The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן ת"ט סעיף א'-ג'

Overview

Siman 409 Seif 1:

If one places his *eruv* in a cemetery it is not valid since it is prohibited to benefit from a cemetery and being that the owner wants the *eruv* to remain there after his residence was established, he would be benefitting from the cemetery. If it was placed in a *bais haperas* it is valid, even if the owner is a *kohen* since he may enter in a moving carriage or if he fans the ground as he walks.

- If the food was placed for a *kohen* it is certainly invalid since he may not access the food. (M.B. 1)
- Shulchan Aruch refers to a structure since if it was placed on a grave on the ground it would be valid since ground does not become prohibited. (M.B. 2)
- The fact that it is there during *bein hashemashos* is inconsequential since an *eruv* may only be made for a *mitzvah* which are not for benefit. (M.B. 3)
- This is permitted only for a *bais haperas* that is Rabbinically prohibited and does not generate *tumas ohel* but in an actual cemetery there is no option since he will form an *ohel* over the graves. (M.B. 6)

Siman 409 Seif 2:

The owner and his *eruv* must be in the same location so that he has the option to eat the food during *bein hashemashos*. Therefore, if he intended to establish residence in the public domain and placed his *eruv* in a private domain or vice versa, it is not valid since it is impossible to *halachically* transport the food from a private domain to a public domain. However, if he intended to establish residence in a private or public domain and placed the *eruv* in a *karmelis* or vice versa, the *eruv* is valid since at the time he acquired the *eruv* which is *bein hashemashos*, it is permitted to transport objects from those domains to a *karmelis* for the sake of a *mitzvah*. The reason is that Rabbinic prohibitions are not in force during *bein hashemashos* when there is a *mitzvah* to perform or when there is a pressing need.

- The Gemara teaches that an *eruv* is valid even if it is placed on a tree that is less than ten *tefachim* tall even though it involves two Rabbinic prohibitions, moving an object from a *karmelis* to a public domain and using a tree. (M.B. 10)
- Making an *eruv techumin* is considered a mitzvah pursuit since an *eruv* may only be made for a *mitzvah*. (M.B. 11)

Siman 409 Seif 3:

If the *eruv* was placed at the top of a reed or rod that is growing from the ground, the *eruv* is invalid since they are soft and easily cut and one would be liable for a Chatas and consequently prohibited by Chazal (If they are as soft as greens, see above at the beginning of *siman* 336) **even during *bein hashemashos* and even for the sake of a *mitzvah*. If they were detached and inserted into the ground, it is a valid *eruv*.**

- Since the reed is so soft Chazal were concerned that he will cut it during *bein hashemashos* so they prohibited it even during *bein hashemashos*. The same is true if one placed his *eruv* in the public domain more than eight *amos* from where he intended to establish residence since he may not transport it in increments of less than four *amos*. (M.B. 12)
- This is true even if the reed is more than ten *tefachim* and stands in the public domain. However, it may not be more than four *tefachim* wide so that it is not considered a private domain. If it is four *tefachim* wide but less than ten *tefachim* tall the same would apply. If the reed is both four *tefachim* wide and ten *tefachim* tall, the *eruv* is invalid since it would require a violation of the Biblical prohibition to access it. (M.B. 14)
- If he detaches it he does not violate a Biblical prohibition and according to some not even a Rabbinic prohibition. (M.B. 15)

Halacha Highlight

Violating two Rabbinic prohibitions

Shulchan Aruch Siman 409 Seif 2
שכל דבר שהוא מדברי סופרים לא גזרו עליו בין השמשות
Rabbinic prohibitions are not subject to decree during *bein hashemashos*

Shulchan Aruch (סעי' ב') rules that it is permitted to place an *eruv techumin* in a *karmelis* and establish his residence in either a public or private domain. The reason is that moving the *eruv* from a *karmelis* to one of the other domains involves only a Rabbinic prohibition and Chazal did not impose Rabbinic restrictions during the period of *bein hashemashos* when it is necessary for a *mitzvah* and an *eruv techumin* is always considered for the sake of a *mitzvah* (מ"ב ס"ק י"א). Mishnah Berurah (סק"י) relates that the Gemara permits placing an *eruv* on a tree within ten *tefachim* of the ground even though taking the *eruv* would involve violating two Rabbinic injunctions, the injunction against using a tree and the injunction against transporting something from a *karmelis* to the public domain.

Rav Akiva Eiger (על המשניות עירובין פ"ג מ"ג) points to this *halacha* as a challenge to Bartenurah who rules that one may not violate two Rabbinic injunctions in order to access an *eruv*. In his *teshuvos* (מהדו"ק סי' קנ"ט) he cites the resolution of Even HaOzer who distinguishes between one who violates two Rabbinic injunctions simultaneously and one who violates two Rabbinic injunctions consecutively. Sefer Orach LaChaim (סק"ב) explains that during *bein hashemashos* at every moment we are uncertain whether it is day or night. Consequently, when one violates two Rabbinic injunctions consecutively, at each moment he is only violating a single Rabbinic injunction and permitted. In contrast, Chazal did not permit one to violate two Rabbinic prohibitions with a single action within the same moment. Rav Akiva Eiger then notes that this explanation is consistent with Rashi's position that violating two Rabbinic prohibitions is considered more severe than violating a single Rabbinic prohibition. However, according to Tosafos who does not draw such a distinction one may violate even two Rabbinic prohibitions.