

Overview

Siman 515 Seif 2:

Even if the gentile plucked the produce or trapped the animal for himself or if the produce became detached on its own or became trapped on its own, it is prohibited to eat or move it that day even for those other than the one for whom it was brought. That night it is permitted immediately after Yom Tov, even for the one for whom it was imported.

- ❖ It is considered *muktzah*. (M.B. 23)
- ❖ Since the issue is *muktzah* it applies to everyone. (M.B. 24)
- ❖ Even if that night is Yom Tov it is permitted and would only be prohibited on the two days of Rosh HaShanah or when Yom Tov and Shabbos run consecutively. (M.B. 25)
- ❖ If it was imported from beyond the *techum* it would be prohibited for that the person for whom it was imported until *בבדי שיעשו* after Yom Tov. (M.B. 26)

Siman 515 Seif 3:

Even if one is uncertain if it was plucked or trapped that day it is prohibited. However, if it is discernable that it was not plucked or trapped that day, it is permitted for those for whom it was not imported but if it was not imported from outside of the *techum*, it is permitted even for the one for whom it was imported. If a gentile relates in the course of conversation that it was not picked or trapped today, he is believed.

- ❖ Shulchan Aruch refers to a gentile who plucked the produce for himself so that the issue is *muktzah* but nonetheless, even in a case of doubt, it is prohibited. If one is certain that it was plucked that day but is uncertain whether it was plucked for the gentile or for a Jew which will make a difference whether it is necessary to wait *בבדי שיעשו* the matter is subject to debate and *Poskim* write that in a circumstance of a *mitzvah* one may be lenient. When there are two doubts, whether it was plucked that day or not and whether it was plucked for a Jew, it is permitted that night without having to wait *בבדי שיעשו*. (M.B. 27)
- ❖ There is a discussion about whether the prohibition includes the 2nd day of Yom Tov and Pri Chadash rules that regarding produce one must be stringent but for trapped animals one may be lenient. (M.B. 28)
- ❖ The reason is that he is criticizing his produce rather than praising it. Rema refers to where the gentile is un-

Halacha Highlight

Uncertain whether the *melacha* was performed for a Jew or for the gentile

Shulchan Aruch Siman 515 Seif 3

אפילו אם הוא ספק

Even if the matter is uncertain

Shulchan Aruch (סעי' ג') continues the discussion of items that a gentile picked or trapped on Yom Tov and rules that not only when it is certain that the gentile performed the *melacha* on Yom Tov is the item prohibited but even if one is uncertain whether the gentile performed the *melacha* the item is prohibited. Mishnah Berurah (סי' כ"ז) explains that Shulchan Aruch refers to where the gentile performed the *melacha* for his personal benefit and thus there is no requirement to wait after Yom Tov *שיעשו*. The issue is *muktzah* since it is not clear whether the item was prepared before Yom Tov or not and in such a case one must adopt a stringent approach.

Mishnah Berurah writes that there is a dispute in the following circumstance. Produce was picked or an animal was trapped on Yom Tov but it is uncertain whether the *melacha* was performed for a Jew requiring *שיעשו* after Yom Tov or whether the *melacha* was performed for the gentile and it is permitted immediately after Yom Tov. The rationale for those who adopt a stringent position in this case (מ"ב סי' שכ"ה סי' ל"ב) is that the *melacha* performed by a gentile on Yom Tov is categorized as a *davar she'yesh lo matirin* – something that will become permitted after Yom Tov and as such treated stringently and consequently, is prohibited even in a circumstance of doubt. The lenient approach (עי' שעה"צ שם סי' ל"ה) contends that although it is true that a *davar she'yash lo matirin* is prohibited even when the prohibition is Rabbinic, however, since the prohibition against benefitting from the *melacha* performed by a gentile is a Rabbinic decree, Chazal's decree did not include circumstances of doubt. Mishnah Berurah concludes by noting that later authorities explain that one may adopt a lenient approach to this debate for the sake of a *mitzvah* or in a circumstance of great need (עי' ביה"ל שם די"ה וי"א).

aware that what he plucked or trapped that day is prohibited because if he realizes that it is prohibited, we are concerned that he is not being truthful. (M.B. 31)

- ❖ If the gentile brought fruit that cannot be eaten raw and it is Yom Tov that follows Shabbos, according to some authorities the fruit is Biblically prohibited on Yom Tov and thus the gentile is not reliable to transmit information in the course of conversation. (M.B. 32)