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

Overview

Siman 245 Seif 1 (a):

If a Jew and gentile own a field, oven, bathhouse or water mill as partners, or if they are partners in a store that sells merchandise, if they stipulated when they formed their partnership that the gentile will take the profits that are earned on Shabbos whether large or small, and the Jew will take the profits from another day exclusively, their partnership is permitted. If they did not stipulate when they formed their partnership, when it is time to divide the profits the gentile should take all of the profits from the Shabosos and the profits from the remaining days should be shared equally. If the amount that was earned on Shabbos is not known the gentile should take 1/7 of the profits and they should split the remainder.

- It is absolutely permitted for a Jew and gentile stipulate at the outset that the gentile will work on Shabbos and take all of those profits and the Jew will work and take all of the profits from another day. If they did not make this stipulation, and the Jew suggests that the gentile take the profits from Shabbos and he will take the profits from another day it is certainly prohibited. There is an unresolved dispute if they did not make this stipulation and want to divide the profits equally. According to Rambam if they stipulated when they formed their partnership and then decided to just split the profits it is acceptable. (M.B.)
- If they did not make this stipulation the work obligation rests equally on both of them. If the Jew later asks the gentile to do all the work on Shabbos, it is as if he is hiring him to work in his place and will pay him back by working another day during the week. Accordingly, if it is not the gentile partner who works on Shabbos but other gentiles come to use the oven for themselves it is permitted for the Jew to share in those profits even if there was no stipulation. The only restriction is taking profits earned from Shabbos exclusively, but if it is included in profits earned during the week it is permitted. There is no concern for an appearance of impropriety since it is known that a gentile also owns a share of the business. (M.B. 1)
- Once they stipulated at the outset the Jew has no responsibility to work on Shabbos and the gentile is not acting as his agent. (M.B. 2)
- This is permitted only if each one takes what was earned on his day, but if they add to the stipulation that they will then divide the remaining profits in a manner that they each earn the same amount it is prohibited. (M.B. 4)
- If they each took the profits from their day and then decide that they would like to split the remaining profits so that they should each end up with an equal share, Magen Avrohom rules stringently since this indicates that their original stipulation was merely a ruse. Others are lenient being that they originally made the correct stipulation. Elya Rabba does not resolve this matter even after extensive analysis. (M.B. 5)
- If the profits for each day are not known, they may split the profits evenly. (M.B. 6)
- Shulchan Aruch ruled stringently when they did not make a stipulation regardless of whether they later decided that the gentile would work on Shabbos and the Jew would work one of the weekdays and even if they merely agreed to split the profits evenly. (M.B. 7)

Halacha Highlight

Forming a partnership with a non-religious Jew

Shulchan Aruch Siman 245 Seif 1 (a)
שיהיה שכר השבת לאינו יהודי בלבד
That the wages from Shabbos will belong to the gentile exclusively

Shulchan Aruch discusses one who owns a business in partnership with a gentile. If they are equal partners and they agree that the gentile will work on Shabbos, it is considered as though the gentile is working for the Jew since according to their partnership agreement the Jew is also obligated to work on Shabbos. One of the ways around this issue is for the Jew and gentile to stipulate at the outset of their partnership that the gentile will work on Shabbos and keep all of the profits or losses from that day for himself and the Jew will work one day during the week by himself and keep all the profits and losses from that day for himself. The remaining days both of them will work and they will share those losses and profits.

Poskim discuss whether the same approach may be adopted if one owns a business with a non-religious Jew. Rav Moshe Feinstein (שו"ת אג"מ או"ח ח"א סי' צ"א) writes that this approach does not work if one's partner is a non-religious Jew. The reason is that based on the stipulation, the non-religious Jew agrees that the religious Jew will work himself one day during the week, so it emerges that the religious Jew benefits from the work that the non-religious partner does on Shabbos. The only way to set up this partnership is for them to be partners in the business only during the week, but on Shabbos and Yom Tov the business belongs to the non-religious Jew exclusively. This also assumes that the non-religious partner is capable of running the business by himself, because if he cannot it would turn out that the religious Jew is assisting the non-religious Jew to desecrate Shabbos. Rav Shmuel Wosner (שו"ת שבט הלוי ח"ה סי' כ"ו) adopts a more stringent position and prohibits forming a partnership even in the matter described above, since he maintains that even in this manner the religious Jew is considered assisting the non-religious Jew in desecrating Shabbos.