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

Overview

Siman 245 Seif 5:

It is permitted to give a gentile merchandise to sell if he fixes wages for him as long as he is not instructed to work on Shabbos. If a Jew took an oven from a gentile as security for a loan and the gentile agreed that what he earns from the oven will be given to the Jew as interest on the loan, it is permitted for the Jew to take that money since the work takes place on the gentile's property and the Jew has no portion of it. Additionally, the Jew is not instructing him to work on Shabbos and the gentile is working out of his own self-interest to fulfill the condition of the loan.

- When his salary is fixed it is assumed that he is working out of his own self-interest rather than as the agent of the Jew. (M.B. 20)
- If the market day is Shabbos it is prohibited since it is considered as though he instructed him to work on Shabbos. (M.B. 21)
- He may take the money even if it is not b'havla'ah and it is not necessary to make a stipulation. (M.B. 22)

Siman 245 Seif 6:

If gentiles baked in the oven of a Jew on Shabbos against his will and they gave him bread as payment, it is prohibited to benefit from that bread.

- Bach asserts that Shulchan Aruch refers to where the gentiles baked only on Shabbos but if they also baked during the week it is permitted to benefit if it is given b'havla'ah. Biur Halacha asserts that this permitted even if the gentiles did not use the oven against the Jewish owner's instructions. Even though the Jew violated a prohibition by allowing them to bake on Shabbos as well, since the prohibition is based on the appearance of impropriety the payment is not prohibited. (M.B. 23)
- The same halacha is true if the Jew was given money as payment. (M.B. 24)

Halacha Highlight

Giving merchandise to a gentile on consignment

Shulchan Aruch Siman 245 Seif 6
מותר לישראל לתן סחורה לאינו יהודי למכר
It is permitted for a Jew to give merchandise to a gentile to sell

Shulchan Aruch (סע' ה') rules that it is permitted for a Jew to give merchandise to a gentile to sell if they agreed to a fixed wage, meaning that the gentile would earn a fixed amount. In other words, he was hired as a contractor and the Jew told him that he could sell the merchandise whenever he wants and agrees to pay him a fixed amount for his work. Since the gentile will earn the same amount regardless of when he works, he is not considered the agent of the Jew and may sell the merchandise on Shabbos. However, Shulchan Aruch adds that the Jew may not stipulate that the gentile should sell the merchandise on Shabbos. Mishnah Berurah (ס"ק כ"א) adds that if the market day is on Shabbos and it is obvious that the gentile will sell the merchandise on Shabbos it is prohibited since it is considered as though the Jew instructed him to sell the merchandise on Shabbos.

Poskim note that Shulchan Aruch's ruling applies when the Jew retains ownership of the merchandise that the gentile is selling. If, however, the Jew sells the merchandise to the gentile before Shabbos it is permitted. Once the Jew relinquishes ownership of the merchandise altogether, it is permitted for the gentile to sell it on Shabbos even if the merchandise was sold immediately before Shabbos and the market day is Shabbos. The reason is that once the merchandise belongs to the gentile he is working out of his own self-interest and it is not traced to the Jew at all. For this reason it is permitted for a Jew to give merchandise to a gentile on consignment for the gentile to sell on Shabbos. The reason is that once it is given to the gentile on consignment it is considered as though the gentile already owns it since if anything happens to the merchandise he will be responsible to pay for it (פסקי תשובות אות ח').