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Digest
Mishna Berura
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סימן רמ"ד סעיף א'

# Overview

Siman 244 Seif 1 (a):

**One may stipulate with a gentile to do work and agree on how much he will be paid for the job, and then it is permitted for the gentile to perform the job on Shabbos since he is doing it out of his own interest. This is true if the work is done in private and people do not realize that the work is being done for a Jew, but if it was known and publicized it is prohibited since one who observes the gentile working will not know that the gentile is being paid for the job and will mistakenly think that the Jew hired the gentile to work on Shabbos. For this reason if one stipulates with the gentile to build him a house, a wall or to harvest his field and the job is within the city or the techum, it is prohibited to allow him to do the job on Shabbos since others may not realize that the gentile is a contractor rather than a day laborer.**

- This refers to קבלנות where the worker is paid a fixed amount for the job. (M.B. 1)
- Since his payment is fixed he is working for himself to finish the job quickly. (M.B. 2)
- Not everyone will realize that the job is being done for a Jew, and the truth is that it maybe that even if it is done in public it is permitted since it is not known that the job is being done for the benefit of a Jew. (M.B. 3)
- Even if some people realize that it belongs to a Jew it is permitted. Even though Rema expresses concern for guests and members of the Jew's household, in that case he was discussing working with items that are attached to the ground and the owner's name is associated with that property. (M.B. 4)
- Items attached to the ground are known and publicized that they belong to the Jew. (M.B. 5)
- Even if land is commonly leased בקבלנות it is prohibited because if people investigate they will realize that the gentile is receiving some of the fruit but in this case they will realize during the harvest season that the gentile did not take any of the profit they will realize that he was not an אריס and will be suspicious that he was a day worker. Even if the custom in town is to hire people as a contractor the Taz maintains that one should be stringent and not permit the gentile to work on Shabbos or Yom Tov and certainly not work constructing a house. Others are lenient when the custom in town is to hire workers as contractors. This applies when all the workers are contractors but if only the supervisor is a contractor but other workers are commonly hired as day workers it is prohibited even if these workers were hired as contractors. Biur Halacha decided that regarding a field one may be lenient in the face of significant loss but it is not clear if one may be lenient for a house. (M.B. 7)

# Halacha Highlight

## A house constructed by a contractor on Shabbos

Shulchan Aruch Siman 244 Seif 1 (a)
**הפוסק עם אינו יהודי לבנות לו חצרו או כתלו**
**Therefore, one who stipulated with a gentile to construct his courtyard or wall**

Shulchan Aruch discusses hiring a gentile to do work as a contractor (קבלן). This refers to where the gentile is hired to complete a job and is paid for the completion of the job rather than hourly. In such a case the gentile may decide when he wants to work and any time he works it is seen as though he is working out of his own self-interest rather than working for the Jew who hired him. However, when the gentile is hired to work on land or something attached to the ground and people know that the property belongs to a Jew there is a concern that people will suspect that he hired the workers as day workers rather than as contractors. Thus if someone hires a gentile to work on his field or build a wall it is prohibited to allow the gentile to work on Shabbos if the work is done where a Jew could possibly observe the gentile working on Shabbos.

Mishnah Berurah (סק"ז) presents a disagreement whether one may allow a gentile to work if the custom in that town is to hire gentiles as contractors rather than as day-workers. Taz adopts a stringent opinion since there are also workers who are hired for the day whereas other authorities are lenient when all the workers are hired as contractors. He then notes that when it comes to a field one may follow the lenient opinion if otherwise one would suffer a loss but when it comes to a house it is not clear that there is room for leniency. Rav Moshe Feinstein (אוי"ח ח"ג סי' ל"ה) rules that if one stipulated with the contractor that he should not work on Shabbos but the gentile nevertheless worked on Shabbos, it is not prohibited for one to live in that house. Being that most workers are hired as contractors one need not be concerned that people, even guests, will suspect that the workers were hired as day workers. He does add, however, that one should delay moving into the house for the number of Shabbosim that the gentile worked in the house.