The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן תקל"ט סעיף ד'-ו'

Overview

Siman 539 Seif 4:

If one has merchandise which if not sold now will generate a capital loss, he may sell it but if he will not suffer a capital loss it is prohibited. However, if it is a circumstance that if it is sold now he will generate a significant profit and will spend that money on *simchas* Yom Tov, it is permitted to sell. It appears to me that this applies to one who has little money and hesitates to spend it on *simchas* Yom Tov but if he were to have more money, he would spend it. Someone who has enough money to spend as he wishes but does not intend to spend so much may not sell merchandise in order to spend more.

- A loss of profit is not considered a loss. (M.B. 15)
- He need not spend all of the profit, spending some of it is sufficient. (M.B. 16)
- The store should remain closed and he will open it slightly when a customer arrives. (M.B. 17)

Siman 539 Seif 5:

If there is something that will not be so available after the *moed*, for example, a ship or caravan arrived or they are about to leave and are selling for cheap or buying at a high price, it is permitted to purchase and sell even if it is not for one's needs and is merely to turn a profit. The same is true concerning fairs that occur from time to time (One may even travel to another city for this purpose). **However, it is not permitted to sell or buy in places that have a market day once a week that occurs during *chol hamoed* since it is not considered a *davar ha'avud* because if one does not sell on market day during *chol hamoed* he can sell on the market day after the *moed*.** A salesman who sells and buys and sells and buys may operate since for him it is considered a *davar ha'avud*.

- Making a profit that is not always available is permitted since it is akin to a *davar ha'avud*. (M.B. 18)
- If the week before Easter occurs during *chol hamoed* it is comparable to a market day that does not occur regularly since many people are buying merchandise. (M.B. 19)
- This assumes that one is confident that the principal will not lose value by waiting. (M.B. 22)
- Magen Avrohom writes that even in such a case he may only sell from his home and may not sit in his store in public. (M.B. 23)

Siman 539 Seif 6:

It is prohibited to exert oneself to find a lost object. For example, if the river deposited fish on its bank, it is prohibited to gather them to preserve them unless they will be fit for consumption during the *moed*.

- We are more lenient for business matters since they are essential for a person's support, as opposed to a lost object which is only profit. (M.B. 24)

Halacha Highlight

Paying employees for *chol hamoed*

Shulchan Aruch Siman 539 Seif 4

אבל אם לא יפסיד מהקרן לא

But if he will not suffer a capital loss, it is prohibited

Shulchan Aruch (סעי' ד') rules that one who has merchandise to sell and if he does not sell it during *chol hamoed* he will suffer a capital loss, it is permitted for him to sell it. If, however, he will not suffer a capital loss, it is prohibited. Mishnah Berurah (סי"ק ט"ו) explains that even if thinks he will earn a large profit by selling the merchandise during *chol hamoed* it is prohibited since a loss of profit is not categorized as a loss. Biur Halacha (ד"ה יפסיד מהקרן) writes that one who must have cash to pay his debts that are due during *chol hamoed* and if he does not pay them will suffer a loss is permitted to sell merchandise to generate cash since the circumstance is categorized as a *davar ha'avud*.

Poskim discuss an employer who has employees that he must pay for the days of *chol hamoed* and if he does not require them to work he will be paying them for nothing. Is this considered a circumstance of *davar ha'avud* or not? Rav Moshe Feinstein (ספר הזכרון מבקשי תורה חול המועד עמ' תס"ה-ג) wrote that if one cannot count this as their vacation days, it is indeed considered a *davar ha'avud* and he may require them to work during *chol hamoed*. Rav Shlomo Zalman Auerbach (שמירת שבת כהלכתה פס"ז הע' מ') questions this leniency. Since it was known well in advance which days will be *chol hamoed* the employer must include these as days off similar to the way he incorporates the employees' vacation days into his annual budget. If, after including *chol hamoed* as vacation days, the employer will still earn a profit, he may not have them work during *chol hamoed*. Chazon Ish (שלמי תודה סוכות וחול המועד עמ' תת"ס) is reported to have ruled that technically one can be lenient since paying employees when they do not work is considered a *davar ha'avud*. However, since the generation is very weak in their observance of *chol hamoed* and easily rationalize that everything is permitted, it is appropriate to adopt a lenient position and close one's business for *chol hamoed*.