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

Overview

Siman 246 Seif 4:

If a Jew leased bulls to a gentile for plowing and he plowed with them, according to some it is permitted if the gentile accepted liability for the animal if it dies, is robbed or stolen or goes up or down in value. Some maintain that since the gentile may not sell the animal it is considered the Jew's animal (and see below in this siman).

- By accepting this responsibility it is considered the gentile's animal and he may plow with it on Shabbos. (M.B. 20)
- In other words, it is evident from the two מתירין ויש and the opinion cited by Rema that halacha follows the lenient opinion. (M.B. 21)

Siman 246 Seif 5 (a):

If a Jew and gentile are partners in the ownership of an animal it is permitted for the gentile to use the animal on Shabbos by stipulating from the beginning when the animal was purchased that the gentile will use it on Shabbos and the Jew one day during the week. If they did not make this stipulation it is prohibited even if they made the stipulation later. If one lends the animal to a gentile as a full-fledged loan, i.e. the gentile may sell it if he chooses without permission from the Jew and set its value as a debt upon the gentile and responsibility for the bull is upon the gentile it is permitted. Some are lenient even if the gentile may not sell the animal as long as they set its value as a debt upon the gentile and the gentile designates the animal as an אפותיקי (in other words payment for the debt will come from here) **to the Jew. Alternatively, he may give it to him as collateral but may not stipulate, "from now on." Some permit this if the Jew warned the gentile not to do melacha with it on Shabbos and if he does he will be fully liable for the animal even from circumstances beyond his control. This stipulation should be recorded in legal documents so that if the gentile decides to use the animal on Shabbos it is not the Jew's animal since it was transferred into the possession of the gentile as far as responsibility for even unavoidable accidents.**

- It turns out that the Jew never purchased the animal for Shabbos and then they may split the profits equally and it is not considered as though the Jew is taking payment for Shabbos. This is also permitted even though they share equal responsibility for all the days of the week, Shabbos and the weekdays. (M.B. 22)
- Even if there is no issue of the obligation to make sure that one's animal rests, it is prohibited since he is taking the animal for one day that corresponds to Shabbos and it is considered wages paid for Shabbos that are not b'havla'ah. (M.B. 23)
- Bais Yosef asserts that if they did not make a stipulation and they split the profits evenly it is permitted since the money for Shabbos is taken b'havla'ah. The wording of Shulchan Aruch indicates that he did not want to rely upon this opinion. Even according to Bais Yosef one should not rely upon this leniency unless one stands to lose a significant amount of money. (M.B. 24)
- In other words they should assess the value of the animal as it is presently worth and any subsequent change in value will belong to the gentile but nevertheless they must stipulate that the gentile has the right to sell it. (M.B. 25)
- This opinion also refers to where he lent the animal to the gentile and they appraised its value but is adding that even though he designated the animal as an אפותיקיand thus cannot sell it, it is still permitted. (M.B. 26)
- Even though it was left in the Jew's possession as collateral and then the gentile takes it to use for work on Shabbos, it is nevertheless permitted since the body of the animal belongs to the gentile. (M.B. 27)
- Even if he declares that if he does not pay by a certain date it will belong to the Jew, since he did not stipulate that it would be effective retroactively it is permitted. (M.B. 28)
- Even though the gentile does not have the authority to sell it, it is permitted. (M.B. 29)

Halacha Highlight

A gentile partner who works an animal against the stipulation that it would rest on Shabbos

Shulchan Aruch Siman 246 Seif 5
אם ישראל ואינו יהודי שתפין בבהמה
If a Jew and gentile are partners in an animal

Shulchan Aruch (סע' ה') discusses the responsibility of a Jew who owns an animal in partnership with a gentile to assure that the animal does not do melacha on Shabbos. The reason this is an issue is that one is commanded to assure that his animal rests on Shabbos even if he is only a partner in that animal. Even if the gentile is having the animal do melacha for his interests and the Jew will not profit at all from the work that the animal does on Shabbos, it is prohibited and one must take the necessary steps to assure that the animal rests. One approach to this issue is to stipulate at the outset of the partnership that the animal belongs to the gentile exclusively on Shabbos and to the Jew exclusively one day during the week.

Another option is to stipulate at the outset of the partnership that the animal will not perform any melacha on Shabbos. If this agreement was properly made and then the gentile violates that condition and has the animal perform melacha for him on Shabbos, the Jew does not violate the command to assure that his animal rests on Shabbos. The reason is that the gentile also owns a share of the animal and he is having his share of the animal perform melacha for him on Shabbos. In contrast to seif 3, there is no necessity in our case for the Jew to declare that the animal is hefker. The reason is that in seif 3 the gentile was working with an animal that belonged exclusively to a Jew. Although the gentile was working the animal against the will of the Jew it still remained the Jew's animal that was working. In our seif since the gentile is also a partner in the animal once there was an agreement that the animal should not work on Shabbos, the gentile is working with the part that is his and the Jew is not in any way responsible (פסקי תשובות אות י' והע' 86).