The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Wed, Sept 25, 2024 ■ כ"ב אלול, תשפ"ד
סימן תקמ"ג סעיף א'-ג'

Overview

Siman 543 Seif 1:

Whatever one may not do, he may not instruct a gentile to do.

- If the job is needed for a *mitzvah* it is permitted since even for Shabbos there are authorities who permit it. (M.B. 1)
- Even if not hiring the gentile means that one will have to pay more after Yom Tov, it is prohibited since that is not considered a *davar ha'avud*. (M.B. 2)

Siman 543 Seif 2:

If a Jew hired a gentile as a contractor before Yom Tov to build a house, the Jew may not allow the gentile to work during *chol hamoed*, even if the job is outside of the *techum*. However, if the job involves items that are not attached to the ground and he will work in his own home, it is permitted.

- Although he is not instructed by the Jew to work on *chol hamoed* and of his own volition he is choosing to do so, it is nevertheless, prohibited since observers will think that he is a day-worker. If the house was built in violation of this *halacha*, it is permitted to live in it. (M.B. 3)
- On *chol hamoed*, as opposed to Shabbos and Yom Tov, people could travel there and see the gentile working. (M.B. 4)
- If the gentile is a sharecropper he may even work on a field. Moreover, even the gentiles who are members of one's household and eat with the Jew may assist the gentile sharecropper since the Jew is not paying them for that work. (M.B. 5)

Siman 543 Seif 3:

It is permitted to hire a gentile as a contractor or even as a day worker to work after the *moed* provided that one does not measure, weigh or count, as would be done during the week. If the gentile decides to do the work during *chol hamoed* it is permitted since the Jew stipulated that the work should be done after the *moed*.

- A Jew may also be hired under these conditions. (M.B. 7)
- He must be told explicitly that the work is to be done after the *moed*. (M.B. 8)
- For this reason the custom is not to give garments to a gentile to launder after the *moed* since they are counted. There is a dispute whether one may give linen garments to a gentile even if the garments will be counted and in a circumstance of necessity, one may follow the lenient opinion. (M.B. 10)

Halacha Highlight

Hiring a gentile to work after the *moed*

Shulchan Aruch Siman 543 Seif 3
מתר לתן לאינו יהודי מלאכה
It is permitted to give a gentile work

Shulchan Aruch (סע' ג') writes that it is permitted to reach an employment agreement, whether it is contract work (קבלנות) or whether it is regular employment (שכיר יום), with a gentile during *chol hamoed* with the stipulation that the work will be done after the *moed*. The one restriction mentioned by Shulchan Aruch is that in reaching the agreement they may not measure, weigh, or count since that is what would be done during the week and it is incongruous with *chol hamoed*. Biur Halacha (ד"ה שיעשנה אחר) cites Magen Avrohom who maintains that it is necessary for the Jew to stipulate with the gentile that he will not do the work during *chol hamoed*. This is in contrast with Elya Rabba who contends that it is not necessary to tell him explicitly that he should not do the job during *chol hamoed* and it is sufficient to tell him, as they are discussing the job, that it should be done after the *moed*. Biur Halacha notes that Rema's use of the term והתנה—he must stipulate, supports Magen Avrohom's position about this that one must stipulate with the gentile that he will not do the job during *chol hamoed*.

Rema rules that once one stipulated with the gentile to do the job after the *moed*, if he decides to do the job during the *moed*, the Jew may allow him to do the job and there is no need for the Jew to protest (מ"ב ס"ק י"א). *Poskim* write that one may allow the gentile to do the job only if at the time of the stipulation it was clear that the gentile intended to fulfill the condition. However, if it was evident that the gentile never intended to wait until after the *moed* to do the job, it is prohibited to allow him to work on *chol hamoed*. Furthermore, the allowance is limited to jobs that involve detached items that will be done in the gentile's home, but jobs involving work done to land or in the Jew's home may not be done and one must protest even if the gentile insists on doing the job during *chol hamoed* (פסקי תשובות אות ג').