The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Sun, Jan 22 2023 ■ כ"ט טבת, תשפ"ג
סימן רמ"ו סעיף ג'

Overview

Siman 246 Seif 3:

It is prohibited to lease or loan one's animal to a gentile so that it should work on Shabbos since a person is commanded that his animal should rest on Shabbos. It is permitted to lease it or lend it with the stipulation that it should be returned before Shabbos but it is not effective to stipulate with the gentile that he should rest the animal on Shabbos since the gentile is not trustworthy about this. **If one lent or leased the animal to a gentile and stipulated that he must return it before Shabbos and then he kept it for Shabbos, the owner should declare, even to himself, the animal is ownerless before Shabbos or he should declare that his animal is transferred to the gentile in order to avoid violating a Biblical prohibition.** If one chooses he may declare the animal ownerless in the presence of three people similar to the standard halacha of hefker. Nevertheless, no one is permitted to take possession of the animal since his intent is to avoid violating Shabbos. This requirement applies only on Shabbos but on Yom Tov one is not commanded that his animal should rest.

- This is prohibited even on Sunday and even if payment is given b'havla'ah. (M.B. 10)
- It should say, "perhaps he will do melacha with it." (M.B. 11)
- Leasing an animal does not transfer ownership, and thus it is the Jew's animal that is working on Shabbos. According to some when it generates a stringency we do consider a lease a transfer of ownership and thus if a Jew leases an animal from a gentile he must make sure that it rests and one should follow that opinion. If one bought/sold an animal from/to a gentile and only did the proprietary act of meshichah or money, one must be stringent and assure that the animal rests on Shabbos. (M.B. 12)
- This applies b'dieved where one stipulated and the gentile kept the animal anyways. L'chatchila, it is prohibited to lease the animal with the intent to declare it ownerless even if that declaration will be made in the presence of three people since there will be people who are unaware this declaration was made and will suspect that a Jew's animal is working on Shabbos. Even regarding a sale one may not sell the animal just for Shabbos since there will be grounds for suspicion. Bach permits leasing an animal with the intent that the owner will declare it ownerless in the presence of three people since the matter will become publicized and there will be no grounds for suspicion. B'dieved, one may rely upon this opinion. (M.B. 14)
- Although declarations of hefker must be made in the presence of three people, Biblically a declaration to one's self is sufficient and in this case where it was already leased and one made the necessary stipulation it is sufficient to make the declaration to one's self to avoid violating the Biblical prohibition. Bais Yosef relates that there are Poskim who require three people to be present for the declaration, thus, l'chatchila one should be stringent. At the very least one should make the declaration in the presence of another person since many Poskim maintain that even Biblically a declaration of hefker must be made in the presence of another individual. (M.B. 15)
- Magen Avrohom asserts that this declaration must be made in the presence of the gentile but merely transferring it to the gentile via a Jew is ineffective. It is obvious that when conveying ownership there has to be an agreement concerning the amount the gentile will pay for the animal. (M.B. 16)
- L'chatchila one should not rely upon a declaration of hefker or conveying ownership to the gentile since these transactions will not become well known and there will be a suspicion of impropriety. (M.B. 17)
- In other words, it is clear that his intent was not to declare the item ownerless forever, rather his intent was to avoid violating Shabbos and such a declaration is considered a declaration of hefker. (M.B. 18)
- The rental must be done b'havla'ah. Maharshal contends that there is an obligation to make sure one's animal rests on Yom Tov and one should be stringent about this matter. (M.B. 19)

Halacha Highlight

Instructing a dog to turn on a light on Shabbos

Shulchan Aruch Siman 246 Seif 3
שאדם מצוה על שביתת בהמתו
A person is commanded to assure that his animal rests

Shulchan Aruch rules that one may not lease or lend an animal to a gentile so that it should do melacha on Shabbos. The reason is that a person is commanded to assure that his animal rest on Shabbos. Mishnah Berurah (סק"י) notes that it is prohibited even if one lends or leases the animal at the beginning of the week, since the issue is not an impression of impropriety; rather the issue is the Biblical command that one must assure that his animal rests on Shabbos. Although the gentile has possession of the animal, as long as it remains the property of the Jew he is responsible to assure that the animal rest on Shabbos (מ"ב ס"ק י"ב).

Poskim debate whether it is permitted for one to train his animal to perform melacha on Shabbos. For example, is it permitted for one to train his dog to press a switch to turn on and off a light when he is given the correct signal by his owner? Teshuvas Har Tzvi (שו"ת הר צבי או"ח ח"א סי' קע"ד) writes that it is prohibited to give the dog a signal to turn on and off the lights due to the obligation to assure that one's animal rest on Shabbos. He equates this to a ruling of another Sefer Even HaOzer who prohibits placing a leech onto one's skin so that it should suck out blood. Rav Shlomo Zalman Auerbach (שלחן שלמה סי' רס"ו סק"א מכ"י) discusses a similar case and rules leniently. If one trained a dog to turn on a light when he sees a thief, it is permitted for one to allow his dog to do this on Shabbos. He explains that pressing a switch is not considered a melacha as far as the dog is concerned; rather it is considered an indirect outcome of pressing the button. The fact that for people it qualifies as meleches machsheves does not mean that it is prohibited for a dog to do so since animals are not subject to the principles of meleches machsheves.