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Halachos Regarding a City Eiruv – 6

Beshalach 5784

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Eiruv in a City with Non-Jews

Some Rules

- We wrote in the introduction to the series on eiruvim (Issue 315, par. 33) that an eiruv consists of two main things. The first is building halachic walls to close off an area so that it gets the status of a reshuv hayachid; we elaborated on the main halachos in the prior issues. The second is to arrange eiruvei chatzeiros or shitufeiv mevo'os, i.e., there must be an eiruv with bread to create a situation whereby everyone in the area of the eiruv acquires a single loaf of bread. This makes it as if they all live in one house and there are no separate living places at all. Then, one may carry throughout the whole area.
- This is the halacha when the eiruv surrounds only Jewish homes. If, however, there are also non-Jewish homes within the eiruv, there is an additional challenge in making a kosher eiruv. Technically, the presence of non-Jews interferes with the heter of carrying in an eiruv if the issue is not dealt with effectively. Even if the walls of the eiruv are of the highest level, carrying inside is assur unless property is rented from the non-Jews according to halacha. We will devote this issue to explaining these halachos, as every city eiruv includes many non-Jewish homes.

Non-Jewish Homes

- D'oraisa.** Strictly speaking, non-Jews living within the area of an eiruv do not interfere with the heter of the eiruv, as a non-Jew's residence is not considered a residence (גמי עירובין דף ס"ב ע"א).
- D'rabanana.** However, Chazal did not want Jews to live in the same neighborhoods as non-Jews, as they might learn from their ways. They saw a need to make it more difficult for a Jew to live in a non-Jewish area (גמי שם, טור סי שפ"ב). They did not want to decree that no Jew could live in an area with non-Jewish neighborhoods, as the majority of people would not be able to keep that (ש"ת תפארת אדם). Thus, Chazal decreed that a non-Jew's property must be rented to be able to carry in an eiruv. Chazal knew non-Jews would make it difficult for Jews to rent property from them; they would be afraid the Jews needed it for witchcraft (שם), as they would not actually be using the property they rent. Seeing that it will be difficult to carry without renting non-Jewish property, the Jews would stay away from living with non-Jewish neighbors (מ"ב סק"ה).
- One Jewish home, one non-Jewish home.** If there is one Jewish home, or one courtyard with multiple Jewish homes from one family who all eat in a shared room [which is considered one Jewish home for eiruvim]; and there is also one non-Jewish home or multiple non-Jewish homes; the presence of the non-Jew[s] does not interfere with the sole Jewish home's heter to carry. Here, Chazal left in place the d'oraisa halacha that a non-Jew's residence is not a residence. They did not make their decree on a single Jewish home, as it is uncommon for one Jew to live among non-Jews, who were suspected of murder, and Chazal do not make decrees for uncommon cases (גמי שם, ש"ע סי שפ"ב ס"א, מ"ב סק"א).
- Two Jewish homes and a non-Jewish home.** However, if there are two or more Jewish homes, and they need an eiruv chatzeiros or shituf mevo'os to allow them to carry; and there is a non-Jewish home or many non-Jewish homes; due to Chazal's decree, they may not make an eiruv until they rent space in each of the non-Jews' houses, as mentioned above (4).

- Non-Jewish building.** This halacha also applies to a non-Jewish building, e.g., if one rents an apartment in a non-Jewish building in a vacation spot or the like and wants to be able to carry in the stairwell or the shared courtyard. If he is the only Jew in the non-Jewish building, he does not need to make an eiruv or rent property (above, 5). However, if there are two Jewish families in separate apartments in the building, they need a shituf mevo'os to allow carrying in the building and stairwell, and they must also rent space from each of the non-Jews in the building (הגר"ש וידוביץ, הליכות עירובים פט"ו אות י"ז).
- Several houses or a city.** If one wants to enclose a small area, e.g., several houses on a street or all the houses on a street, and there are only a few non-Jews living among them, it is easier to rent space from each of the non-Jews personally; that is the proper approach. However, when the eiruv surrounds a large area containing many non-Jewish homes, it is difficult to rent property from each one. The poskim discuss how it is possible in various cases to rent space from the non-Jews without needing to deal with each non-Jew separately. We will now go through the basics of the halachos of renting property from a non-Jew, an essential element of a kosher eiruv.

מומך

- Both a Jew who does avoda zara or publicly breaks Shabbos, even to satisfy his desires [לתיאבון], and a Jew who does any aveira out of spite [להכעיס], even an issur d'rabanana in private, is like a non-Jew for these halachos and cannot be part of an eiruv with the members of a courtyard. There is no way to allow carrying without renting space from him, just like a non-Jew (ש"ע סי שפ"ה סיג ומ"ב שם).

Chazal's Decree Today

- Some say the reason for the decree to rent does not apply today, as the whole decree was made so that Jews would not live with non-Jews. In current times, when we mix with non-Jews and our entire parnassa is from them, Chazal's decree is flimsy and shaky for us. Thus, one can be meikel in this decree where there are factors allowing it (ש"ת גינת ורדים כלל ג' סי כ"ב).
- However, most Acharonim argue with this logic. We do not get rid of any of Chazal's decrees, even if the reason is not so relevant today. They hold that even today, one must rent space in the non-Jewish homes as per the decree and as paskened in Shulchan Aruch (ש"ת חת"ס או"ח סי צ"ב, ש"ת ובהרת בחיים סי קכ"ו).
- Some rely on the rationale to be meikel in a pressing situation where there is no other choice (בית מאיר ס"כ); if there is someone who breaks Shabbos out of spite and does not want to rent his property; or in a situation where there is no possibility at all of renting from "שכירו ולקטו" (ש"ת שבט הלוי ח"ו סי מ"ז, ח"ה סי צ"ז, סי קע"ז ב') (see below, 22 and on).

Renting Property

Type of Rental from a Non-Jew

- When Chazal decreed that Jews need to rent space in non-Jewish homes, they did not insist that it needed to be an all-out rental with all the fine details of rentals. A minimal act of rental suffices (חזו"א או"ח סי פ"ד סק"ז). Through the rental, the Jews get the right to use the whole area of the non-Jew's residence to place some small item in any small section of the residence. Because of this, there are several kulos in the rental halachos, as will be explained.
- Renting without specification.** An unspecified rental from a non-Jew works; there is no need to specify that it is to allow carrying (ש"ע סי שפ"ב ס"ד). However, he must be told his property is being rented; it does not help to say, "Give me permission to carry in the courtyard or alley" (חיי אדם כלל ע"ה ס"ז). It may be explained to him that the reason for the rental is to allow the local Jews to carry (מור"ד הגר"י בלויא בנתיבות שבת פל"ז הע"ר).

15. **No contract necessary.** There is no need to write a rental contract (ש"י"ע שם ס"ד), as a "weak" rental is enough (מ"ב סק"כ). A verbal agreement is enough even if such a rental has no validity according to local laws (החכמת לב פ"ו הע"י ב"ש הפוסקים).
16. **Less than a peruta.** Property may be rented from a non-Jew for less than a peruta (ש"י"ע שם ס"ה). That is considered money for non-Jews, as a ben Noach can be killed for less than a peruta's worth (מ"ב סק"כ"א). Nowadays, a peruta is no more than ten agurot [about \$0.03/£0.02]. For a mumar, however (above, 9), a peruta is necessary, as for these purposes, a mumar has the status of a Jew, not a ben Noach (עי' הו"א סי' פ"ב סק"ו, ס' הליכות אבן ישראל שבת ח"ב פ"ח אות ט"ו).
17. **Rental on Shabbos.** If one did not rent from a non-Jew before Shabbos, one may rent from him on Shabbos (רמ"א שם ס"ה) [which works along with the Jews nullifying their property (ש"י"ע סי' שפ"ג) [ל"ס"א]]. This is not like business on Shabbos, as a minimal act of rental suffices and it is merely a distinction [היכר]. Money should not be paid for the rental, as money is muktzah on Shabbos. Rather, the non-Jew should be paid with food or something that is not muktzah (מ"ב שם סק"כ).

Things that Do Not Work as a Rental

18. Although a minimal act of rental is enough and there is no need for a "strong" rental (13) there does need to be something that can be defined as a rental, albeit a "weak" one. Thus, if the non-Jew grants the rights as a gift (ביאה"ל שם ס"א ד"ה ממנו), lends the rights (מ"ב סק"ו), or gives the rights to use his property without any language form of rental, it does not help (נתיבות שבת פל"ז ס"א).

Rental Period

19. There is no need to rent every Erev Shabbos. One can rent for many Shabbosos for a long time, and the rental is valid until the non-Jew backs out (ש"י"ע סי' שפ"ב ס"ו). Some say the rental should not be for more than fifty years so it does not look like a joke (ש"י"ע נבנה גאונ' קדמאי); others rented for sixty years (ב"י החדשות סי' ד' בירושלים, העיר הקדוש והמקדש ח"ג פכ"ג (הכס צב"י ר"י)). Yet others say it should not be for more than a year or two (הכס צב"י ר"י).
20. As a compromise, the consensus of the poskim is that it should not be for longer than twenty years (מ"ב סי' נ"א, מ"ב סי' שפ"ב). When there is a time limit, the ones in charge of the eiruv must ensure the rental is still valid, as the generations come and go, and people do not always know how long the original ones in charge of the eiruv made the agreement valid for.

One Person Rents for the Rest

21. When multiple Jews live with non-Jews in the eiruv area, there is no need for each Jew to rent the non-Jews' property. One of them can rent space in the non-Jews' homes, and it works for everyone (ש"י"ע סי' שפ"ב ס"ט). He does not even need to say he is renting on behalf of everyone (ש"י"ע הרב ס"ב), but he needs to rent space from each and every non-Jew (above, 8).

שכירו ולקטו

22. **Renting from a worker.** Chazal were meikel in the halacha of renting property from a non-Jew. They said it is not necessary to rent specifically from the non-Jew himself or a household member. One may also rent from the non-Jew's set worker, whether someone who works for the whole year, called "שכירו" [his employee], or someone who only works for a specific season, called "לקטו" [lit., his collector, i.e., someone who only collects in the harvesting and gathering seasons (פירש"י עירובין)]. The employee can even rent out the non-Jew's property without his knowledge (ש"י"ע סי' שפ"ב ס"ב). Because he works for the non-Jew, he is also considered a household member and has permission to rent for these purposes.
23. **Employee's employee.** Not only may one rent from an employee, one may even rent from an employee's employee (רמ"א שפ"ב ס"ג) if the first employee has permission to employ someone in the house (מ"ב סק"ה).
24. **Renting from someone who has something on the property.** Another leniency Chazal gave is that if a non-Jew allowed a certain person to leave any sort of item on his property, that person is also included in "שכירו ולקטו," and the non-Jew's property may be rented from him. It is not necessary to rent specifically from the non-Jew himself (ש"י"ע שפ"ב ס"ב).

Non-Jew Does Not Agree to Rent Out His Property

25. **Forcibly.** Renting a non-Jew's property does not help if the non-Jew does not consent to rent out his property, as one cannot rent something forcibly (ש"י"ע סי' שפ"ב ס"י), unless it is done through his employee (above, 22).
26. **From his wife, household members.** Even if one knows a non-Jew does not agree to rent out his property, one may approach his wife or household members to rent the property from them. Some say this only works if he does not explicitly object to the rental executed by his wife (ל"א בסי' שס"ז, ע"פ הגר"א הובא במ"ב סי' שפ"ב סק"ד); others say one can rely on renting from the non-Jew's wife even if he explicitly objects to the rental (סתם ש"י"ע סי' שפ"ב ס"א).

27. **Leaving a key with the non-Jew.** If a non-Jew does not want to rent out his property for the eiruv, there is a solution. A Jewish neighbor or another Jew can ask if he can leave something with the non-Jew, e.g., a key, explaining it is for home security in case he loses his key. Through this, the owner of the key is like the non-Jew's שכירו ולקטו (see above, 24) and can rent out the non-Jew's property to the residents of the courtyard (החכמת לב פ"ו אות י"ב).

Renting Property in Big Cities

General Rental from the Authorities

28. **Neighborhood eiruvim.** When a neighborhood eiruv is established to be on the highest level possible in all aspects, an effort is usually made to rent space in each non-Jewish home separately rather than relying on a general rental from the authorities, as will be explained.
29. For this, a list of all non-Jewish residents in the area must be compiled; each one must be approached to do the rental; and it must be constantly kept up to date to stay on top of changes in non-Jewish residents so that new rentals can be made with new residents, and the like. This is difficult work.
30. **City eiruvim.** In big cities, where it is impossible to rent from every non-Jew separately, the poskim throughout the generations relied on a general rental from the authorities when they have the ability to enter any house and place things there. As explained (above, 24), a rental may be obtained through someone with permission to place something in the non-Jew's house.

In the Past

31. In previous times, when the ruler had the right to place items on the citizens' property without the citizens being able to stop it, it was possible to rent property for an eiruv from the king or governor. The authorities were powerful and were able to place their items in any house if they wanted to. The right to put items on a non-Jew's property gave the ruler the status of שכירו ולקטו (רמ"א סי' שפ"ב ס"ד). Space could be rented in the non-Jewish homes through the king's minister, from the police, or from another government representative. The police are the king's servants, and one can rent from a non-Jew's employee's employee (ש"י"ע סי' שצ"א ס"א ומ"ב שם סק"ו, מ"ב סי' שפ"ב סק"מז).
32. **From the police.** In those days, when the king had more power, it was not necessary to rent from the king himself. Space could be rented in the non-Jewish homes through the king's minister, from the police, or from another government representative. The police are the king's servants, and one can rent from a non-Jew's employee's employee (above, 23).

Today

33. **Government.** Even today, some poskim hold one can rent space in non-Jewish homes from the government, as they can place things in the non-Jewish homes, at least during wartime [as is clear from what is happening in Gaza...]. However, many poskim argue that the government's power over a private home is not as strong as it used to be, so one cannot rent from the government (הסתייפולר, קרייני דאגרתא ח"ב איגרת צ"ו).
34. **City official.** Some poskim say that even today, one may rent from a city official or his agent, e.g., the police (ש"י"ע מהר"ש"ם). שואל ומשיב ה"ל, גינת ורדים או"ח כל"ג סי' כ"ב, הגרש"א הובא בארחות שבת (פכ"ח הע' קמ"ה).
35. However, some poskim argue with the heter of a city official today, since neither he nor his agent, e.g., the police, has permission to enter homes without a warrant. Their power is much more limited than what it once was (ב"י קע"ז ב', הגרש"א הובא (ב"י חכמה לב עמק החכמה סי' י"ג באריכות)).
36. **Electric, water company.** Some rely on renting property from the electric or water company, as they have permission to install meters – which remain in their ownership – in every residence. This works through the halacha of שכירו ולקטו (above, 24) (הגר"נ קרליץ, קונטרס).
37. **Fire department.** Some rent property from the fire department, as firefighters have the authority to break into any house and place items and hoses in a situation of emergency, fire, or the like.

In Practice

38. In practice, as an inseparable part of making a city eiruv, property rental for non-Jewish homes must also be arranged. In the highest-level neighborhood eiruvim, an effort is made to rent each non-Jewish home separately besides for executing a general rental from the authorities. This avoids common shailos involved in general rentals, as discussed above.
39. In big cities, where it is impossible to rent each house, they rely on a general rental from the authorities. To avoid uncertainty, they try to execute a rental with all sorts of authorities – the police (34), the fire department (37), and the electric and water companies (36) – to satisfy all opinions. This is all in addition to the opinion that the decree does not apply today (above, 10). However, we must certainly do everything possible to make the eiruv in an effective way.

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