The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שצ"ז סעיף א'-ד'

Overview

Siman 397 Seif 5:

If one gave an animal to a shepherd, even if it was given to him on Yom Tov, it is like the feet of the shepherd. If it was given to two shepherds, it is like the feet of the owner since he did not convey it to either one of them.

- This is also true when it is given to a gentile shepherd. (M.B. 11)
- Shulchan Aruch implies that the animal is like the feet of the shepherd even if there are many shepherds in town. Other *Poskim* disagree and contend that the animal remains confined to the feet of the owner unless he regularly gives it to a particular shepherd. The same is true regarding Shabbos. (M.B. 12)
- Shulchan Aruch does not differentiate whether the animal was delivered to the two shepherds before Shabbos or on Shabbos but others disagree and maintain that when delivered before Shabbos it does not matter whether it was delivered to one or many shepherds and in all circumstances the animal is like the feet of the shepherds and may only go where both shepherds may travel. If when he delivered to them the animal he did not specify which one is the custodian and then on Shabbos he chose one, it is like the feet of the owner since he did not choose before Shabbos. (M.B. 13)

Siman 397 Seif 6:

The bull of a fattener is like the feet of the one who purchased it to slaughter on Yom Tov. Similarly, if the owner slaughtered it on Yom Tov and sold the meat, each buyer may transport his portion to the place where he may walk.

- Even if he is from another city, he may transport it back to his place since the intent of the owner was on the one who purchased it. (M.B. 15)
- The intent of the owner was to give it to whoever wanted to purchase it. (M.B. 16)

Siman 397 Seif 7:

The bull of a shepherd may be transported like the feet of the residents of that town.

- This is a person who raises animals and sells them on occasion to his neighbors and acquaintances but does not sell to people from other cities since the animal was not yet fattened. (M.B. 17)
- Even if the shepherd made his *eruv* in one direction, he does not prevent them from transporting it two thousand *amos* in the other direction. (M.B. 18)

Siman 397 Seif 8:

Utensils that are used exclusively by one of the brothers are like his feet. If it is not used exclusively by him, it may not be moved other than the place where all of the brothers may go.

- The other brothers do not use it and thus cannot restrict him and confine the item to his *techum*. (M.B. 19)

Halacha Highlight

Choosing a shepherd to be a custodian on Shabbos

Shulchan Aruch Siman 397 Seif 5
ואם מסרה לשני רועים
And if he gave it to two shepherds

Shulchan Aruch (סעי' ה') rules that one who gives his animal for shepherding to two shepherds, the animal is confined to its owner's *techum* rather than the *techum* of the shepherds. Mishnah Berurah (ס"ק י"ג) notes that since Shulchan Aruch did not distinguish, the implication is that it does not matter whether the animal was given to the shepherds on Shabbos or on *erev* Shabbos, and in all cases the animal is confined by the owner's *techum*. Many authorities disagree with this position and contend that when the animal was given to the shepherd before Shabbos, it does not matter whether it was given to a single shepherd or many shepherds; in all cases it is confined by the shepherd/s *techum/in* rather than the owner's. He then adds in the name of Magen Avrohom that if he gave the animal to the shepherds before Shabbos but did not specify who will be the custodian until it was already Shabbos, the animal is confined by the *techum* of the owner rather than the shepherds.

Chasam Sofer (הגהות על המג"א סק"ה) wonders why the principle of *bereirah* – retroactive clarification — does not apply in this case since the principle is used for Rabbinic matters. He answers that *bereirah* can be utilized only if he told the shepherds that he would choose one of them to become the custodian on Shabbos. When he then chooses a shepherd on Shabbos, the principle of *bereirah* instructs that this was the shepherd that was going to be the custodian all along and the animal is confined to his *techum*. If, however, the owner never indicates that he intends to appoint one of the shepherds as the custodian on Shabbos, the principle of *bereirah* does not begin. *Bereirah* only works if one indicates before Shabbos that he intends to make a choice on Shabbos that will apply retroactively to before Shabbos.

Siman 397 Seif 9:

If two people borrowed a garment, one to use it in the morning and the other to use at night, it may not be moved other than the place where both of them may walk. If one made an *eruv* at the end of two thousand *amos* to the east and the other at the end of two thousand *amos* to the west, the object may not be moved from its location.

- They borrowed before Yom Tov for both of them to use. (M.B. 21)
- Shulchan Aruch does not refer to the second night of Yom Tov rather he refers to the night before the day so that they both have rights on the same day and thus they prohibit one another if they made their techumin in opposite directions. (M.B. 22)