

SHABBAT LEASE AGREEMENT

Rabbi Joel Roth and Judge Norman M. Krivosha

This paper was approved by the CJLS on June 14, 1995, by a vote of fourteen in favor, one opposed, and five abstaining (14-1-5). Voting in favor: Rabbis Kassel Abelson, Stephanie Dickstein, Jerome M. Epstein, Samuel Fraint, Arnold M. Goodman, Judah Kogen, Aaron L. Mackler, Lionel E. Moses, Paul Plotkin, Mayer Rabinowitz, Avram Israel Reisner, Joel Roth, Gordon Tucker, and Gerald Zelizer. Voting against: Rabbi Ben Zion Bergman. Abstaining: Rabbis Elliot N. Dorff, Myron S. Geller, Susan Grossman, Alan B. Lucas, and Joel E. Rembaum.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

Leasing for Shabbat

Rabbi Joel Roth

שאלה

May a lease arrangement be utilized in the agreement between a Jew and a non-Jew for Shabbat?

תשובה

This paper is occasioned by an objection raised in the Committee's deliberations on the lease submitted by Judge Norman Krivosha. The purpose of this paper is very limited. It will be restricted to demonstrating that leasing is an acceptable avenue for a Shabbat arrangement.

It is relatively common for the Hafetz Hayyim to preface his comments on a specific סימן with an introductory comment on the contents of the entire passage. That is the case with סימן 243 of Orah Hayyim, which is entitled: **דין המשכיר שדה ומרחץ לאינו יהודי** – law of one who rents a field or a bath-house to a non-Jew. Here are the comments of the Mishnah B'rurah:

Be aware that there are three categories [involved in the subject matter of this passage]. The first category is profit-sharing (**אריסות**) in which one hires a non-Jew to work in the field or the bath-house, with the profits or the crops shared. The second category is leasing (or, rental) (**שכירות**) in which the non-Jew gives the Jew a fixed amount for his field or bath-house for the entire year. These two

categories are completely permissible with regard to a field, and technically legal with regard to a bath-house, [the reason being] that the non-Jew is working on his own behalf. The sages forbade these two categories with regard to a bath-house because of the appearance of impropriety (*מראית העין*), namely, that since the bath-house is known as the bath-house of the Jew, people will suspect that the non-Jew is working as the agent of the Jew.

The third category is job contracting (*קבלנות*) in which all of the profits belong to the Jew who pays the non-Jew a fixed amount each year for his labor. This is surely forbidden by law with regard to a bath-house since the non-Jew is the agent of the Jew, and the Jew benefits from the Sabbath labors of the non-Jew since the Jew would lose the profits of any day on which the non-Jew did not work.

Thus, if it is customary for most of the local residents to lease or to give in a profit-sharing manner (i.e., and the problem of *מראית העין* would no longer apply since everyone would know that the Jew had leased out his bath-house to a non-Jew), the status of the bath-house becomes identical in law with the status of the field. That is, categories one and two are permissible and category three is forbidden.

And the permissive types of leasing must be done in the context of an overall lease (*הבלעה*) which includes weekdays as well. It would be forbidden to lease even a field for Shabbat alone, even where the arrangement is generally well known.

The basis of the permissibility of the leasing arrangement is that the non-Jew is working for himself even if the Jew is also profiting. The proviso added by the Hafetz Hayyim is that the lease should be done *בהבלעה*, lest the non-Jew be considered an agent of the Jew hired for Shabbat alone, and working on behalf of the Jew.

It is interesting to note that the Mishnah B'rurah justifies a partnership arrangement on the basis of its comparability to a profit-sharing management. In comment 10 to *סימן* 245 the Hafetz Hayyim explains that a non-Jewish partner may keep the profits of Shabbat because he is like the *אריס* who is working on his own behalf.

In the Talmudic Encyclopedia, volume 8 entry *הבלעה*, column 131, the author says: “*אחרונים* have written that if one hires a Jewish guard to guard for him on Shabbat he should stipulate that he should also guard a few hours before Shabbat and a few hours at the conclusion of Shabbat. In this way the Shabbat wages are paid *בהבלעה*.” Thus, it follows that if the lease with a non-Jew is written to become effective several hours before Shabbat and to terminate several hours after the onset of work on the first workday following Shabbat (or Yom Tov), the non-Jew's Shabbat or Yom Tov profits will have been earned *בהבלעה*.

Conclusion

A lease arrangement is an appropriate mechanism for an agreement between a Jew and a non-Jew for a Shabbat contract. The contract should take effect several hours before Shabbat or Yom Tov and should terminate several hours after the onset of business on the next business day.

Religious Lease

Judge Norman M. Krivosha

This Lease made and entered into this _____ day of _____, _____, by and between _____ hereinafter referred to as (“Landlord”), and _____ hereinafter referred to as (“Tenant”).

WITNESSETH:

WHEREAS, Landlord is currently the owner of a certain _____ business known as _____ and operating in the location(s) as described on Exhibit A; and

WHEREAS, Landlord desires to observe the Halakhah concerning the prohibition against a Jew engaging in gainful employment on the Sabbath or certain holidays; and

WHEREAS, Tenant is willing to assist Landlord in fulfilling the prohibition concerning working on the Sabbath and certain holidays by leasing from Landlord the above described business on those days, and running said business and paying to Landlord for such lease the rental agreed to herein; and

WHEREAS, each of the parties hereto recognize and agree that the sole and only purpose for entering into this Lease agreement is to permit Landlord to observe the Halakhah;

NOW THEREFORE, it is hereby agreed by and between the parties as follows:

1. *Leased Premises.* Landlord hereby leases to Tenant and Tenant hereby takes from Landlord the business situated in the location(s) as more particularly set out and described in Exhibit A, attached hereto and made a part hereof as fully as though set out herein verbatim; together with all of the inventory equipment, fixtures, furnishings, goods, wares, design, decor, decorations, installations, appurtenances and personal property located therein and used in connection with the operation of the described business; it being however specifically understood and agreed that said Lease does not include any bank accounts of any kind, nature, or description belonging to Landlord and used in connection with said business during the remainder of the time that said business is not otherwise operated by Tenant as lessee.
2. *Commencement and Term.* The term of this Lease shall commence on the date of the execution hereof and shall be effective as follows: to wit,
 - A. Beginning one-half hour before sundown on each and every Friday, during the term of this Lease and ending one-and-a-half hours after sundown on Saturday of each and every week; plus beginning one-half hour before sundown of the dates shown on Exhibit B as “Beginning Day”, and ending one-and-a-half hours after sundown on such days as shown on Exhibit B as “Ending Day”. It being the purpose and intention of this Lease that Landlord shall lease to Tenant said business and premises one-half hour before the beginning of the Sabbath and ending one-and-a-half hours after the end of the Sabbath, or such additional days as are designated as religious holidays and set out on Exhibit B. Said Lease arrangement shall continue each week for such time as the parties may mutually agree, it being fully understood and agreed that such lease shall automatically ter-

minate in accordance with paragraph (12) following, or either party may terminate such lease upon giving the other written notice of such termination, not less than 24 hours prior to the beginning of any day on which Tenant is to exercise Tenant's Leasehold rights and operate said business.

3. *Rental.* Tenant shall pay to Landlord as rental for such Lease, a sum equal to _____% of the gross receipts earned by Tenant during the day or days Tenant shall be exercising rights over the Leased premises and operating said business. The remainder of such gross receipts shall be the sole and absolute property of Tenant. Payment by Tenant to Landlord shall be accomplished by making appropriate accounting entries and Landlord shall remit to Tenant the payment due, if any, within _____ day(s) after the same has been earned by Tenant.
4. *Use of Premises.* Tenant shall use said premises only for conducting the business established by Landlord in accordance with all of the procedures and processes previously established by Landlord for the operation of said business and Tenant shall make no changes either with regard to the manner in which the business is conducted, nor the prices for goods sold or services rendered, nor the salary or wages of any employee. Moreover, Tenant shall make no structural changes to said premises and shall exercise such care to see that no waste shall be committed upon said Leased premises while Tenant is operating said business.
5. *Subletting.* Tenant shall have no right to sublet either the business or the premises, or any part thereof, nor shall Tenant be permitted in any manner to encumber or burden said Lease or the Leased premises.
6. *Services.* Landlord shall at its sole and own expense provide all services necessary to operate said business including but not limited to heat, water, air conditioning, electricity and garbage disposal at Landlord's sole and own expense and Tenant shall be under no obligation to provide any such services. The cost for such services shall be included in the rental paid by Tenant to Landlord as described in paragraph 3 above.
7. *Indemnity Liability Insurance.* Save and except for acts of willful or gross negligence committed by Tenant, Tenant shall assume no liability for the operation of said business or said premises and Landlord shall indemnify and protect Tenant from any and all liability of any kind, nature, or description, unless such liability is occasioned by acts of the Tenant, which constitutes willful or gross negligence; and Landlord shall be responsible at Landlord's sole and own expense to provide all necessary insurance to protect against either liability or loss of any nature.
8. *Operation of Business.* During the day or days that the Tenant shall be actually operating said business, under the terms of this Lease, Landlord shall exercise no management rights, nor shall in any manner engage in the operation of said business, provided however that Tenant shall conduct said business in full accord with the terms of this lease, including Article 4. above.
9. *Notices.* Any notice, demand, request, or other communication given hereunder or made by either party to the other shall be in writing and mailed by Certified Mail in a post-paid envelope addressed as follows:
 - A. If to Tenant: as shown on Exhibit C.
 - B. If to Landlord: as shown on Exhibit C.

10. *Access to premises.* Landlord may enter the Lease premises at any reasonable time, on reasonable notice to Tenant, for purpose of inspection and to show the premises to prospective mortgagees or purchasers.
11. *No representations.* Neither party has made any representations or promises except as contained in this Lease.
12. *Automatic Termination.* Each of the parties recognize and agree as to the true purpose of this Lease and the personal nature thereof. Should either party die or if married, file for any form of divorce or separation, this Lease shall automatically terminate. Furthermore, should either party be adjudicated a bankrupt, make a general assignment for the benefit of creditors or take the benefit of insolvency act, have a judgment lien entered in favor of another and against either party to this agreement or in any manner become indebted for the payment of any taxes of any kind, nature or description, this Lease shall automatically terminate at once.
13. *Entire agreement.* This Lease supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

Dated this _____ day of _____, _____.

Landlord

Tenant