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Eiruv Daf 39

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**  
**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

Mav the studing of the Daf Notes be a zechus for their neshamot and mav their souls find peace in Gan Eden and be bound up in the Bond of life

The *Gemora* asks: What, however, is your explanation of that which Rav Yehudah said: If a man prepared an *eiruv* for the first day with his feet, he must also prepare it for the second day with his feet, and if he prepared the *eiruv* for the first day with bread, he must also prepare it for the second day with bread? Isn't he preparing on a festival day for the *Shabbos*? [*Granted that in the case of an eiruv with bread, since validity takes effect at the beginning of the day for which it is prepared, there is no preparation from the festival for the Shabbos, for when he redeposits the bread that was removed after the first evening, he is merely returning it to its original position; in the case of an eiruv prepared with one's feet, however, since the man cannot exactly determine the moment at which the Shabbos begins, he would obviously pronounce the declaration, whereby he acquires the spot as his residence, while it is yet day, and thus he would be guilty of preparing on a festival for the Shabbos.*]

Rabbah replied (to Abaye): Do you think that he must go to the required location and pronounce some declaration? In fact, he only goes there and sits down in silence (and accordingly, no forbidden act of preparation is taking place).

The *Gemora* notes: In agreement with whose view (that no declaration is necessary for acquiring a spot as one's residence for a *Shabbos* or festival)? It is in agreement with that of Rabbi Yochanan ben Nuri who holds that objects of *hefker* (ownerless) acquire the spot on which they rested (that they cannot be moved beyond 2,000 *amos* from where they resided at the onset of *Shabbos*).

[*Obviously, no declaration was made on an ownerless object.*]

The *Gemora* disagrees: It may be said to be in agreement even with the view of the Rabbis, for they differ from Rabbi Yochanan ben Nuri only in respect of a sleeping person, who cannot possibly pronounce the declaration, but where a person is awake and could, if he wished, pronounce it - he is deemed to have pronounced it, even though he has not actually done so.

Rabbah bar Rav Chanin said to Abaye: If the master had heard that it was taught in a *braisa*: A man may not walk (on the *Shabbos* or *Yom Tov*) to the end of his field to ascertain what it required (after the *Shabbos*). Similarly, no man may walk (on the *Shabbos* or *Yom Tov*) towards the gate of a province (before *nightfall*) in order that he might enter a bathhouse immediately (after the holy day terminates). [Had Rabbah heard this *braisa*,] he would have changed his view. [From this *braisa* it is obvious that on a holy day - even a walk is forbidden if the purpose is to facilitate some forbidden act. Similarly, in the case of an *eiruv*, if the utterance of the declaration would constitute an infringement of the law of preparation, the silent occupation of the required spot for the same purpose would equally constitute an infringement.]

The *Gemora* notes that this, however, is not correct. He did in fact hear of this ruling but did not change his view, since there, the motive is evident (that he is preparing for the next day), while here it is not at all obvious, for if the person is a Torah scholar, people would assume that he



might have been absorbed in his studies (*and that is why he walked towards the place of his eiruv*), and if he is an ignorant person, it would be said that he might have lost his donkey (*and is searching for it*).

The *Gemora* returns to the main text: Rav Yehudah said: If a man prepared an *eiruv* for the first day with his feet, he must also prepare it for the second day with his feet, and if he prepared the *eiruv* for the first day with bread, he must also prepare it for the second day with bread. If he prepared his *eiruv* for the first day with bread (*and it was consumed*), he may prepare it for the second day with his feet, but if he prepared it for the first day with his feet, he may not prepare it for the second day with bread, because it is not allowed (*on a Yom Tov*) to prepare initially an *eiruv* (*for the Shabbos*) with bread. [*This is because the eiruv would have to be designated on the festival day, the prohibition against performing an act on a festival for the Shabbos would be infringed.*]

The *Gemora* asks: [*Rav Yehudah had said:*] If he prepared the *eiruv* for the first day with bread, he must also prepare it for the second day with bread!? [*Wouldn't this require a new designation, and it should be forbidden on account of "preparing for the Shabbos on the festival day!?"*]

Shmuel answered: It is only with the same bread.

Rav Ashi noted: Logical deduction from our *Mishna* supports this as well, for it was stated: How is one (*who desires that it should be effective for the second day as well*) to proceed? He arranges (*for the eiruv*) to be brought (*by an agent to the desired place*) on the first day (*Thursday afternoon*) and, having remained there with it until nightfall (*which is the time that the eiruv takes effect*), he takes it with him (*so it shouldn't get lost*) and goes. On the second day (*Friday afternoon*), he again comes with it and keeps it there until nightfall, when he may eat it (*for the eiruv took effect already*) and go. [*Obviously, he is bringing it home in order to protect it, so that he may use the same food for the eiruv on the following day.*]

The *Gemora* explains that the Rabbis will say that there, the Tanna might merely have been giving us some good advice.

[*The day beginning the New Year, as well as the respective days beginning the months of the year, was determined and announced in Jerusalem after the court heard, and were satisfied with the necessary testimony regarding the time the new moon appeared in the respective month. People who lived in the diaspora, too far from Jerusalem, were not able to ascertain in time which day was fixed as the New Year.*] Rabbi Yehudah said: If on the eve of *Rosh Hashanah*, it was feared that the preceding month of *Elul* might be intercalated (*and it would be declared to consist of thirty, instead of twenty-nine days; if the witnesses were in time, only the day following the twenty-ninth of Elul was announced as Rosh Hashanah, but if they were late, that day was added to Elul and Rosh Hashanah was announced for both that day - the thirtieth of Elul, and the day following it - the first of Tishrei*), he (*if he wishes to go on the two days respectively in two opposite directions of the town*) may prepare two *eiruv*s and make the following declaration: "My *eiruv* for the first day shall be to the east (*of the city*), and the one for the second day shall be to the west," or, "The one for the first day shall be to the west, and the one for the second day shall be to the east." [*If he needs the eiruv for only one of the days, he declares as follows:*] "My *eiruv* shall be effective for the first day, and for the second day, I shall retain the same rights as the residents of my town (*who did not make an eiruv*)," or, "My *eiruv* shall be effective for the second day, and for the first day, I shall retain the same rights as the residents of my town." [*R' Yehudah maintains that since two days are observed out of doubt, and in essence, one day is holy and the other is an ordinary weekday, they are independent of each other, and each day's techum does not effect the other.*] The Sages, however, did not agree with him (*maintaining that both days are in fact one entity of holiness*).

Rabbi Yehudah further said: A man may conditionally set aside *terumah* (though the designating of *terumah* and *ma'aser* is forbidden on a day that is definitely known to be a holy day) for a basket of produce (which is *tevel* – untithed) on the first festival day (of *Rosh Hashanah*) and may then eat it on the second day. [He makes the following declaration, “If today is an ordinary weekday and tomorrow will be a holy day, let this basket of produce be *terumah* for the other, and if today is a holy day and tomorrow is a weekday, let my declaration be void.” He thus designates it conditionally and puts it away. On the following day, he says, “If today is a weekday let this basket of produce (the one he designated as *terumah* the day before) be *terumah* for the other, and if today is a holy day, let my declaration be void,” and he thus designates it and may then eat the remainder.] And so also, if an egg was laid on the first festival day (of *Rosh Hashanah*), it may be eaten on the second (it cannot be eaten on the first; the reason for that is explained in the *Gemora* in *Beitzah*; since *R’ Yehudah* maintains that one day is *Yom Tov* and the other day is an ordinary weekday, the egg may be eaten on the second day); but the Sages did not agree with him.

Rabbi Dosa ben Harkinas said: The person who leads the prayer services on the first festival day (of *Rosh Hashanah*) says, “Fortify us, O Hashem our God, on this day of *Rosh Chodesh*, whether it be today or tomorrow,” and on the following day, he says, “[Fortify us, O Hashem our God, on this day of *Rosh Chodesh*], whether it be today or yesterday.” The Sages, however, did not agree with him.

The *Gemora* asks: Who is it that did not agree with him (*R’ Yehudah*)?

Rav replied: It is Rabbi Yosi, for it was taught in a *braisa*: The Sages agree with Rabbi Eliezer that if on the eve of *Rosh Hashanah*, it was feared that the preceding month of *Elul* might be intercalated, he (if he wishes to go on the two days respectively in two opposite directions of the town) may prepare two *eiruv*s and make the following declaration: “My *eiruv* for the first day shall be to the east

(of the city), and the one for the second day shall be to the west,” or, “The one for the first day shall be to the west, and the one for the second day shall be to the east.” [If he only needs the *eiruv* for one of the days, he declares as follows:] “My *eiruv* shall be effective for the first day, and for the second day, I shall retain the same rights as the residents of my town (who did not make an *eiruv*),” or, “My *eiruv* shall be effective for the second day, and for the first day, I shall retain the same rights as the residents of my town.” [*R’ Eliezer* maintains that since two days are observed out of doubt, and in essence, one day is holy and the other is an ordinary weekday, they are independent of each other, and each day’s *techum* does not effect the other.] Rabbi Yosi, however, forbids this. Rabbi Yosi said to them: Do you not agree that, if witnesses came after the time of *Minchah* (that they observed the new moon, their testimony would not be accepted, and *Rosh Hashanah* would definitely be on the following day), both that day and the day following are observed as holy days!? [The Rabbis decreed that the remainder of the day must be observed as a holy one, for otherwise, in future years, the people would belittle the importance of observing the thirtieth day of *Elul* as *Rosh Hashanah*. *R’ Yosi* maintains that in such an occurrence, it was mandated that *Rosh Hashanah* was a two-day celebration. Since the people who lived far away from Jerusalem would never know in time if this actually occurred, they always had to observe the two days of *Rosh Hashanah* as if it was a two-day celebration. Accordingly, he ruled that one could not prepare two *eiruv*s for both days; rather, only one *eiruv* could be made for both of the days.]

The *Gemora* explains the opinion of the Rabbis who disagree: There, the reason for the observance (on the remaining time of the first day) is that people shall not treat it with disrespect (but it was not regarded as a holy day). [It is in fact not holy; but if, where witnesses came after *Minchah*, that day (the 30th of *Elul*) had not been treated to the end as a holy day, the public might on the next occasion come to regard the entire day with equal disrespect and would, in consequence, permit themselves



to work all that day as if it had been one of the ordinary working days. Such laxity would result in the actual desecration of a holy day where the witnesses happened to come before noon and that day (the one following the 29th of Elul) had been declared as the one and only day of Rosh Hashanah.]

The Gemora explains why the mention of the three cases (of R' Yehudah in the Mishna) was necessary. [R' Yehudah ruled regarding the two eiruv, the basket of terumah and the egg. Each of those rulings was based on the opinion that one of the two days of Rosh Hashanah was holy, and the other was an ordinary weekday.] For if we had been informed only of the (two eiruv of) Rosh Hashanah, it might have been presumed that Rabbi Yehudah maintained his view only in that case because nothing is being done (on the Yom Tov), but that in the case of the basket, where it might appear that he is rectifying the tevel (through his stipulation), perhaps Rabbi Yehudah agrees with the Rabbis (that it is forbidden). And even if we had been taught both those cases, it might have been presumed that Rabbi Yehudah maintained his view in these only because there are no grounds that these should be forbidden as a preventive measure, but that in the case of the egg, where there is reason to forbid it as a preventive measure – either on account of fallen fruit (which on Yom Tov, it is forbidden to eat fruit that fell from the tree on that day, as a preventive measure against one's climbing the tree and plucking them), or on account of juices that issued (on Yom Tov, for it is forbidden to drink the juice of fruit that issued on that day, as a preventive measure against one's squeezing of the fruit; an egg might have been assumed to come under either of these categories); perhaps he agrees with the Rabbis. Therefore, the three cases were required.

The Gemora cites a braisa: In what manner did Rabbi Yehudah mean his ruling that 'a man may conditionally designate terumah for a basket of produce on the first festival day (of Rosh Hashanah) and may then eat it on the second day' to be carried out? He makes the following

declaration, "If today is an ordinary weekday and tomorrow will be a holy day, let this basket of produce be terumah for the other, and if today is a holy day and tomorrow is a weekday, let my declaration be void." He thus designates it conditionally and puts it away. On the following day, he says, "If today is a weekday let this basket of produce (the one he designated as terumah the day before) be terumah for the other, and if today is a holy day, let my declaration be void," and he thus designates it and may then eat the remainder. Rabbi Yosi forbids this. And so also did Rabbi Yosi forbid such a procedure on the two festival days of the Diaspora.

The Gemora relates: A deer that was caught (by gentiles) on the first day of Yom Tov of the Diaspora and slaughtered on the second day of Yom Tov was presented at the Exilarch's home. Rav Nachman and Rav Chisda ate it, but Rav Sheishes did not eat it. [Rav Nachman and Rav Chisda were of the opinion that the two festival days of the Diaspora are regarded as two entities, the one holy and the other not holy, so that if the first was not the holy day the deer was caught on an ordinary weekday and may well be eaten on the holy day that followed it; and if the first day was holy the deer may well be eaten after the day ended - provided only that there was time enough since the conclusion of the holy day for the deer to be caught. Rav Sheishes, however held that both days are regarded as one entity of holiness.] Rav Nachman asked: What can I do with Rav Sheishes who does not eat the meat of a deer? Rav Sheishes retorted: How could I eat it in view of the braisa taught by Issi, or as others say: Issi taught a braisa and so did Rabbi Yosi forbid (such a procedure) on the two festival days of the Diaspora (for they hold that the two days of Yom tov of the Diaspora are regarded as one)?

Rava said: What, however, is the difficulty? Is it not possible that the braisa meant as follows: And so did Rabbi Yosi forbid (such a procedure) on the two festival days of Rosh Hashanah in the Diaspora (but it was not referring to the two days of Yom Tov of the Diaspora)?



The *Gemora* responds: If so, instead of the expression, ‘of the Diaspora’ (*implying a festival that is two days outside of Eretz Yisroel*); it should have stated, ‘in the Diaspora’ (*referring to a Yom Tov such as Rosh Hashanah which is observed for two days inside of Eretz Yisroel and outside it as well*)?

Rav Assi said: What difficulty (*is the braisa on Rav Nachman and Rav Chisda*)? Is it not possible that it meant as follows: And so did Rabbi Yosi treat the prohibition on the two festival days of the Diaspora just as the Rabbis did regarding the two festival days of *Rosh Hashanah*, on which they ruled leniently? [*This is rather a forced interpretation, but is preferable to the difficulty of allowing a senseless ruling – of a stringency with no logical reason for it, to stand in the name of Rabbi Yosi who is invariably known for his reasoned statements and arguments.*]

Rav Sheishes subsequently met Rabbah bar Shmuel, and asked him: Has the master taught any *braisa* on the question of festival sanctities (*regarding the two days of Yom Tov of the Diaspora*)? He replied: I have taught that Rabbi Yosi agreed in the case of the two festival days of the Diaspora (*that they are not regarded as one day of holiness*). Rav Sheishes said to him: If you happen to meet them, do not mention to them anything to them (*about this braisa, for it refutes my opinion, and it would be embarrassing to me*). (38b – 39b)

## INSIGHTS TO THE DAF

### ***As if He Said it***

The Sages say that although one should have to say “*shvisasi b’mekomi*” (“my residence is where I am located”) and this is deemed preparing from the first day to the second day (*as it is for the purpose of the second day*), they actually hold he does not have to say anything. This is because he is awake, and technically could say it, so it is as if he said it.

However, this seems to fly in the face of a widely used principle in Shas called “*Kol she’aino rauy l’bilah, bilah meakeves bo.*” Without going into the literal meaning, the principle is that whenever something technically cannot be done, we cannot say that even if it is not done it can be considered done.

In our *Gemora*, it would seem that we have no right to say that because he could technically say it, it is as if he said it. This is because it would be Rabbinically forbidden for him to say this, as it is preparing from Shabbos to Yom Tov (or visa versa)! How can the *Gemora* say it is as if he said it?

Rabbi Elazar Moshe Horovits, the Maharsham, and others prove from this *Gemora* that this principle in fact does not apply to Rabbinical prohibitions.

There are many proofs for their opinion. One is the widely known law regarding someone who is in the middle of Shemoneh Esrei, and he hears the Chazzan reciting *Kedushah*. The law is that he should listen to the Chazzan’s recitation of *Kedushah* (Kadosh and Baruch Kevod), and have in mind to fulfill his obligation of *Kedushah* through the concept “*shomei’a k’oneh*” -- “hearing is like answering.” The obvious question is: based on the principle stated above, should he not be able to fulfill his obligation in this fashion? Being that he is in the middle of Shemoneh Esrei and cannot interrupt for other things, he cannot technically interrupt and answer *Kedushah*. How, then, can we consider it as if he did? Indeed, there is an opinion in the *Shibolei Ha’Leket* who says that for this reason he cannot do so. However, we do not rule like this opinion, and it is not widely cited. This is one of the proofs that this principle does not apply by Rabbinic prohibitions.

### ***Gentile’s Work on Yom Tov***

Rashi holds that the *Gemora* concludes that if a gentile captures an animal on the first day of Yom Tov, it is indeed permitted to be eaten on the second day of Yom Tov. As

stated above, Rav Nachman and Rav Chisda clearly held this way. Additionally, the *Gemora* concludes that Rav Sheishes admitted they were correct (or he never thought this would be wrong, according to Rav Ashi).

However, the *Gemora* in Beitzah (24b) quotes Rav Papa as stating that if a gentile brings a present of fruit to a Jew on Yom Tov, if this type of fruit is still on trees during this time of year, it is forbidden to have benefit from it, and one must wait to benefit from it until the amount of time it would take to do that forbidden act (of plucking it off the tree) passes. Doesn't this imply that person cannot have benefit from work done by a gentile on Yom Tov?

Rashi explains that when Rav Papa says the amount of time etc., he means from the beginning of the second day (or rather night) of Yom Tov. Being that Rashi understands that a regular Yom Tov (not Rosh Hashanah) is indeed looked upon as one day is actually a weekday, this is understandable. If the first day was actually a weekday, no prohibition was done and it should be able to be eaten right away. If the first day was actually Yom Tov, he should wait until the work would be able to be done "in a permitted fashion" (though it is not actually permitted as the custom is to keep two days) after Yom Tov, and then may benefit from it. This is in order not to derive benefit from a forbidden action done on Yom Tov.

However, the Bahag argues that Rav Papa in Beitzah (ibid.) indeed means until after the work could be done after the end of the second day of Yom Tov. According to the Bahag, the entire reason for this amount of waiting is so that a Jew should not tell a gentile to do something forbidden for him on Yom Tov, in order that he can benefit from it right after Yom Tov. We therefore make him wait this amount of time after Yom Tov. According to this reason, it is understandable he would have to wait until after the second day of Yom Tov, as we are still worried he will tell a gentile to do forbidden work for him even on the second day, when it is clearly still forbidden to do so. According to the Bahag, the case in our *Gemora* was where the deer

became trapped by itself, and not that gentiles went out to trap it. This is different from Rav Papa's law regarding a gentile who specifically goes out and does forbidden work for a Jew (even though the Jew didn't know he was going to do so).