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Digest
Mishna Berura
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סימן רמ"ד סעיף ב'

Halacha Highlight

Using objects that were prepared in violation of halacha

Shulchan Aruch Siman 244 Seif 2

ואם עשו כן לא ישקעם בבנין

And if he did it the beams and stones should not be used on the building

Shulchan Aruch writes that it is prohibited for a gentile to hew stones or fashion beams on Shabbos since they will become part of a home. Mishnah Berurah (ס"ק ט"ו) further explains that since they will be used in the construction of a home they are already treated like something that is attached to the ground and if the work is taking place within the techum one must protest even if he is far from the construction site. This prohibition applies even though the gentile is working as a contractor since when it comes to items attached to the ground there is a concern that people will be suspicious of impropriety. In the event that the gentile did this work on Shabbos one should not use those items in the construction of his building. Mishnah Berurah (סק"כ) references his comments below (סק"כ) where he rules that b'dieved if the gentile was hired as a contractor one may rely upon the authorities who maintain a lenient position and one may live in a house that was built with these stones or beams.

Biur Halacha (ד"ה לא ישקעם) notes that Tur writes that it is prohibited to use these stones or beams in the construction of the building. This is in contrast to what Tur writes elsewhere (סי' תקמ"ג) and Shulchan Aruch cites in seif 3 that it is proper to be stringent not to enter a house that was constructed in violation of halacha. Why in our seif does Tur write that it is prohibited whereas in the other seif he only writes that it is appropriate to be stringent? Tosefes Shabbos answers that our seif refers to a l'chatchila situation since one has not yet used the stones or beams in the construction of the building whereas in seif 3 he is discussing a house that was already constructed with such stones and beams. Biur Halacha explains that Shulchan Aruch specifically did not cite Tur's opinion in our seif and merely wrote that one should not incorporate such items into a structure but did not rule that it is forbidden.

Overview

Siman 242 Seif 2:

It is prohibited for a gentile to chisel stones or fix beams since the work is done for something attached to the ground. If they did this work the items should not be used in the construction of the building. According to some if it is not known that the objects belong to a Jew it is permitted.

- This applies only when the stones or beams belong to a Jew and he gave them to the gentile to fix them but if the gentile is working with beams and stones that he owns, meaning that the Jew hired him as a contractor on the entire project and the gentile could chisel other stones if he chooses and keep the ones he is currently working with for himself, as long as he is not working the Jew's home it is permitted. This reflects the opinion of Dagul Ma'rivava. Radvaz wrote a similar ruling but added that if the gentile is working close to the place where the stones and beams will be used, it is improper since it gives the appearance of impropriety. (M.B. 14)
- This opinion references all of the previous cases and asserts that if it is known that the building is not associated with the Jew it is permitted if the gentile was hired as a contractor. (M.B. 17)
- One need not protest if the gentile works on Shabbos but he may not be instructed to work on Shabbos. This is true when the gentile works in his own home or far from the construction site so that it does not appear as though he is working for a Jew. Many authorities indicate that they follow this lenient position with regards to chiseling stones but when it comes to work on items attached to the ground one should not be lenient even if it is not known to belong to a Jew. (M.B. 18)