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סימן שע"א סעיף א'

Halacha Highlight

A gentile who is away for Shabbos

Shulchan Aruch Siman 371 Seif 1
אם הוא קרוב מהלך יום אחד

If he is within a one day's journey

Shulchan Aruch addresses a circumstance in which one of the residents of the yard went away for Shabbos. He rules that even if the resident will spend Shabbos in a nearby yard he does not prohibit the residents of the yard that contains his home provided that he intended to not return on Shabbos. The rationale behind this ruling is that a residence that does not contain residents does not qualify as a residence (מ"ב סק"א). Shulchan Aruch then notes that this principle is true when the resident who went away for Shabbos is Jewish, but if the resident who is away for Shabbos is a gentile, he prohibits the other residents unless they lease from him his space, provided that he is within a one day's journey from his permanent residence. The reason this is true is that since the gentile may travel on Shabbos he may decide to return and thus his presence will prohibit the others. Shulchan Aruch then acknowledges that even a gentile who went away for Shabbos does not prohibit and Rema adds that is seems that this is the opinion to follow.

With regard to the gentile who went away for Shabbos, Shulchan Aruch initially cited the opinion that maintains that if he is within a one day's journey he prohibits the other residents but if he is more than a one day journey he does not prohibit the other residents. Mishnah Berurah (סק"ד) notes that even though when he travelled more than a one day's journey it is possible that before Shabbos he began his journey back home so that he is now within a one day's journey, nevertheless, we are not concerned about such a possibility. Kaf HaChaim (סי' שפ"ג אות ה') discusses the *halacha* of a gentile who travelled more than a one day's journey from his yard but if he travels by boat he can cover that distance. He writes that the ability nowadays to travel greater distances in shorter periods of time does not change the original formulation of the *halacha* and if he is more than one day's journey by foot it is not necessary to be concerned that he will travel by boat to cover a greater distance. He notes, however, that according to other authorities the issue is whether it is possible for him to arrive from that other location within a day's travel and even if that would involve travelling by boat, car or airplane, it would be necessary to lease from him his domain.

Overview

Siman 371 Seif 1:

If one of the residents of the yard went to spend Shabbos elsewhere, even if he is nearby but his intent was to remain there and not return on Shabbos, he does not prohibit. This is true if the person is a Jew but if it is a gentile he prohibits, even if he went to spend Shabbos in a different city until they lease from him his domain if he is within a one day's journey since it is possible for him to return on Shabbos. If he is more than one day away he does not prohibit. Some maintain that even when a gentile intends to reside in another yard he does not prohibit and this appears correct. (If a gentile arrives on Shabbos see below *siman* 383).

- A dwelling without residents is not considered a dwelling that will prohibit others. (M.B. 1)
- He left before Shabbos with all of the members of his household. Some authorities are lenient even if they left on Shabbos if their intent was not to return. (M.B. 2)
- Taz writes that if the gentile regularly returns home he prohibits according to all opinions. (M.B. 5)
- Biur Halacha cites many authorities who are lenient only if the gentile is in another city but not if he is merely in another yard. (M.B. 6)