MISHNA

One who resides with a gentile in the same courtyard, or one who lives in the same courtyard with one who does not accept the principle of eiruv, even though he is not a gentile, such as a Samaritan (‘Kati’), this person renders it prohibited for him to carry from his own house into the courtyard or from the courtyard into his house, unless he rents this person’s rights in the courtyard, as will be explained below.

HALAKHA

When does a gentile render it prohibited – אֲלֵי אָמְרִיד בִּשְׁלָמָא רַבִּי מֵאִיר

A gentile who shares a courtyard with a Jew renders it prohibited for the Jew to carry into the courtyard only if there are two Jews who would prohibit each other from carrying in the courtyard if there were no eiruv. This ruling is in accordance with the statement of Rabbi Eliezer ben Yaakov (Shulhan Arukh, Orah Hayyim 382).

NOTES

A gentile, a Samaritan, and a Sadducee – נְטָר מָית וּנְטָר מָיתוֹקֵד

The mishna mentions at least three types of people who do not have the same status as Jews with regard to the laws of eiruv. The Gemara elaborates on each of these categories. The status of a gentile and that of a Jew is clear with regard to eiruv: A gentile is not obligated in any of the halakhot of eiruv, whereas all of these halakhot apply to a Jew. The status of a Samaritan, who is referred to by the phrase: One who does not accept the principle of an eiruv, in the mishna, has been disputed by the Sages over the generations. Does a Samaritan have the status of a Jew or a gentile? The mishna mentions a Sadducee, who is a full-fledged Jew but does not accept the words of the Sages. The dispute is with regard to whether his status with regard to the halakhot of eiruv is like that of a gentile, as Rabbi Yehuda states, or that of a regular Jew.

GEMARA

Abaye bar Avin and Rav Hinana bar Avin were sitting, and Abaye was sitting beside them, and they sat and said: Granted, the opinion of Rabbi Meir, the author of the unattributed mishna, is clear, as he holds that the residence of a gentile is considered a significant residence. In other words, the gentile living in the courtyard is a resident who has a share in his own house and his own courtyard.

But Rabbi Eliezer ben Yaakov, what does he hold? If you say he holds that the residence of a gentile is considered a significant residence, he should prohibit carrying even when there is only one Jew living in the courtyard. And if it is not considered a significant residence, he should not prohibit carrying even when there are two Jews living there.

Abaye said to them: Your basic premise is based on a faulty assumption. Does Rabbi Meir actually hold that the residence of a gentile is considered a significant residence? Wasn’t he taught in the Tosefta: The courtyard of a gentile is like the pen of an animal, i.e., just as an animal pen does not render it prohibited to carry in a courtyard, so too, the gentile’s residence in itself does not impose restrictions on a Jew.

The pen of an animal – אֲלֵי אָמְרִיד בִּשְׁלָמָא רַבִּי מֵאִיר

All of the halakhot of eiruv, like the rest of the halakhot of Shabbat, were given only to the Jewish people. Therefore, they do not apply to one who is not a Jew. This statement means that as a result, a gentile who lives in a certain place may be ignored for the purposes of eiruv, as he is not included among those to whom the halakhot of eiruv apply.

NOTES

A gentile, a Samaritan, and a Sadducee – נְטָר מָית וּנְטָר מָיתוֹקֵד

The status of a gentile and that of a Jew is clear with regard to eiruv: A gentile is not obligated in any of the halakhot of eiruv, whereas all of these halakhot apply to a Jew. The status of a Samaritan, who is referred to by the phrase: One who does not accept the principle of an eiruv, in the mishna, has been disputed by the Sages over the generations. Does a Samaritan have the status of a Jew or a gentile? The mishna mentions a Sadducee, who is a full-fledged Jew but does not accept the words of the Sages. The dispute is with regard to whether his status with regard to the halakhot of eiruv is like that of a gentile, as Rabbi Yehuda states, or that of a regular Jew.
This is in accordance with the opinion of Rav Sheshet, who stated:

גוי, וְאֵין בִּיטּוּל רְשׁוּת מוֹעִיל בִּמְ וֹם גּוֹי

An eiruv in a place where there is a gentile – שֶׁבִּמְ וֹם גּוֹי

Neither an eiruv nor a renunciation of rights is effective when there is a gentile living in the courtyard. The only solution is for the gentile to rent his domain to a Jewish resident of the courtyard. The type of rental mentioned by the Sages in the context of a joining of courtyards is not the standard form of rental, as even a flawed or symbolic rental suffices (Rambam). It is not necessary to draw up a document for such a rental, and one need not explain the reason for it. This is in accordance with the opinion of Rav Sheshet, who was a greater authority than Rabbi Hisda and whose opinion is lenient here, as the lenient opinion is generally accepted in disputes relating to the halakhot of eiruv (Shulhan Arukh, Orah Hayyim 382:4).

Rather, this explanation must be rejected, and the dispute in the mishna should be understood differently: Everyone agrees that the residence of a gentile is not considered a significant residence, and here they disagree about a decree that was issued lest the Jew learn from the gentile’s ways. The disagreement is with regard to whether this decree is applicable only when there are two Jews living in the courtyard, or even when there is only one Jew living there.

The disagreement should be understood as follows: Rabbi Eliezer ben Yaakov holds that since a gentile is suspected of bloodshed, it is unusual for a single Jew to share a courtyard with a gentile. However, it is not usual for two or more Jews to do so, as they will protect each other. Therefore, in the case of two Jews, who commonly live together with a gentile in the same courtyard, the Sages issued a decree to the effect that the gentile renders it prohibited for them to carry. This would cause great inconvenience to Jews living with gentiles and would thereby motivate the Jews to distance themselves from gentiles. In this manner, the Sages sought to prevent the Jews from learning from the gentiles’ ways. However, in the case of one Jew, for whom it is not common to live together with a gentile in the same courtyard, the Sages did not issue a decree that the gentile renders it prohibited for him to carry, as the Sages do not issue decrees for uncommon situations.

On the other hand, Rabbi Meir holds that sometimes it happens that a single Jew lives together with a gentile in the same courtyard, and hence it is appropriate to issue the decree in such a case as well. Therefore, the Sages said: An eiruv is not effective in a place where a gentile is living, nor is the renunciation of rights to a courtyard in favor of the other residents effective in a place where a gentile is living. Therefore, carrying is prohibited in a courtyard in which a gentile resides, unless the gentile rents his property to one of the Jews for the purpose of an eiruv regardless of the number of Jews living there. And as a gentile would not be willing to rent out his property for this purpose, the living conditions will become too strained, prompting the Jew to move.

The Gemara poses a question: What is the reason that a gentile will not rent out his property for the purpose of an eiruv? If you say it is because the gentile thinks that perhaps they will later come to take possession of his property based on this rental, this works out well according to the one who said that we require a full-fledged rental, i.e., that rental for the purpose of an eiruv must be proper and valid according to all the halakhot of renting.

However, according to the one who said that we require only a flawed, symbolic rental, i.e., all that is needed is a token gesture that has the appearance of renting, what is there to say? The gentile would understand that it is not a real rental, and therefore he would not be wary of renting out his residence. As it was stated that the amoraim disputed this issue as follows: Rav Hisda said that we require a full-fledged rental, and Rav Sheshet said: A flawed, symbolic rental is sufficient.

Having mentioned this dispute, the Gemara now clarifies its particulars: What is a flawed rental, and what is a full-fledged one? If you say that a full-fledged rental refers to a case where one gives another person a peruta as rent, whereas in a flawed rental he provides him with less than the value of a peruta, this poses a difficulty. Is there anyone who said that renting from a gentile for less than the value of a peruta is not valid? Didn’t Rabbi Yitzḥak, son of Rabbi Yaakov bar Gyoirei, send in the name of Rabbi Yoḥanan: You should know that one may rent from a gentile even for less than the value of a peruta?!
And Rabbi Hyya bar Abba said that Rabbi Yoḥanan said: A Noa­hide, i.e., a gentile who stole is executed for his crime, according to the laws applying to Noahides, even if he stole less than the value of a peruta. A Noa­hide is particular about his property and unwilling to waive his rights to it, even if it is of minimal value; therefore, the prohibition against stealing applies to items of any value whatsoever. And in the case of Noahides, the stolen item is not returnable,6 as the possibility of rectification by returning a stolen object was granted only to Jews. The principle that less than the value of a peruta is not considered money applies to Jews alone. With regard to gentiles, it has monetary value, and therefore one may rent from a gentile with this amount.

The Gemara examines the ruling in the Tosefta in the previous discussion. Returning to the matter itself: The courtyard of a gentile is like the pen of an animal, and it is permitted to carry in and carry out from the courtyard to the houses and from the houses to the courtyard, as the halakhot of eiruv do not apply to the residences of gentiles.

But according to the one who said that we require only a flawed rental, what is there to say in this regard? Why shouldn’t the gentile want to rent out his residence? The Gemara answers: Even so, the gentile is concerned about witchcraft, i.e., that the procedure is used to cast a spell on him, and therefore he does not rent out his residence.

The Gemara proceeds to analyze the Tosefta: The Master said above: The courtyard of a gentile is like the pen of an animal, which implies that the residence of a gentile is not considered a significant residence. But didn’t we learn otherwise in the mishna: One who resides with a gentile in the same courtyard this person prohibits him from carrying? This implies that a gentile’s residence is in fact of significance.

The Gemara answers: That is not difficult. This halakha in the mishna is referring to a situation where the gentile is present, and therefore carrying is prohibited, whereas that halakha in the Tosefta refers to a situation where he is not present, and therefore carrying is permitted.
The Gemara poses a question: What does Rabbi Meir hold? If he holds that a residence without its owners is still considered a residence, and it is prohibited to carry in the courtyard even when the owner is away, then even a gentile in absenta should likewise render it prohibited for carrying. And if he holds that a residence without its owners is not considered a residence, then even a Jew who is away should also not render it prohibited for carrying.

The Gemara answers: Actually, he holds that a residence without its owners is not considered a residence, but nevertheless, he draws a distinction between a Jew and a gentile. In the case of a Jew, who renders it prohibited to carry for those who dwell in the same courtyard when he is present in his residence, the Sages decreed with regard to him that even when he is not present, his residence renders it prohibited for them to carry as though he were present.

However, with regard to a gentile, who even when he is present does not fundamentally render it prohibited to carry, but only due to a rabbinic decree that was issued lest the Jew learn from the gentile’s ways, no further decree was necessary. Thus, when he is present, the gentile renders it prohibited to carry; but when he is not present, he does not render it prohibited to carry.

The Gemara asks: And when the gentile is not present, does he really not render it prohibited for carrying? Didn’t we learn elsewhere in a mishna: With regard to one who left his house without establishing an eiruv and went to spend Shabbat in a different town, whether he was a gentile or a Jew, he renders it prohibited for the other residents of his courtyard to carry objects from their houses to the courtyard and vice versa. This is the statement of Rabbi Meir. This indicates that according to Rabbi Meir, a gentile renders it prohibited to carry in the courtyard even if he is not present."}

The Gemara answers: There, it is referring to a situation where the person who left his house without establishing an eiruv intends to return on that same day, on Shabbat. Since upon his return he will render it prohibited for others to carry in the courtyard, the decree is applied even when he returns home. However, if he left his house intending to return after the conclusion of Shabbat, he does not render it prohibited to carry, in absentia."

Rav Yehuda said that Shmuel said: The halakha in this dispute is in accordance with the opinion of Rabbi Eliezer ben Yaakov. And Rav Huna said: This is not an established halakha to be issued publicly; rather, the custom is in accordance with the opinion of Rabbi Eliezer ben Yaakov, i.e., a Sage would rule according to his opinion for those who come to ask. And Rabbi Yoĥanan said: The people are accustomed to conduct themselves in accordance with the opinion of Rabbi Eliezer ben Yaakov. Accordingly, a Sage would not issue such a ruling even to those who inquire, but if someone acts leniently in accordance with his opinion, he would not object.

Abaye said to Rav Yosef, his teacher: We maintain that the teaching of Rabbi Eliezer ben Yaakov measures a kav, but is clean, meaning that it is small in quantity but clear and complete, and that the halakha is in accordance with his opinion in all instances. Moreover, with regard to our issue, Rav Yehuda said that Shmuel said: The halakha is in accordance with the opinion of Rabbi Eliezer ben Yaakov, and therefore there is no doubt about the matter.

However, what is the halakha with regard to whether a disciple may issue a ruling according to the opinion of Rabbi Eliezer ben Yaakov in his teacher’s place of jurisdiction, i.e., in a place where he is the recognized authority? Although it is usually prohibited to do so, perhaps such an evident and well-known principle such as this does not fall into the category of rulings that a disciple may not issue in his teacher’s territory.
The Gemara relates that Rav Yosef said to Abaye: When regard to matters such as those detailed in Megillat Ta'anit, which is written and laid on the shelf for all to access and offers a list of the days on which fasting is prohibited, what is the halakha concerning whether or not a disciple may rule about these matters in his teacher’s place of jurisdiction? Abaye said to him: Rav Yosef said as follows: Even when Rav Hisda was asked about the permissibility of cooking an egg in kutaĥ throughout the years of Rav Huna’s life, he refused to issue a ruling.11

The Gemara relates that Rav Hisda nonetheless issued halakhic rulings in the town of Kafri during the years of Rav Huna’s life, as he was not actually in his teacher’s place.12

Background

Harta De’argez — מַחֲוֵי לֵיָרָד: Harta De’argez was a town in Babylonia, whose builder, Argez, is the subject of various traditions. During the years of Rav Hisda’s lifetime, it was the only place in which the Oral Law was committed to writing. Even according to those who maintain that the Mishna was written down during the period of the amora’im, halakhic rulings may not be issued directly from a mishna without further analysis. Clear halakhic rulings could be found only in Megillat Ta’anit.

Notes

When does a gentile render it prohibited — המְרָאָת בְּדִי ַת סַכִּין בִּ׳ְ ֵי רַבּ: Even according to the majority of authorities, a gentile is not permitted to issue rulings in his teacher’s place. Even explicit permission from the teacher does not remove this prohibition so long as the student is within three parasangs of his teacher.

Halakha

Examining a knife before one’s teacher — רַבּ ופ דב סג: It is prohibited for a student to examine a slaughterer’s knife in the presence of his teacher (Tur, Yoreh De’ah 242). A disciple-colleague — רַבּ ופ דב סג: A disciple who is also his teacher’s colleague may not issue a ruling in his teacher’s presence if he is within three parasangs of him. If he is farther away than this, it is permitted. If the student received permission from his teacher (Shelah; Vilna Gaon), it is permitted for him to issue a ruling even within three parasangs of his teacher (Rema). However, with regard to his principal teacher, it is prohibited in all circumstances (Shulhan Arukh, Yoreh De’ah 242:4 and in the comment of the Rema).

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Ruling in one’s teacher’s place — בְּדִי ַת סַכִּין בִּ׳ְ ֵי רַבּ: A disciple is prohibited from issuing a halakhic ruling in his teacher’s place. Even explicit permission from the teacher does not remove this prohibition so long as the student is within three parasangs of his teacher. (Rema; Shulhan Arukh, Yoreh De’ah 242:4).

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