Construction on Shabbat

Question: Is it allowed to let non-Jewish contractors to work on Shabbat in construction? Is there a difference between a private home and a public facility?

Answer: interestingly enough, the halakhic literature contains numerous discussions on this topic. I will present here an excerpt of the encyclopedic discussion of Rabbi Ovadia Yossef in his Yabia Omer (Vol. 8, Orah Hayyim, 28).

The Los Angeles Case

Rabbi Yossef was asked by the rabbi of Congregation Adat Yeshurun in LA’s San Fernando Valley, whether it is allowed to use a synagogue which was built around the clock, including Shabbat and holidays. It is not clear if the rabbi asking the question is associated with the congregation or if the congregation even has a rabbi, but the argument was that the board of directors at the time of the construction was not knowledgeable and did not care about observing the Mitzvot. After completing the construction, a new board of directors, more observant, was elected. The new board wanted to know if the community is allowed to use the synagogue, or if it considered a product of a sinful action.1

Rabbi Yossef answers with presenting two opposing opinions of early medieval rabbis:

- Rabbenu Tam considers allowing the building of a house on Shabbat, if the payment is per job and not per day, because it is the decision of the builder on which days to work.2
- Rabbenu Yitzhak holds that it is forbidden because contractors are usually hired on a daily basis and the onlookers will think that the Jew ordered the non-Jew to perform work on Shabbat.3

Even though Rabbenu Tam ruled in favor of continuing on Shabbat, he did not want to rely on his ruling when building his own house.4 Many other rabbis ruled that construction on Shabbat is forbidden, among them: HaTerumah, HaMaor, Shibbole HaLekket, Ramban, Rashba, Ritva, Or Zarua, Hagahot Maimoni, Hagahot Asheri.5 It is also clearly so stated by Maimonides, and the Shulhan Arukh agrees with him.6
It seems, however, that all depends on local work and contracting practices, and if the norm is to pay per job and not per day, it will be allowed to let the contractor work on Shabbat.

Rabbi Yossef concludes this part of the discussion by saying that since this is a rabbinic prohibition we could rely on the lenient opinion. His statement requires further explanation so let me illuminate here a general rule regarding the use of the services of a non-Jew on Shabbat.

**Asking a non-Jew to do work on Shabbat**

According to the Torah hired workers can do any work on Shabbat. The Torah only limited the work of slaves who were considered property of their masters. They had to rest just as the property of the master, including animals and fields had to rest. During rabbinic time, as the economic system shifted from slavery to hired workforce, more and more people bypassed the prohibitions of Shabbat by asking non-Jews to do their work for them.

In order to put an end to this phenomenon the rabbis decreed that one cannot ask a non-Jew to do work for him on Shabbat. They knew, however, that there will be situations where the help on a non-Jew will be needed, and they therefore left a back door to bypass their own prohibition. That back door, or loophole, has to do with activities which are only forbidden because of rabbinic law, or when there is a great need.

For centuries Jews refrained from using the services of non-Jews, mainly in order to avoid mockery for “tricking” their own legal system. During the long stay of Jews in medieval Europe, though, a change occurred. Because of the cold weather it became very common to rely on non-Jews to light fire for heating, and as a result the non-Jews came to understand that asking for their help is an integral part of the Jewish legal system.7

Understanding the historical development of אמירה לגוי – asking a non-Jew to do work on Shabbat is important since it applies to many aspects of Jewish life on Shabbat, especially outside Israel. Once we understand that we are not bypassing Halakha by asking a non-Jew to help us, but rather we are using a path created for us by the rabbis, we can use this Halakhic device more wisely and without feeling of guilty for tweaking or cheating the legal system.
Working per job or per day

Let us return now to the issue of construction, R Yosef writes that since today the norm is to hire contractors per job, and it’s their choice on which days to work, it is allowed to continue construction on Shabbat.\(^8\)

R Yosef than quotes R Yom Tov Tzahalon who opposes this ruling on the grounds that even though most people hire workers per job and not per day, not everyone is familiar with the fine distinction between the two, and people will think that Shabbat is being transgressed. Rabbi Tzahalon concludes that one can hire a non-Jew to do work only with portable objects.\(^9\)

This argument is refuted by the author of Shemen HaMish-ha who writes that it is the obligation of the onlookers to research the details of the type of work done and the halakhic parameters, and once they do that, they will know that no prohibition has been transgressed.\(^10\)

After all this, there could still be a problem, according to some poskim, if the chief contractor hires day workers. Some say that it is if the Jew hired day workers which is forbidden, while others argue that since the contractor is directly responsible to hire, fire, and pay these workers there is no room for such concerns.\(^11\)

Rabbi Yair Bacharach adds that a case like that should be permissible, since a Jew is allowed to tell a non-Jew to do work for him through a mediator, meaning that he will tell one person to tell another person to do the work.\(^12\)

Building a Synagogue

The discussion so far dealt with construction in general, but when it comes to construction of a synagogue there are additional considerations. The Magen Avraham, Rabbi Yehudah Ayash, and Rabbi Yehudah Assad, among others, vehemently opposed it because they felt that it shows
disrespect for Shabbat and that people will think that the rabbis create a separate system of Halakha to satisfy their needs.\textsuperscript{13}

Despite their objections, other poskim write that if there is a concern that forbidding work of non-Jews on Shabbat might cause the construction to stop altogether and the synagogue will never be built, it is allowed to continue construction on Shabbat. Rabbi Shneur Zalman of Liadi, who lived under an oppressive regime, explains that the concern is that the government will change its mind and will not let the Jews finish the construction of the synagogue.\textsuperscript{14}

This continuous swaying between proponents and opponents of construction on Shabbat reflects the dilemma of balancing the needs of the community, including financial considerations and dependence on the government, with the moral, emotional, and ideological cost of allowing such actions, and it seems that the decision remains in hands of the local rabbi, and if applicable, his board as well.

**The Adat Yeshurun Conclusion:**

Rabbi Yosef’s conclusion regarding the synagogue in LA which was built on Shabbat was that now that it is already done, it is allowed to use the facilities, for the following reasons:\textsuperscript{15}

- It was built for a Mitzvah, so people will judge those in charge of the project favorably, and will not assume that they have transgressed any prohibitions.
- Most people hire workers per job, and not per day, which is permissible for all types of work.
- There are many poskim who say that when dealing with a public facility, the need to serve the public overrides the concern of “what will people think?”
- The board who was in charge of the construction represents the people, and the people can claim that they should not bear negative consequences of their deeds. In the language of the Talmud the people can tell the board: “We appointed you to do good and not to cause harm.”

**So, can one let the contractor continue?**
The ruling of Rabbi Yosef refers to a case where the Synagogue was already built, but the question remains, in light of the many concerns and disputes, whether one should continue or stop construction on Shabbat.

There is no definitive answer, since one might argue that even though it is allowed according to Halakha, it still doesn’t feel right and sends a wrong message to the public about the sanctity of Shabbat and how it can be bypassed in certain cases.

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However, from a practical point of view, all poskim agree that the problems with continuing construction on Shabbat are all related to the way people perceive and judge that activity.

It is therefore recommended that if indeed construction must be continued on Shabbat for financial, communal, or other considerations, large signs will be placed at all corners of the construction site. The signs will explain in simple language the principles presented here and the motives of the board which is in charge of the project to continue construction on Shabbat. Similar messages should be posted on the Synagogue’s website and distributed by mail to neighbors of the construction site.

In that manner there will be no concern about misperception, and the builders of the synagogue will have followed the directive: הֶיוּ יְהֵキャンקְמִיָּאִים מַאָה וּמִשְׁרָאֵל – you shall to what is right in the eyes of both God and humans (Numbers 32:22).
 Shawshon, ר"ח ע"א. "שثورת בחורף, הלכות הרמב"ם... nacionalistic, או שהנ"ד הוא קבלן, ועל שאר הפועלים הם שכירי יום, או שבגרים רבים שמשיכו את הבנייה, מתנו לזכרו חילול ה'.
איש הרואים את הפועלים בעבודתם בשבת, וישיבו לשאולתו ששכירי יום הם, לא יבצר מלשאול עוד ממי מקבל שכרו, אף הוא ישיבנו שמקבל ו מהקבלן הגוי שכר
12 写了 "ת" היהзор האוסר את הבקננות של הגוי בשבת, והיה נראה להתיר ג"כ בנין בהכ"נ בשבת בקבלנות של הגוי, ומ"מ ראיתי שהגדולים לא רצו להתיר...

^ "המגן אברהם" סימן רמד צ"ח (...) כתה שבש"ת חות יאיר (סימן נג) שנראה לו ישגר שמותר לומר לגוי אמור לגוי פלוני שיעשה לי מלאכתי, משום דהויא אמירה לאמירה

13 写了 "בבר א建設 בית כנסת בקבלנות של גוי בשבת...
...המגן אברהם" סימן רמד צ"ח (...) חזרתי על צדדים וצדי צדדים למצוא היתר לדבר ולא מצאתי...

...ה坬ו ניחש себ טענו מבקננות, "כל הנורח הלאاجتماع לבנות ע"ע, לפי ווירו בערבי...

...אף שחש"ו "ז" היהזר האוסר את הבקננות של הגוי בשבת, הספק שכתב נ прочי...

...היה נראה להתיר ג"כ בנין בהכ"נ בשבת בקבלנות של הגוי, ומ"מ ראיתי שהגדולים לא רצו להתיר...

...וזה הספק שכתב נ прочי...

...והואיל ומעיקר הדין אפי' אם היה נבנה באיסור גמור, אין שום איסור להכנס בו, וכמ"ש גדולי האחרונים אליבא דמרן הש"ע,classed="2" class="2">

...וכל הדיון הוא לענין החומרא ממדת חסידות, ...) כתבה והל"כ בarefa והל"כ בראה האוסר דבר שאינו שלו.

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