



Parshas Vo'eschanan 5764

July 31, '04
Volume III Issue 38

What exactly is permitted on Shabbos, when buying a house in Eretz Yisrael?

The *gemora* in *Gittin* 8b says that even though one is rabbinically prohibited to tell a gentile to violate an *issur* on Shabbos, nevertheless, when it comes to buying a house in Eretz Yisrael it **is** permitted. The case involved in the *gemora* concerns the person who had already purchased a house from a gentile, but the deed had not yet been certified in court. The *gemora* says that since it involves the mitzvah of *yishuv* Eretz Yisrael (settling the land of Israel) one may instruct a gentile to draw up the contract and have it certified in a gentile court. The only prohibition involved is *אמירה לעכו"ם* (instructing a gentile) which may be waived in face of the mitzvah of *yishuv* Eretz Yisrael.

I have heard though that much more is permitted when it concerns the purchase of a house in Eretz Yisrael?

It is a fallacy. The *Mechaber*¹ says that one may purchase a house from a gentile in Eretz Yisrael and have the deed signed and certified in court. The *Mishna Berura*² explains that one may direct the gentile to where the Jew's money is and the gentile can sign and certify the sale but the Jew may not handle the money and give it to the gentile.

¹ *Simon* 306:11.

² *Simon* 306:45-46. His explanation is based on the *Yerushalmi*, see the *Sha'ar Hatsiun* 35.

We see that even though handling money is only an *issur* of *muktze*, nevertheless one may not handle money in order to make the purchase.

But is the writing not an issur d'oraisso (biblical)?

Indeed it is, but since it is not the Jew who is doing the writing but rather the gentile it is permitted. This is one of the unique cases where we may instruct a gentile to violate an *issur d'oraisso*, as explained in the *Mishna Berura*.³

Is every purchase in Eretz Yisrael called yishuv Eretz Yisrael?

It is not so simple. *Rashi* in *Gittin* says that the mitzvah is to relocate the gentiles from the land and settle Jews in their place. The *Mechaber* also writes "One may purchase a house **from a gentile**". This would mean that to buy a house from a Jew in Eretz Yisrael does not fall into this category. This does not demote the actual residing in Eretz Yisrael, which according to the *Rambam* is a *Mitzvas Aseh*, but buying a house from a Jew (according to these *poskim*) will not allow the instructing of a gentile to do anything.

When is one permitted to violate the Shabbos in order to prevent a fellow Jew from doing a greater sin?

³ *Ibid*.

In the yesteryear ovens, bread dough was pasted on the side of the oven and removed with a special spatula. The *halacha* is that it is *ossur* to use this spatula on Shabbos being that it is an עובדא דחול.⁴ The *Shulchan Aruch*⁵ talks about a case where someone pasted dough inside an oven with the deliberate intention of baking the dough, and says that he is permitted to peel the bread from the oven (even though an *issur* is being violated by doing so). This was permitted in order not to create a much more severe *issur* of baking the bread.

The *Mishna Berura*⁶ says that only the baker who pasted the bread in the oven may remove it and not someone else, even though the intention is to prevent the baker from violating a very severe *issur*. Peeling the bread is an *issur* and we do not say that one should violate even a small *issur* in order to prevent another person from violating an *issur*, even though it is a more severe *issur*.

What if the person pasting the bread is unaware that it is an ossur - for instance, he thought it was not yet Shabbos. May I remove it from the oven?

The *Mishna Berura* says⁷ that the same *halacha* applies when the person pasting the bread is unaware that he is violating an *issur*. The *Magen Avraham* explains⁸ this applies even when it is done unknowingly. As there is an element of carelessness involved, as one should have taken more care, one may not violate an *issur* for the sake of another person.

⁴ M"B *simon* 254:35.

⁵ *Simon* 254:6.

⁶ *Simon* 254:40.

⁷ *Ibid*.

⁸ See *Sba'ar Hatsium* 254:40.

Vort on the Parsha

The *posuke* says שמור את יום השבת לקדשו which is a continuous verb, telling us that a person must continuously have Shabbos in mind, even during the week. One must make sure on Sunday and on Monday and on each day of the week that no matter what happens, one will not cause Shabbos to be violated. One might conclude a business deal which would require equipment to be delivered on Shabbos, for example. The Torah tells us - שמור, guard the Shabbos now.

Food For Thought

Would this issur apply to regular ovens?

What if someone placed food on the fire b'issur? May or must I remove it from the fire before it cooks?

What if a person is coerced to violate an issur? May or must a lesser issur be violated in order to prevent the greater issur?

I see someone about to turn on a light, not realizing that it is already Shabbos. Can I attract his attention by throwing a stone next to him?

Answers coming next week.

One may receive and distribute these weekly shiurim by calling or writing: Office 99 Rechov Bayit Vegan, Yerushalayim, Phone Numbers: U.S. and Canada 732-370-3344 Israel 972-3-616-6340

South Africa 083-714-3166 UK 44-020-8731-6666 Australia 61-296835626 Switzerland 0114143 333 0288

• e-mail: shabbosweekly@shemayisrael.com, or www.shemayisrael.com.

weekly sponsorships are available as well.

If you would like to send a question to Rav Ostroff, you can write to him at shabbosweekly@shemayisrael.com.

Note: The purpose of this series is intended solely for the clarification of the topics discussed and not to render halachic decisions. It is intended to heighten everyone's awareness of important practical questions which do arise on this topic. One must consult with a proper halachic authority in order to receive p'sak.