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

Overview

Siman 382 Seif 1:

If one lives with a gentile in a yard, the gentile does not prohibit unless there are two Jews living in two separate houses who would prohibit one another. In such a circumstance a gentile prohibits the Jews from transporting objects until they lease from him his domain. If a Jew leases or lends his house to a gentile, the gentile does not prohibit since he did not lease or lend his house so that it should become prohibited to him. However, if the house belongs to a gentile and a Jew leased it from him and that gentile dwells in that home with him, that lease is not effective as far as the *eruv* is concerned. If a Jew lent or leased his house to a friend (in a place where gentiles live), even though he has a share in the house, it is ineffective and it must be leased from the gentile.

- Technically, a gentile's dwelling does not prohibit but Chazal decreed that he does prohibit so that people would not live near them and learn from their ways. (M.B. 1)
- For example, a father and son who live in separate homes in a yard but the son is supported by his father. (M.B. 3)
- The *eruv* that they make between them is ineffective until they lease space from the gentile. (M.B. 4)
- Chazal did not want people to live near gentiles so they made it difficult to do so by requiring one to lease the gentile's domain and since the gentile will not be interested in doing so the Jew will seek another place to live. (M.B. 5)
- Gra contends that this is true only when the Jew reserves the right to force the gentile to vacate the property whenever he wishes. (M.B. 7)
- Leasing to a gentile is not an issue when the Jew owns the house, but not when he is a tenant and subleases it to another gentile. (M.B. 8)
- Meaning, he subleases it back to the gentile owner. (M.B. 9)
- Rema refers to where the gentile has his own room because if the Jew could enter the room at will, it is not necessary to lease from him that space. (M.B. 10)
- The Jew owns two properties in the yard that is shared with the gentile and leased one house to another Jew but retained the right to use some of the space. Although for *eruvin* it would not be necessary for them to make an *eruv* they are required to lease from the gentile his domain. (M.B. 11)

Halacha Highlight

Leasing a gentile's domain

Shulchan Aruch Siman 382 Seif 1
הדר עם עכו"ם בחצר אינו אוסר עליו

One who dwells with a gentile, the gentile does not prohibit him

Shulchan Aruch writes that when a gentile lives in a yard with a Jew he does not prohibit the Jew from transporting items in the yard. Mishnah Berurah (סק"א) explains that this is because the dwelling of a gentile is not considered dwelling. However, when there are two Jews living in a yard in separate houses together with a gentile, the gentile does prohibit them from transporting objects in the yard, even though they made an *eruv* between themselves, until they lease from the gentile his home. The reason Chazal instituted this requirement was to serve as a deterrent from living in close proximity with a gentile. Chazal were concerned that if a Jew were to live in close proximity to a gentile he would learn from his ways. Therefore, they enacted that he should have to lease from the gentile his home, which they assume the gentile would be hesitant to do, so that the Jew would seek a home elsewhere where he will not have such difficulties (מ"ב סק"א וסק"ה).

Teshuvas Ginas Veradim (כלל ג' סי' כ"ב) writes that nowadays the rationale for the enactment is no longer applicable. The point of the injunction was to try and create distance between Jews and gentiles. However, since most people are involved with gentiles on a regular basis due to their business dealings, the enactment will no longer have the desired effect and thus when there are other factors to be lenient; one may adopt a lenient approach. Chasam Sofer (או"ח סי' צ"ב) disagrees with that position. He explains that although the rationale for the enactment no longer applies, nevertheless, since the enactment was adopted by a vote, the only way to suspend the enactment is with another vote and in the absence of such a vote, it remains in force. Bais Meir (סע' כ') agrees with Chasam Sofer but notes that in a pressing circumstance when there is no option to lease the gentile's domain, it is better to make an *eruv* without leasing the gentile's space than to not make an *eruv* altogether since people will probably transport items either way.