The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שס"ז סעיף א'

Overview

Siman 367 Seif 1:

A man's wife may make an *eruv* for him without his knowledge, even if he protested that she should not make the *eruv* and even if he is not accustomed to making an *eruv* with the other residents. This is true when he prohibits for them, for example, his house only opens to that yard. If the house opens to two yards and one of them he uses regularly so that he prohibits them and the other he does not use regularly, regarding the one who he uses regularly, she may join the *eruv* even without his knowledge even though he does not regularly join the *eruv*. Concerning the one he does not use regularly, even though he does not prohibit for them, if he regularly joins the *eruv* she may join without his knowledge but if he does not prohibit them and does not regularly join, she may not join in the *eruv* without his knowledge. If he did not protest explicitly, even if he is not accustomed to join them and does not prohibit them, she may join the *eruv* without his knowledge since it is assumed he would be satisfied. She may not convey ownership of his bread to others without his knowledge. If the husband and wife are not in town the members of the household could join the *eruv* without his knowledge if the house opens to only one yard. If it opens to two yards they may join the *eruv* with the yard he regularly uses but not with the yard he does not regularly use. The other residents of the yard may not take bread from his home for the purpose of an *eruv* without the knowledge of a member of the household even though he is accustomed to do so and prohibits for them. Some maintain that a wife may join an *eruv* only without his knowledge but if he states that he does not want to join, she may not join. If he normally joins but this time is not interested, the residents of the yard may enter his house and take food against his wishes but if he does not normally join they may not take food against his wishes but they would have *bais din* force him to join or *bais din* would take bread from him. If someone was not accustomed to joining an *eruv* and then did so but subsequently changed his mind, it is necessary to convey ownership of it to him again. If he regularly participates in the *eruv* it is a valid *eruv* even against his wishes.

- Chazal were lenient in these matters out of concern that his intent would be to incite his fellow residents. (M.B. 1)
- This is done out of consideration for peace since until now he was accustomed to join them and thus the *eruv* takes effect no matter what. (M.B. 5)
- She may use her own food to join the *eruv*. (M.B. 7)
- If the members of the household know that he does not want to join they may not join even though he did not explicitly say so. (M.B. 9)
- It is to his benefit and we are certain he will not mind. If his house opens to two yards they may not join without his knowledge since it is not clearly a benefit for him since he may prefer to join the other *eruv*. (M.B. 10)
- Meaning without the knowledge of one of the members of the household. Biur Halacha cites authorities who maintain that the other residents of the yard may take bread without his knowledge [if they do not know for sure that he would protest] and even without the knowledge of the members of the household. (M.B. 12)
- If he expresses this sentiment after the *eruv* was made it is nullified retroactively. (M.B. 14)
- His wife may do the same. Shulchan Aruch refers to where he prohibits them by not joining. (M.B. 15)
- *Bais din* forces him to join so that he should not prohibit them and this ruling is accepted by both positions cited in Shulchan Aruch. (M.B. 16)
- His *eruv* is nullified even though the bread remains in place and thus if he wishes to rejoin he must do so formally. (M.B. 19)

Halacha Highlight

Forcing someone to join an *eruv*

Shulchan Aruch Siman 367 Seif 1
כופין אותו בבית דין לערב עמהם

Bais din would compel him to join the *eruv*

Shulchan Aruch rules regarding one who regularly joins an *eruv* but one week decides that he does not wish to participate that the other residents of the yard may enter his home and take food from him for the *eruv* against his will. Mishnah Berurah (ס"ק ט"ו) notes that this is true only when his refusal to participate will prohibit the other residents from transporting objects in the yard. If he did not regularly join their *eruv* the other residents may not take food from him against his will. However, *bais din* could compel him to join the *eruv* or alternatively, *bais din* could take property of his to be used for the *eruv*. Mishnah Berurah (ס"ק ט"ז) explains that although the other residents may not force him to join since they are not empowered to compel him to join, *bais din* can compel him to not prohibit the others from transporting objects in the yard.

Nesivos HaMishpat (סי' ג' סק"א) maintains that generally just as one is empowered to prevent someone from committing a transgression, so too, one is empowered to force someone to fulfill a *mitzvah*. The Ketzos (משובב נתיבות שם) disagrees and maintains that although one may stop someone from committing a transgression, one may not compel a person to fulfill a *mitzvah*. That right is the exclusive domain of *bais din*. Chasam Sofer (חו"מ סי' קע"ז) writes that even if one subscribes to the opinion that any person may compel another to fulfill a *mitzvah*, all authorities agree that regarding monetary matters only *bais din* has the authority to force a person to part with his money. Accordingly, Teshuvas Chazon Nachum (סי' מ"ב) questions Shulchan Aruch's ruling that only *bais din* can force a person to participate in an *eruv* against his will when it involves a *mitzvah* matter. He answers that the reason is that an *eruv* is considered a monetary matter since he must give some of his food. He then adds that one could work around his refusal to join by conveying ownership of his food to him for the purpose of being used for the *eruv* and this method does not require *bais din*'s participation.