The Chicago Center
Digest
Mishna Berura
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סימן רמ"ו סעיף ה'

Halacha Highlight

Selling an animal before Shabbos

Rema Siman 246 Seif 5
וכל צדדי התרים אלו הלכתא נינהו
All of the different leniencies are halachically proper

Rema writes that all of the leniencies recorded in Shulchan Aruch are reliable in halacha and one may choose any one of them. The one concern that he expresses is that since it is known that the animal belongs at least partially to the Jew he should publicize that he handled the situation in a permitted manner. Mishnah Berurah (ס"ק ל"א) writes that the preferred method is for one to sell the animal to the gentile during the week as a binding sale. The gentile should give the Jew a down payment and the remaining amount should be structured as a loan that the gentile must repay. Additionally, the gentile should designate the animal as an אפותיקי so that he is assured of getting back his money. Preferably this transaction should take place in the presence of bais din so that the transaction will be done properly and so that it will become publicized that the Jew took the necessary steps so that he would not be in violation of halacha.

Biur Halacha (ד"ה רק שיפרסם) cites numerous authorities who oppose employing subterfuge by selling one's animal to a gentile for Shabbos. They admit that those who rely on the leniency have support in the Poskim, but a ba'al nefesh should be stringent and avoid utilizing these leniencies. Teshuvas Tzemach Tzedek also opposes these leniencies but writes that when it is necessary for the sake of a mitzvah of the tzibbur it is permitted. Thus, for example, if it is necessary to transport esrogim so that they should be available for Sukkos, one may declare the animal hefker before Shabbos. After citing additional authorities who are stringent about this matter he writes that one should not be lenient unless it is a pressing circumstance. Additionally, one should write a halachic contract and publicize that one sold the animal in accordance with halacha. He concludes by writing that one who trusts Hashem should follow the simple meaning of the pasuk that instructs one to assure that his animal rest on Shabbos and should not search for loopholes to avoid the prohibition. One who trusts Hashem will certainly be blessed during the remaining days of the week.

Overview

Siman 246 Seif 5 (b):

All the different leniencies are halachically proper and one may choose to follow any of them. Even if the animal belongs exclusively to the Jew, it is treated the same as if it was owned in partnership with a gentile and one should publicize that it was done in a permissible manner.

- The preferred method is to sell the animal to the gentile during the week and have the gentile give a down payment and the remaining balance becomes a loan. He should then designate the animal as an אפותיקי so that the Jew is assured that he will receive his money. This sale should preferably be done in the presence of bais din so that it is done properly and so that the matter is publicized without concern for the appearance of impropriety. (M.B. 31)
- Even accepting responsibility that Shulchan Aruch mentioned at the end of his comments is effective even though the gentile may not sell the animal. If one is in a pressing circumstance and cannot implement one of the other leniencies, e.g. one is leasing a field to a gentile and it is necessary to lease to him the animals as well, one may rely upon Bach's opinion that one may declare the animal hefker in the presence of three people before Shabbos and publicize that this was done. (M.B. 32)
- This applies when the animal is transferred so the gentile could use it for himself but it is prohibited for the animal to do melacha for the benefit of the Jew. (M.B. 33)
- Biur Halacha writes that one should not rely on these leniencies unless it is a pressing circumstance, as opposed to those people who intentionally sell their bulls to gentiles so that they could perform melacha on Shabbos and it is recognized that the melacha if the Jew's. Although it is unnecessary to protest against those who are lenient, a ba'al nefesh should be stringent except in a pressing circumstance and with the guidance of a Torah scholar. (M.B. 34)