people will come to hire a *sachir yom* for the specific type of job that the *kablan* is doing. That is the case only when this job is sometimes performed by a *sachir yom* as well.
It seems that the Biur Halacha understands the Rambam’s phrase according to the second possibility: that if this job is generally performed by a kablan (and it is actually being performed by a kablan now as well), but it is still sometimes performed by a sachir yom, people who see him working may suspect that he is actually a sachir yom.

This opinion is also stringent in relation to that of the Tosafot, who permit hiring a kablan as long as people usually hire a kablan for this kind of job, but the Biur Halacha does seem to hold that even the Ran is lenient if everyone hires a kablan for this kind of job.

The Biur Halacha summarizes Poskin’s opinion’s: it emerges that the Rosh and Ri’s leniencies, though questionable, may certainly apply in a time of need.

However, it is important to note what Rav Moshe wrote later in that responsa:

Rav Moshe Feinstein adds two important points:

1. In a generation that is lax in Shabbat observance, and does not sufficiently honor Shabbat, we should be stringent, and, under normal circumstances, forbid having even a kablan build a house on Shabbat (similarly, the Gemara in Moed Katan 12, which we will bring below, forbids an important person to hire workers on Shabbat even in a permitted way). He writes that one should be lenient only in order to avoid a significant loss.

2. This may only theoretically permit the future home owner to hire a non-Jewish kablan builder, but it is certainly forbidden for a Jewish kablan to employ a non-Jew sachir yom subcontractor to work on Shabbat.

2. After the fact: B’dieved

חטולמ בבל מסכת מעד כות דף ז עמוד א

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דאמרו: סימוע סימעינכ עלייתו.
There are two ways of understanding the situation discussed in the Gemara: the first is that although the work was being done in a permitted way, an important person must be more stringent. The second is that the construction was being done in a forbidden way, and the Rabbis therefore did not want to visit or benefit from a building built on Shabbat.

Tosafot (there) tell us that Rabbeinu Tam did not want to be lenient for himself and allow a kablan to build his house on Shabbat. This is seemingly in accordance with the first understanding of this Gemara:

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Shiur number 7 - Jobs that are Rabbinically Forbidden to Ask a Non-Jew to Perform, Because of Marit Ayin

This Shiur is based on the Shiur of Rav Shimon Yehudah Rappaport, z'v

For jobs that are rabbinically forbidden to ask a non-Jew to perform, because of Marit Ayin:

1. While employing a non-Jew in a permitted way, if it is known that the non-Jew is doing the work for a Jew (such as in the case described in the question, where a building is being built for a Jewish family), and it is suspected that he is paid for doing work on Shabbat, then this is forbidden because of Marit Ayin.

2. Building is considered a customary job for a non-Jew, and therefore there is no Marit Ayin even if the building is visible. However, if the building serves an educational purpose and is visible, and it is suspected that the non-Jew is paid for doing work on Shabbat, then this is forbidden because of Marit Ayin.

3. In the case described in the question, the building is far from the Jewish community, and if the non-Jew is hired only to work in the interior of the building, then there is no violation.

4. It is mandatory to formulate a work plan that does not require the non-Jew to work on Shabbat. If he decides to work on Shabbat, then he must work in a way that it is not clear that he is working on Shabbat.

The question submitted to the Rav Shimon Yehudah Rappaport: In the upcoming weeks, we will begin building a children's garden. The garden is not located within or immediately next to the school, but rather about a half-mile away. The construction is scheduled to be done by a Jewish contractor who observes Shabbat. We hope to complete the construction within 9 months, considering the needs of the children (who are currently studying in the school, a less than ideal location), the needs of the community (all school children meet in the school on Shabbat and the crowding makes it difficult for everyone), and the economic needs (each day over the expected time will increase our cost significantly).

According to these considerations, is it permissible to hire a non-Jewish subcontractor to observe Shabbat, and if so, under what conditions?

The answer: It is forbidden to hire a Jewish contractor to hire a non-Jewish subcontractor to work on Shabbat. Under the condition of a great need, as described in the question, it is permissible to hire a non-Jewish subcontractor and allow him to work on Shabbat, as long as he is not told to work on Shabbat and he is not given a work schedule that forces him to work on Shabbat. If he decides to work on Shabbat, then he must work in a way that it is not clear that he is working on Shabbat.

In the opinion of Rabbi Yitzchak Yehudah Lipkin, it is considered a violation of the name of Hashem if a non-Jew builds a building of the community on Shabbat, even under these conditions. Therefore, it is not permissible to allow a non-Jew to work on Shabbat even under the conditions described in this question.

The reason for this is that building is considered a customary job for a non-Jew, and therefore there is no Marit Ayin even if the building is visible. However, in the case described in the question, it is known that the non-Jew is doing the work for a Jewish community, and it is suspected that he is paid for doing work on Shabbat, then this is forbidden because of Marit Ayin.

The reason for this is that building is considered a customary job for a non-Jew, and therefore there is no Marit Ayin even if the building is visible. However, in the case described in the question, it is known that the non-Jew is doing the work for a Jewish community, and it is suspected that he is paid for doing work on Shabbat, then this is forbidden because of Marit Ayin.

Questions and comments may be sent to: info@eretzhemdah.org
Summary

3. *marit ayin in the context of a non-Jew work on Shabbat*

The Gemara in Masechet Shabbat (17) teaches that a Jew may assign a job to a non-Jew during the week, even if there is a reasonable chance that he will work on Shabbat, as long as his fee was fixed in advance. We discussed this issue in the previous shiur.

In Masechet Moed Katan (12), Shmuel states that one may give work to a *kablan* (meaning, the fee for the job was fixed in advance) as long as there is no concern of *marit ayin*.

In Masechet Avodah Zara (21), it states that one may not rent a bathhouse to a non-Jew for Shabbat, because its employees are generally paid per hour. In contrast, the Gemara permits giving a field to a non-Jewish *aris*, even though he will work on Shabbat, even though he will be working publicly in a Jewish area!

In light of this, Rabbeinu Tam explains that the Gemara in Moed Katan is discussing *marit ayin* in the context of *aveilut*, not Shabbat. In regards to *marit ayin* on Shabbat, Rabbeinu Tam distinguishes between a bathhouse, whose employees are hired per hour, and construction, where a *kablan* was sometimes used. As a *kablan* is sometimes used for building, even if a Sachir Yom was the standard arrangement, there is no *marit ayin*.

The Ri writes that the critical factor is what the standard mode of employment is for that particular business. A bathhouse usually employs a *sachir yom*, and therefore there is *marit ayin* when the non-Jew rents it out. A field is usually given over to an *aris*, and there is therefore no *marit ayin* when it is given to an *aris* or renter, even if he works there publically on Shabbat. A house is usually built by a *sachir yom*, and therefore there is *marit ayin* when the non-Jew builds on Shabbat, even if he is actually a *kablan*. Based on the implication of the Yerushalmi, the Rosh accepts the Ri’s opinion.

The Ran explains that the Rambam understands that there are two types of *marit ayin*:
1) If the accepted mode of employment for that job is *Sechirut Yom*, it is forbidden for the non-Jew to work in public, even in a permissible way (based on the Gemara in Avodah Zara).
2) It is forbidden for a *kablan* to work in public because there is *marit ayin* regarding the payment, which looks the same as for a *sachir yom*. The Magen Avraham and Mishna Berurah explain the Shulchan Aruch similarly to the Rambam.

4. The appearance of being a Sachir Yom

The Ran explains that the Rambam forbids having a *kablan* work in public due to the problem that "מיחזי להו לאינשי כשכירי יום": it looks to people like a *sachir yom*. This problem can be understood in two ways:
1) People do not understand the difference between a *Sachir* and *kablan*, and therefore, even if they realize that this worker is a *kablan* it is still forbidden, since it appears to people to be something that is forbidden or it could lead to the hiring of a *sachir yom* on Shabbat. The Pri Megadim seems to understand the Rambam thus, and therefore writes that hiring a *kablan* is forbidden even if the custom is for everyone to hire *kablanim*.
2) People will mistakenly think that the worker is a *sachir yom*, not a *kablan*. According to this understanding, if a *kablan* is always used for that specific job, so that no one would assume he is a Sachir Yom, it would be permitted. This is the Igrot Moshe’s opinion, and it also appears to be the Biur Halacha’s understanding of the Pri Megadim.

Practically, the Biur Halacha rules that although one should preferably be stringent like the Rambam’s opinion, one need not object to those who rely on the Ri and Rosh and use a worker that is a *kablan* when that is the standard mode of employment.

The Igrot Moshe adds that in a generation that is lax in Shabbat observance, it is appropriate to be stringent unless there is significant financial loss.
5. **After the fact – B’dieved**

The Gemara in *Moed Katan* (12) relates how certain Amoraim refused to enter homes that had been built on Shabbat, explaining that this may have been due to one of two reasons: either the building had been built in a permitted manner but these rabbis maintained a higher level of stringency due to their stature, or that the building had been done in a forbidden way, and they therefore refused to enter them. Rabbeinu Tam writes that it is permitted to employ a *kablan* to build a house on Shabbat, but he himself maintained a higher level of stringency, presumably in accordance with the first way of understanding the Gemara.

The Shulchan Aruch writes that if the house was built in a forbidden way then it is best to avoid entering it. The Magen Avraham explains that the Shulchan Aruch is discussing a situation in which the builder was employed in a permitted manner, wherein it is preferable not to enter – as opposed to a situation in which the house was built in a forbidden manner, where it is forbidden to enter it. The Taz, more leniently, holds that even if the house was built in a forbidden manner, it is permitted to enter after the time of *כדי שיעשו* has passed.

The Igrot Moshe writes that as everyone employs a *kablan* to build a house nowadays, it should be permitted to use a *kablan*, but one should nevertheless be stringent due to *marit ayin*, given the general poor level of Shabbat observance.

*Shut* Bemareh Habazak also writes that even though employing a *kablan* nowadays should theoretically be permitted because everyone uses a *kablan*, one should consider being more stringent in regard to the construction of an educational institution or a communal building if the building on Shabbat would create a Chillul Hashem.

With this we conclude the discussion of *melacha* performed by a non-Jew on Shabbat. In the next shiur we will discuss the status of an item that was created on Shabbat through *melacha* performed by a Jew.