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 2:

If they stipulated from the outset, and when it comes time to divide the profit the gentile agrees to split the profits equally, it is permitted.

- In other words, they agreed to split the days regardless of whether one will earn more than the other but when it comes time to divide the assets they agree to split the profits equally. In such a case we do not conclude that the gentile was acting as his agent; rather it is a gift that the gentile is giving him since according to the original stipulation that money is the gentile's. This applies when the gentile's decision did not come from the Jew's claim that the gentile earned more than he did and they should even out their respective earnings. (M.B. 13)

Siman 245 Seif 3:

If they did not stipulate from the outset, the situation could be rectified by the seller refunding to them the money they gave him or they can sell it to another person and then repurchase it as partners with the necessary stipulation. If they formed a partnership in a store and did not stipulate, each partner will take back his share thereby nullifying the partnership and then they should reconstitute the partnership with the necessary stipulation. If they received land to work as partners they must dissolve the partnership and forgo any claims they have against one another and then reconstitute with the necessary stipulations. If one is interested in leasing his share to a gentile for Shabbos or to hire him as a contractor it is permitted as was explained above at the end of *siman* 244 regarding taxes and currency that is permitted and certainly in this case it is permitted since he has a gentile partner.

- In Choshen Mishpat it is taught that a new proprietary act is necessary to transfer the land back to the seller and it is not sufficient to return the money and the contract of sale. (M.B. 14)
- Magen Avrohom and Taz find difficulty with this ruling. Magen Avrohom explains that we refer to where it was leased using *havla'ah* so that there is not an issue of wages earned by the Jew on Shabbos. The leniency concerning hiring him as a contractor refers to where he did not specify that the gentile would work on Shabbos and the main novelty of the ruling is that we are not concerned that it gives an impression of impropriety. Taz also writes that this is permitted only when the profits are given *b'havla'ah* but he must also be careful not to discuss with the gentile working on Shabbos. (M.B. 15)

Siman 245 Seif 4:

A Jew may give money to a gentile to deal with, even if the gentile will do business on Shabbos and will share the profits with the Jew since the gentile is not obligated to work on Shabbos that we would conclude that the gentile is acting as his agent. Additionally, it is not discernible whose business this is. This is true only in this case where the gentile is the only one who is doing business with the money but if each one works on a separate day and the Jew must work one day in exchange it is prohibited. Regarding a Jew has collateral from a gentile see below *siman* 325:2-3.

- If it was incumbent upon him it would be prohibited. (M.B. 16)
- It does not appear as though he is receiving compensation for work done on Shabbos since the money is received *b'havla'ah*. (M.B. 17)
- There is no issue of an appearance of impropriety since it is not discernible whose business it is but it is still not permitted unless the Jew is careful not to tell the gentile to work on Shabbos. (M.B. 18)
- This is true unless they stipulated from the outset. (M.B. 19)

Halacha Highlight

Owning stocks in businesses that run on Shabbos

Shulchan Aruch Siman 245 Seif 4

יכול ישראל לתן לאינו יהודי מעות להתעסק בהם

It is permitted for a Jew to give a gentile money with which to do business

Shulchan Aruch (סע' ד') rules that it is permitted for one to give money to a gentile for him to use for business. Even though the gentile will engage in buying and selling on Shabbos, it is permitted, and the Jew may even take a percentage of the profits. The reason is that the Jew has no obligation to do this work, so that it could possibly be thought that the gentile is working as the Jew's agent. Furthermore, since all the Jew gave the gentile was cash, it is not discernible that the gentile is working for the Jew and thus there is no concern that he is giving an impression of impropriety. Although the Jew is profiting from the work that the gentile does on Shabbos, as long as that money is given *b'havla'ah* it is permitted (מ"ב ס"ק י"ז).

Teshuvas Minchas Yitzchok (ח"ג סי' א') sees this *halacha* as the source that permits one to purchase stocks in companies that work on Shabbos, as long as some of the stocks are owned by gentiles and the people in charge of running the corporation are gentiles. The reason is that the gentiles are working out of their own self-interest rather than for the Jews that own some of the stocks. Similarly, Rav Moshe Feinstein (שו"ת אג"מ או"ח ח"ד סי' נ"ד) rules that it is permitted for a Jew to purchase stocks in companies that are open on Shabbos and it is permitted even if the majority of the stockholders are Jewish as long as the gentiles are the ones who run the day to day affairs of the business. He considers this comparable to an אריס or a contractor who is permitted to work on Shabbos as long as working does not raise a question of giving an appearance of impropriety. In the case of a corporation this means that it may not be perceived that this is a Jewish owned company. He adds that even if the people running the affairs of the business listen to the advice of the major shareholders, it is permitted since they are not obligated to listen to them and consider it mere advice that they may accept or reject.