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Digest
Mishna Berura
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סימן תקט"ו סעיף א'

Halacha Highlight

Benefiting from a picture taken by a gentile on Shabbos or Yom Tov

Shulchan Aruch Siman 515 Seif 1 (c)

ושעור בכדי שיעשו

And the duration of, "The time it takes to do it"

Shulchan Aruch presents the parameters for calculating בכדי שיעשו which is the amount of time one must wait after Shabbos or Yom Tov to benefit from a *melacha* a gentile performed for the benefit of a Jew. He explains in the context of a gentile importing fruit that one must wait the amount of time it would take for the gentile to walk to the place where the fruit grew, pluck the fruit and then return. Mishnah Berurah (סק"כ) adds that if the gentile travelled by horse one is only required the amount of time the trip would take travelling by horse. Kaf HaChaim (אות ל"ט) further clarifies that if the trip requires three days one is only required to wait the amount of time the gentile travelled on Shabbos and one is not required to include all three days in the calculation.

If a *melacha* was performed by a Jew to prevent a loss, Maharsham notes that logically it should be prohibited for the Jew to ever benefit from that *melacha* since had they waited until after Shabbos or Yom Tov, the Jew would have suffered a complete loss. Consequently, the concern that the Jew may instruct the gentile to perform the *melacha* remains and it should be prohibited forever. Nevertheless, Chazal did not differentiate in their injunction and only prohibited the item after Shabbos or Yom Tov for the amount of time it takes to perform that *melacha*. Rav Shlomo Zalman Auerbach (ביצחק יקרא סי' שכ"ה סע' ו') ruled that if a gentile snapped a picture on Shabbos (in a circumstance in which the scene cannot be recreated after Shabbos, e.g., following the birth of a child or at a simcha that is celebrated on Shabbos) it is prohibited to benefit from that picture. Rav Yosef Shalom Elyashiv (ארחות שבת ח"ב פכ"ג הע' ע"ד) also prohibits the picture. It would seem that their stringent position is at odds with the above cited position of the Maharsham.

Overview

Siman 515 Seif 1 (c):

Similarly, if something is brought on the second day of Yom Tov one must wait until after כדי שיעשו of the second day. However, regarding the 2 days of Rosh HaShanah or when Yom Tov is adjacent to Shabbos, whether before or after, if the object was brought on the first of those days one must wait until after כדי שיעשו after Yom Tov and Shabbos. The duration of time of בכדי שיעשו is the amount of time it takes for the gentile to travel to the place where the produce was picked, finish the *melacha* and return. If one is uncertain about the origin of the produce it may be assumed to have arrived from outside of the *techum*.

- If it was delivered at the beginning of the 2nd night so that it is clear that it was picked or the animal was captured on the 1st day, it is treated as though it was picked or trapped on the first day. The same is true if it is delivered at the beginning of the 1st night. (M.B. 14)
- The two days are treated as one long day. (M.B. 15)
- After Shabbos it is permitted immediately and it is not necessary to wait בכדי שיעשו. (M.B. 17)
- If the gentile travelled by horse one calculates the time based on the time it takes to travel that distance by horse. (M.B. 20)
- If one is uncertain whether it was imported from within the *techum* or from beyond the *techum* one must be stringent but if one is uncertain whether it was from just beyond the *techum* or far beyond the *techum* it may be assumed it was imported from just beyond the *techum*. (M.B. 22)