The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן רמ"ג סעיף א'-ב'

Overview

Siman 243 Seif 1:

One may not rent his bathhouse to a gentile since it is called his and the gentile will work in it on Shabbos and a regular bathhouse is not leased to an אריס (an אריס is someone who takes a portion of the profits) and people will think that all the profits belong to the Jewish owner who hired the gentile as a day laborer and the gentile is working as the Jew's agent. This arrangement is permitted for a field since it is common to lease a field to an אריס and although it is known that the field belongs to a Jew people will say that the gentile leased it is an אריס and he is working for himself. An oven is treated the same as a bathhouse and a grain mill is treated the same as a field. Even if the gentile only takes 1/3 or ¼ and the Jew benefits from the work that the gentile does on Shabbos, it is permitted since the gentile is working for his own benefit.

- There are three categories:
  - אריסות—One hires a gentile to work in a field or bathhouse and the profits or produce are shared
  - שכירות— The gentile takes all of the profits or produce and he gives the Jew for use of his field a fixed amount per year.

    These two categories are permitted for a field and regarding a bathhouse it is only technically permitted. The reason is that the gentile is working for his own benefit but Chazal prohibited these two methods for a bathhouse because it gives the impression of impropriety (מראית עין) since it is known to belong to a Jew and people will think the gentile is the Jew's agent
  - קבלנות—In this case all of the profits are taken by the Jew and the gentile is given a fixed amount per year for his work. This is clearly prohibited for a bathhouse since the gentile is working for the Jew and the Jew benefits from the work that is done. In a place where most people use אריסות or שכירות a bathhouse would have the same halacha as a field and would be permitted.

    The allowance for שכירות refers to where the wages for Shabbos are given in a lump sum with the wages that were earned during the week (הבלעה) but it is prohibited if one receives money just for Shabbos. (M.B.)
- It is certainly prohibited to hire a non-religious Jew and one also violates לפני עור. (M.B. 1)
- Even if the gentile receives a percentage of the profits and is working for himself but nevertheless it is prohibited because it is gives an impression of impropriety since it is known to belong to a Jew and people will think that the gentile is acting as his agent. This is permitted only if he is hired to work for the year or month but if he is paid for each day that he works it is prohibited since this constitutes שכר שבת. (M.B. 3)
- Even if the gentile, on his own accord, does work that benefits the Jew one must protest. (M.B. 5)
- There will not be suspicion that he was hired as a day worker, it will be assumed that he is working as an אריס. (M.B. 6)
- All of these matters are subject to local custom, regardless of whether this produces a stringency or leniency as will be discussed on seif 2. (M.B. 8)
- Rema adds that even אריסות is permitted and Shulchan Aruch agrees with this ruling. (M.B. 9)
- This is permitted only if the gentile takes some of the produce but if the Jew takes all of the produce, although technically it should be permitted, nevertheless, it is prohibited since people will think he was hired as a day worker rather than assume he is an אריס. (M.B. 10)
- The agreement is actually prohibited for a bathhouse. The reason for a field it is technically permitted is that there is a fixed amount of work that has to be done and the gentile can choose to do the work when he pleases but when it comes to a bathhouse and mill each day he works the Jew earns money and it cannot be said that he is working out of his own self-interest. Being that it is technically prohibited even if it is known that he was hired for the year and it is outside of the techum it is prohibited unless the gentile receives a portion of the profits earned on Shabbos and it is known that he was hired for the year. It is certainly permitted if one sells it to a gentile entirely on erev Shabbos. (M.B. 10)

Siman 243 Seif 2:

Even a bathhouse or oven, if they are leased one year after another and it is well known as a result that this Jew does not hire workers but rather he leases the bathhouse or oven and the custom of most people is to lease it or to give it to an אריס it is permitted to lease them to a gentile or give it to him as an אריס. Even where it is prohibited, if the Jew does not own the structure but rents it from a gentile and then subleases it to another gentile it is permitted since it is not known as property owned by a Jew. Similarly, if there is a bathhouse in a private residence only those from the household may bathe there since they know that the gentile rented it. If one leased it in a circumstance in which it is prohibited there are some authorities who maintain that the profits are permitted while others maintain that they are prohibited and this is the correct opinion.

- Even if the custom in that place is to rent and this person only leases property, nevertheless, אריסות is permitted since people will assume that it was leased. (M.B. 11)
- Bais Yosef in the name of others contend that even if the Jew purchased it but before settling there he leased it to others so that it is not known by his name, one may be lenient. (M.B. 12)
- If it belonged to a Jew it would be prohibited since it will be suspected that the gentile is a day worker. (M.B. 13)
- There is a disagreement whether it is permitted to sublease if the Jew actually used the property before he subleased it to the second gentile. (M.B. 14)
- If the only people who bathe are the members of the household it is permitted since only members of the household are aware there is a bathhouse there and they know that it was leased to a gentile. If other people also bathe there it is prohibited since there is the suspicion that others will think that the gentile is a day worker. If the bathhouse is on public property it is prohibited since people will not know that it was leased to a gentile. Some are lenient if the bathhouse is on its own property and even if others bathe there as well. Only the neighbors know who owns the property and it is assumed that they know that it was leased to a gentile. (M.B. 15)
- Later authorities write that there is no dispute about the matter. When technically it is permitted and the prohibition is based on מראית עין b'dieved it is permitted. When it is technically prohibited then even b'dieved the money is prohibited. (M.B. 16)

Halacha Highlight

Vending machines and Shabbos

Mishnah Berurah Siman 243 Introduction

אבל ליום השבת לחוד אסור

But for the day of Shabbos itself it is prohibited

Mishnah Berurah writes in the introduction to this siman, that in all of the circumstances in which it is permitted for one to hire a gentile to work for him even though he is working on Shabbos, one may not pay him specifically for work that he does on Shabbos. In other words, if one pays the gentile for the work he does for a week or month, it is permitted since the money that he earned for working on Shabbos is included in the lump sum that he is paid for the week or month. If, however, he is paid separately for each day that he worked, it is prohibited since one may not pay a gentile specifically for melacha that is done on Shabbos even if he was hired in a permitted manner.

Whether a person is permitted to own a vending machine where only gentiles will purchase items on Shabbos is subject to debate. Rav Shmuel Wosner (שו"ת שבט הלוי ח"ה סי' כ"ח) maintains that it is prohibited to benefit from the money that is earned on Shabbos. Rav Shlomo Zalman Auerbach (שש"כ פכ"ט הע' ע') disagrees and argues that this does not violate the prohibition against earning money for melacha that is done on Shabbos. The money the gentile pays is for the food or drink that he is purchasing and is not for the melacha that was done to deliver that item. Therefore, in a place where only gentiles would purchase things on Shabbos it is permitted.