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DAF Notes
Insights into the Daily Daf
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Eiruvin Daf 62

Daf Notes is currently being dedicated to the neshamah of

Tzvi Gershon Ben Yoel (Harvey Felsen) o"h

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

If a man lives in a courtyard with an idolater or with one who does not accept the principle of *eiruv*, either of them causes him to be restricted in the use of the courtyard. Rabbi Eliezer ben Yaakov said: Neither can restrict him unless there are two Jews (*living in the courtyard*) who impose restrictions upon each other. [*Only in such circumstances does the right of a third resident of the type mentioned, wherever that right has not been duly rented from him, restrict their use of the common courtyard. He cannot, however, impose any restrictions upon a Jew if the latter and he are the only tenants. The Gemora will explain the reason for this.*]

Rabban Gamliel related: A Sadducee once lived with us in the same *mavoi* in Jerusalem and father (*Rabban Shimon ben Gamliel*) told us (*on a certain occasion when the Sadducee renounced his right to his share in the mavoi*): Hasten (*before the Shabbos begins*) and carry out all the necessary utensils into the *mavoi* (*in order to acquire by that act the Sadducee's share*) before he carries out his (*into the mavoi*) and thereby imposes restrictions upon you (*by reacquiring the right he at first renounced*). [*A Sadducee, according to this view, is not regarded as an idolater, whose right in a courtyard or a mavoi must be rented, but as a heretic Jew, who may renounce his right by a mere declaration, no renting of it being necessary. Since the Sadducee in question had received no rent, it was within his power to withdraw his concession at any moment, provided the other tenants had not acquired possession of the mavoi by carrying their articles into it. That is the explanation in the instruction to hasten the acquisition before the Sadducee had time to change his mind.*]

Rabbi Yehudah related: The instruction was given in a different manner: Hasten and attend to your needs in the *mavoi* before he carries out his (*into the mavoi*) and thereby imposes restrictions upon you (*by reacquiring the right he at first renounced*). [*According to R' Yehudah, a Sadducee who renounced his right to his share without receiving any payment for it may withdraw his concession at any time even after the other tenants had, by the performance of some act, acquired possession of his share. As he might change his mind at any moment, the other tenants had to carry out all they needed prior to the commencement of the Shabbos.*]

Abaye bar Avin and Rabbi Chinena bar Avin sat at their studies while Abaye was sitting with them, and in the course of their session they dealt with the following question (*on the Mishna*): It is quite possible to understand the view of Rabbi Meir (*the first Tanna of the Mishna*), since he may hold the opinion that an idolater's dwelling is legally a valid dwelling, and that no difference is to be made between one Jewish tenant and two Jewish tenants. [*That is why he rules that an idolater invariably restricts the use of a common courtyard, irrespective of whether he has many Jewish neighbors or only one.*] What, however, could be the view of Rabbi Eliezer ben Yaakov? If he is

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of the opinion that an idolater's dwelling is legally a valid dwelling, restrictions should be imposed even in the case of one Jewish tenant; and if he holds that it is legally no valid dwelling, no restrictions should be imposed even in the case of two Jewish tenants? [*This is because - in either case, as far as Shabbos laws are concerned, he has no share in the courtyard; while the Jews' shares are merged into one common domain by means of their 'eiruv!?*]

Abaye said to them: But does Rabbi Meir hold that an idolater's dwelling is legally a valid dwelling? Was it not in fact taught in a *braisa*: An idolater's courtyard has the same status as an animal stable. [*When he is away for the Shabbos, he does not restrict the movement of objects from the houses into the courtyard; this is different by a Jew. Evidently, even R' Meir holds that an idolater's residence is not a legal dwelling!?*]

Rather, says Abaye: All agree that an idolater's dwelling is legally not a valid dwelling, but the point at issue between them here is the question whether a law had been instituted as a preventive measure against the possibility of a Jew being influenced by his deeds. Rabbi Eliezer ben Yaakov holds that, since an idolater is suspected of murder, a preventive measure has been enacted by the Rabbis in the case of two Jews, who quite frequently live together with an idolater, but not in that of one Jew, who as a rule, does not live together with an idolater, while Rabbi Meir holds that, since it may sometimes happen that one Jew also should live with an idolater, the Rabbis have laid down that no *eiruv* is effective where an idolater lives in the same courtyard, nor is the renunciation of one's right effective where an idolater is concerned, unless that right has been rented out; but an idolater would not rent out his right.

The *Gemora* asks: What is the reason for this? If it is because he considers it possible that the other might take permanent possession of his share, the explanation would be satisfactory according to the one who holds that the rental must be of a sound character; what, however, could be said in explanation according to the one who holds that only a token rental is required? For it was stated: Rav Chisda ruled: The rental must be of a sound character and Rav Sheishes ruled: It may be even a token rental.

The *Gemora* asks: What is meant by 'token' and what is meant by 'sound'? If it be suggested that 'sound' denotes a rental of a *perutah*, and 'token' means a rental that was less than a *perutah*, the following objection would arise: Is there any authority who accepts the opinion that an acquisition from an idolater cannot be effected with less than a *perutah*? Didn't Rabbi Yitzchak the son of Rabbi Yaakov bar Giyori send the following message in the name of Rabbi Yochanan: Be it known to you that one can rent from an idolater even with less than a *perutah*, and Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: A Noahite is executed for stealing even if the item is worth less than a *perutah*, and it does not need to be returned.?

The *Gemora* answers: The fact is that 'sound' denotes a rental which allows the lessee the privilege of placing in the yard chairs and seats, and 'token' denotes one that does not allow him this privilege.

The *Gemora* returns to its question: The explanation would be satisfactory according to the one who holds that the rental must be of a sound character; what, however, could be said in explanation according to the one who holds that only a token rental is required?

The *Gemora* answers: Even in such a case, the idolater fears that the Jew is engaged in sorcery and does not rent his share in the courtyard.

The *Gemora* reverts to the text above: An idolater's courtyard has the same status as an animal stable, and it is therefore permitted to carry things in and out, both from the courtyard into the houses and from the houses into the courtyard, but if only one Jew was a tenant there, he does impose restrictions; these are the words of Rabbi Meir. Rabbi Eliezer ben Yaakov ruled: No restrictions are ever imposed, unless there are also two Jewish tenants who impose restrictions upon one another. [*As the idolater's share is distinct from theirs, they, by virtue of their shares in the courtyard, impose restrictions on the movements of objects from the idolater's house into the courtyard, while he, by virtue of his share, despite the eiruv in which the two Jews may have joined, imposes restrictions on the movements of objects from their houses into the courtyard.*]

The master had stated: An idolater's courtyard has the same status as an animal stable.

The *Gemora* asks: Did we not, however, learn in our *Mishna*: If a man lives in a courtyard with an idolater … he causes him to be restricted in the use of the courtyard?

The *Gemora* answers: This is not a difficulty, since the *Mishna* deals with the case of an idolater who was at home (*on the Shabbos*), while the *braisa* deals with one who was not at home. [*When he is not at home, he cannot impose restrictions on the Jew's house; it is only prohibited to carry from the idolater's house.*]

The *Gemora* asks: But what principle does he adopt? If he is of the opinion that a dwelling house without an occupier is legally a valid dwelling, shouldn't an idolater's house (*even when he is away*) impose restrictions; and if he is of the opinion that a dwelling house without an occupier is legally not a valid dwelling, shouldn't a Jew's house (*when he is away*) also impose no restrictions?

The *Gemora* answers: He holds the view that a dwelling house without an occupier is legally not a valid dwelling, but in the case of a Jew, who imposes restrictions when he is at home, the Rabbis have enacted a preventive measure where he is away; while in the case of an idolater, who even when at home, imposes restrictions merely as a preventive measure lest the Jew become influenced from his deeds, it was enacted that he imposes restrictions only when he is at home but not in his absence.

The *Gemora* asks: But does he (*an idolater*) not impose restrictions when he is absent? Have we not in fact learned in a *Mishna*: If a man left his house and went to spend the *Shabbos* in another town, whether he was an idolater or a Jew, his share imposes restrictions; these are the words of Rabbi Meir?

The *Gemora* answers: There, it is a case where he returns on the same day (*where during the first part of the Shabbos, he was not far away from his home*). [*If no restrictions upon his fellow tenants had been imposed, even in his absence, they might, after his return, unconsciously have continued the unrestricted use of their courtyard which they enjoyed since the day began. Where, however, the idolater is unable to return on the same day, no such precaution is necessary and consequently no restrictions were imposed.*]

Rav Yehudah stated in the name of Shmuel: The *halachah* is in agreement with Rabbi Eliezer ben Yaakov. Rav Huna stated: The custom is in agreement

with the ruling of Rabbi Eliezer ben Yaakov. Rabbi Yochanan stated: The public are accustomed to act in agreement with the ruling of Rabbi Eliezer ben Yaakov.

Abaye said to Rav Yosef: We have a tradition that the teaching of Rabbi Eliezer ben Yaakov is limited (*for there are not so many of them*), but well sifted, and Rav Yehudah stated in the name of Shmuel: The *halachah* is in agreement with Rabbi Eliezer ben Yaakov. Is it then permitted for a disciple to give a ruling accordingly in the vicinity of his teacher?

Rav Yosef replied: Even a simple question about the permissibility of eating an egg with *kutach* (*a mixture containing milk*), a man shall not decide in the vicinity of his teacher, for I have, in fact, asked Rav Chisda throughout the lifetime of Rav Huna, and Rav Chisda gave me no decision.

Rabbi Yaakov bar Abba asked Abaye: Is it permitted for a disciple, in the vicinity of his teacher, to give a ruling that was written and available, as those contained in Megilas Taanis? Abaye replied: Rav Yosef said: Even a simple question about the permissibility of eating an egg with *kutach* (*a mixture containing milk*), a man shall not decide in the vicinity of his teacher, for I have, in fact, asked Rav Chisda throughout the lifetime of Rav Huna, and Rav Chisda gave me no decision.

Rav Chisda decided legal questions at Kafri during the lifetime of Rav Huna. Rav Hamnuna decided legal points at Charta d'Argeiz during the lifetime of Rav Chisda. (61b – 63a)

INSIGHTS TO THE DAF

Renting Homes for an Eiruv

As we know, by taking common possession of an eiruv-bread, the residents of an enclosed area unite into one communal body, and thereby transform their courtyard into a *reshus hayachid* in which it is permitted to carry. If even one Jewish resident of the courtyard abstains from this eiruv, they are all forbidden to carry into the courtyard.

In the sixth chapter of Maseches Eiruvin, we find the halachos relevant to a courtyard that includes among its residents a gentile or a Jewish apostate. Strictly speaking, one need not include a gentile in the common possession of the eiruv-bread. The eiruv need only unite the Jewish residents. Nevertheless, our Sages decreed that the very presence of a gentile neighbor in the courtyard prevents the eiruv from functioning, and even including him in the eiruv would be insufficient. They enacted this decree in order to discourage Jews from living among gentiles, a practice that might lead us to learn from their ways. Our Sages hoped that Jews would find it so inconvenient to live without an eiruv, that they would decide to live elsewhere.

Nevertheless, the Sages made a provision by which an eiruv would be effective even among gentiles. If the Jews in the courtyard rent a right to the use of the gentile's home, the eiruv would then be effective. The Sages assumed that the gentile would mistrust the intentions of his Jewish neighbors, and refuse.

One need not rent from the gentile homeowner himself. The gentile's employees also have a certain right to the use of his house; they may leave their

possessions there while they work. It is sufficient to rent even this minor privilege from the employees, in order for the eiruv to function (64a). Our Sages were lenient in this respect, since the complication of gentile neighbors is only a Rabbinic stringency to begin with (Rashba, ibid).

Renting homes from the mayor: The Rishonim (cited in Beis Yosef O.C. 391) apply this leniency to the power that was once invested in the mayor of a city, to commandeer homes should need arise. He could force people to lodge soldiers in their homes, or store supplies, in case of war. The mayor's power represented a certain degree of ownership of the homes of his subjects. It is therefore sufficient to rent the right to make an eiruv from the mayor, rather than making individual contracts with each gentile neighbor. However, this leniency depends upon the absolute power of the mayor to enter houses, at least in cases of war, without requiring the authorization of any other legislative body. Some hold that he must have the authority to even declare war (see Biur Halacha, ibid).

Today, most local authorities do not have this power. Even police generally require a warrant to break into people's homes. Some governments have provisions by which the government may forcibly purchase land from its subjects. However, this is not viewed as a current right to use of the land, which may be rented for the purpose of *eiruvin*. Rather, it is a right to purchase, which has no bearing as long as it is not utilized.

Therefore, we may not make one general agreement with the local authorities. Rather, we must make an individual agreement with each gentile neighbor (Shulchan Aruch, ibid:1).

City governments have the right to reroute or close streets if need should be. Theoretically this constitutes a sufficient degree of ownership to allow us to rent the rights to the street from the government. We would then be allowed to make an eiruv on streets where only Jews live, and include public land in the eiruv. However, in practice, this is insufficient. As we have seen recently in Daf Yomi, if a courtyard without an eiruv opens into a courtyard with an eiruv, it is forbidden to carry in either. Here too, the gentile streets open directly onto Jewish streets. Therefore, it is forbidden to carry on either.

Even in areas where the government does maintain the right to commandeer the homes of its subjects, foreign embassies and consulates are free from the constraints of the local ruling body, according to international law. Therefore, a separate agreement must be reached with the embassies to rent rights to their use.

These complications are another reason why many refrain from relying on the neighborhood eiruv to carry. However, in neighborhoods where only observant Jews live, these problems do not apply.