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 (b):

Some are lenient, b'dieved, if they did not stipulate at the outset but spilt the profits evenly and it appears to me that one may be lenient if it involves a significant loss. According to some authorities this discussion relates to a partnership where each person works on a separate day but when they both work together during the week and on Shabbos the gentile works by himself it is permitted to share the profits evenly since the gentile is working out of his own self-interest and the Jew does not benefit from the work since that work is not his responsibility. However, he may only take the profits from Shabbos if it is paid in one lump sum with the rest of the weekly profits.

- In other words when the profits were divided the Jew did not offer the gentile the profits for Shabbos in exchange for the profits from another day. Furthermore, Rema is not discussing where the Jew did not tell the gentile that he will work on Shabbos and in exchange the Jew will work another day; rather the gentile decided to work on Shabbos on his own initiative. (M.B. 8)
- The entire seif refers to where the Jew and gentile are equal partners in all of the assets but if the gentile doesn't own any of the assets but merely receives a portion of the profits because he bakes or tends to the fire, according to some opinions a stipulation at the outset is not effective. It is considered as though the Jew is hiring the gentile to work on Shabbos and he will, in exchange, work one day during the week and if he does so it is considered profit that is earned on Shabbos. Magen Avrohom writes that one should be stringent about this matter when the profits are not given in one lump sum. Some later authorities do not require a stipulation at the outset when the profits are split in one lump sum when the gentile does not own any of the business' assets. (M.B. 8)
- Since the Jew works on Sunday, the gentile is the Jew's agent to work on Shabbos. Later authorities write that even if the gentile gave the Jew money to work with during the week and on Shabbos the gentile works, it is prohibited for the Jew to receive the profits that are generated on Shabbos unless the Jew stipulates from the outset that he is not obligated to work on Shabbos. (M.B. 9)
- In other words, the benefit comes about on its own since the gentile does not have the authority to demand the Jew to also work on Shabbos so whatever he does is for his own benefit. (M.B. 11)

Halacha Highlight

A gentile business partner

Rema Siman 245 Seif 1 (b)

אדעתא דנפשה קא עביד

He is working out of his own self interest

Rema cites an opinion that maintains that the Shabbos restrictions that apply when one forms a business partnership with a gentile is limited to where each one works on a separate day. When this is the agreement, it will turn out that when the Jew works alone on Sunday, the gentile is working as his appointed agent to work alone on Shabbos. For this reason it is necessary for them to have a stipulation in place from the outset of their partnership as described by Shulchan Aruch at the beginning of the seif (מ"ב סק"ט). However, when they both work together during the week and on Shabbos the gentile works alone, the Jew may share in the profits that were earned on Shabbos since the gentile is working out of his own self-interest. Whatever benefit the Jew has from the work done by the gentile comes about indirectly as a result of gentile's self-interest to earn more money. However, the money that the Jew takes from the profits earned by the gentile on Shabbos must be given b'havla'ah – an overall payment that includes the other days of the week.

Mishnah Berurah (סק"י) explains that in the permitted case the gentile partner is similar to a contractor. A contractor works in order to earn money for himself and the benefit the Jew has from the work is indirect. So too in this case the gentile works on Shabbos to earn more money for himself and whatever money is earned by the Jewish partner is indirect. This circumstance is, in fact, better since there is no issue of an appearance of impropriety since it is known that the business is partially owned by a gentile and people will assume that he is working out of his own self-interest. Rav Shlomo Zalman Auerbach (שלחן שלמה סק"א) writes that the Jew may share equally the profits that are earned on Shabbos even if the gentile's share of the business is minor.