The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Thurs, January 13, 2022 ■ י"א שבט, תשפ"ב
סימן קנ"א סעיף י"א-י"ב

Overview

Siman 151 Seif 11:

If a stipulation was made to permit mundane use of the *Bais HaKnesses* when it was constructed it is permitted to use it for mundane purposes after it is destroyed but while it is in use, the stipulation is ineffective. Even when it is destroyed the stipulation is ineffective for disrespectful activities, e.g. planting and making community financial calculations. When do these parameters apply, only concerning a *Bais HaKnesses* outside of Eretz Yisroel but a stipulation is completely ineffective for a *Bais HaKnesses* in Eretz Yisroel.

- The wording implies that the stipulation must be explicit and we do not assume that it was constructed with a stipulation. Elya Rabba follows Masas Binyomin who is lenient about this matter. (M.B. 32)
- The stipulation is ineffective for activities that involve lightheaded behavior, e.g. eating, drinking and escaping weather conditions, but it is effective for activities that do not involve lightheaded behavior. (M.B. 34)
- There is a disagreement whether individual financial calculations are permitted. (M.B. 36)

Siman 151 Seif 12:

One must avoid using the attic that is above a *Bais HaKnesses* on a regular basis for disrespectful activities, e.g. sleeping. It is unclear whether one may use the attic for other activities. This applies to an established *Bais HaKnesses* which was built to be a *Bais HaKnesses* but it is permitted to sleep above a house that was designated as a *Bais HaKnesses* after it was built.

- The wording implies that an occasional nap is permitted. (M.B. 39)
- Sha'arei Teshuvah is lenient other than above the *aron kodesh*. (M.B. 40)
- If the *Bais HaKnesses* was built in the first place with an apartment above it one may live there since it was not sanctified. Nevertheless, one may not engage in extremely disrespectful activities. (M.B. 41)
- The practice to live above space rented for a *Bais HaKnesses* and engage in activities that are dirty is perhaps permitted since the *Bais HaKnesses* is there only temporarily. (M.B. 41)
- Someone who is cautious will avoid this leniency and certainly above the *aron kodesh* one should be cautious. (M.B. 42)

Halacha Highlight

Making a *shul* under an apartment

Shulchan Aruch Siman 151 Seif 12
כגון לשכב שם
For example, to sleep there

Shulchan Aruch (סע' י"ב) writes that one may not regularly sleep in a room that is above the *Bais HaKnesses*. Rema adds that this restriction applies to a permanent *Bais HaKnesses* that was originally constructed to serve as a *Bais HaKnesses*. If a building was built and after the construction it was designated for use as a *Bais HaKnesses,* it is permitted to sleep above it. Mishnah Berurah (ס"ק מ"א) notes that the common custom in many cities is to permit renting space on the ground floor for a *Bais HaKnesses* even though the second floor is an apartment that has children who are dirty or it contains things that are disgusting. The rationale for leniency is that since the space will be used for a *Bais HaKnesses* only temporarily one need not be concerned with what happens above the *Bais HaKnesses*. In Sha'ar Hatzion he comments that although Taz writes that this practice prevents the *tefilos* from ascending , nevertheless, his rationale is not so strong and one may rely upon the common custom to be lenient.

Teshuvas Eretz Tzvi (סי' ל"א) also writes that it is difficult to understand Taz's rationale but when the issue could easily be avoided one should avoid renting space beneath an apartment. Teshuvas Divrei Malkiel (ח"ה סי' י') also writes that there is no concern to have gentiles live in an apartment above a *Bais HaKnesses*. The prohibition is for one to live above a *Bais HaKnesses* rather than a prohibition against making a *Bais HaKnesses* beneath an apartment. Moreover, the prohibition against living above a *Bais HaKnesses* is limited to a building that was originally constructed to serve as a *Bais HaKnesses* but does not apply to a building that was originally constructed as an apartment building. Teshuvas Avnei Nezer (או"ח סי' ל"ב) and Teshuvas Chelkas Yaakov (ח"ב סי' קנ"ג וח"ג סי' ק"כ) adopt a more stringent position and prohibit moving a *Bais HaKnesses* beneath an apartment in which gentiles are living (ע' באורך בחיי משה עוד על דבר זה).