HALAKHA

If a resident of a courtyard died – קדושי ימים קדשים קדושי ימים קדשים
With regard to one of the residents of a courtyard who died before he could establish an eiruv, and he left his portion to someone who was not a resident of the courtyard, the following distinctions apply: If he died before Shabbat and his heir arrived on Shabbat, the heir renders carrying prohibited. However, if he died on Shabbat after having established an eiruv, the heir may not impose any restrictions on the tenants. If he had not established an eiruv, the heir imposes restrictions only when he arrives (Shulhan Arukh, Orach Hayyim 371:4).

One who inherited part of a courtyard – קדושי ימים קדשי קדושי ימים קדשי קדושי ימים קדשי
In the case of a person who owned a residence in a courtyard but did not dwell there, and who left his property to a resident of that courtyard, the halakha is as follows: If he died before Shabbat, the heir does not render carrying prohibited, for the eiruv that he established before Shabbat includes the portion he has inherited as well. However, if the person died after nightfall, then the heir does render carrying prohibited, because his eiruv is ineffective in such a case (Shulhan Arukh, Orach Hayyim 371:5).

NOTES

A Jew and a convert... in a single residency – קדושי ימים קדשי קדושי ימים קדשי קדושי ימים קדשי
The early commentators point out that this case clearly refers to a legal acquisition of ownership (ius ad usum) rather than an inheritance (see Ritva). According to the Ra’avad, who maintains that an heir has rights because it is considered as though the deceased renounced his rights in his favor before Shabbat, one who acquires property that was ownerless is similarly like one who acquires from a person who renounced his rights to others.

Perek VI

Daf 71 Amud a

In such a case, even though a different Jew took possession of the convert’s property, the one who acquires it renders carrying prohibited. If, however, he died after nightfall, even though a different Jew did not take possession of his property, it, i.e., carrying, is not prohibited, for carrying already been permitted on that Shabbat.

The Gemara raises a difficulty: The baraita itself is difficult. You first said: If the convert died while it was still day, even though a different Jew took possession of his property, the latter renders carrying prohibited, which implies that it is not necessary to say so where another Jew did not take possession of the property, for in such a case it is certainly prohibited. But this is incorrect. On the contrary, in a case where a different person did not take possession of the property, it is certainly not prohibited, for in such a case the convert’s property is ownerless and there is nobody to render carrying in the courtyard prohibited.

Rav Pappa said: Say that the baraita should read as follows: Even though a different Jew did not take possession of it. The Gemara raises a difficulty: How can it be corrected in this manner? But doesn’t it teach: Even though he took possession of it?
After nightfall...it does not render it prohibited – The Ritva explains that even if the convert died without previously establishing an eiruv, carrying is not prohibited, as his death is considered a general renunciation of his rights in the domain.

The reason of Beit Hillel – Some commentaries point out that Ulla's explanation in this context disagrees with Rabbi Yoĥanan's opinion with regard to an heir, and maintains that even according to Beit Hillel, an heir may not renounce his rights in a domain. He states that Beit Hillel's reason for permitting the renunciation of rights is that the owner's intentions have been clarified retroactively, and this is not possible in the case of an heir (Rashash).

Turn toward the high-quality ones – Just as one who says, Turn toward the high-quality ones, reveals his intention of giving from the very best quality produce, so too, one who renounces his rights indicates that he did not mean to prevent the residents of the courtyard from carrying, but, on the contrary, he wished to completely renounce his rights in the courtyard in their favor (Meiri).

HALAKHA

A different Jew and a convert – Rav Pappa said: Say that the convert, after nightfall, took possession of his property, even after nightfall, that Jew renders carrying in the courtyard prohibited, even though such renunciation requires the convert's property to be mingled with his neighbors. What he then does on Shabbat is not a complete renunciation of his rights, but renunciation is effective.

Rav Pappa said: Say that the convert, after nightfall, took possession of his property, carrying is not prohibited. This implies that it is not necessary to say so where another Jew did not take possession of the property, for in such a case it is certainly not prohibited. But, on the contrary, where a different person takes possession of the property, he renders carrying prohibited.

Rav Pappa said: Say that the baraita should read as follows: Even though a different Jew took possession of it. The Gemara raises a difficulty: But didn't the baraita teach: Even though he did not take possession of it? The Gemara explains: This is what the baraita is saying: If the convert died after nightfall, even though a different Jew did not take possession of his property, carrying is not prohibited. This implies that it is not necessary to say so where another Jew did not take possession of the property for in such a case it is certainly not prohibited. But, on the contrary, where a different person takes possession of the property, he renders carrying prohibited.

Rav Pappa said: Say that the baraita should read as follows: Even though a different Jew took possession of it. The Gemara raises a difficulty: But didn't the baraita teach: Even though he did not take possession of it? The Gemara explains: This is what the baraita is saying: If the convert died after nightfall, even though a different Jew took possession of his property after nightfall, since he did not have the possibility of taking possession of it while it was still day, he does not render carrying prohibited. After explaining the baraita, the Gemara proceeds to clarify the issue at hand: In any event, the first clause is teaching that the person who acquires the convert's property renders carrying prohibited; but why does he render carrying prohibited? Let him renounce his rights in the domain like an heir. The implication then is that he does not have the option of renunciation, in contrast to the opinion of Rav Nahman.

Rav Nahman replied: What is the meaning of the word prohibits that it teaches here? It means he renders carrying prohibited until he renounces his rights, but renunciation is effective.

Rabbi Yoĥanan said: Who is the tanna of the problematic baraitot that imply that an heir cannot renounce rights, and from which objections were brought against Rav Nahman? It is Beit Shammai, who say that there is no renunciation of rights on Shabbat at all, even for the owner of the property. As we learned in the mishna: When may one give away rights in a domain? Beit Shammai say: While it is still day. And Beit Hillel say: Even after nightfall.

With regard to this dispute itself, Ulla said: What is the reason of Beit Hillel? That one may renounce rights even after nightfall? This should be considered an act of acquisition, which is prohibited on Shabbat. He explains: It is comparable to one who says: Turn toward the high-quality ones. If a person sets aside teruma from another person's produce without the latter's knowledge, and when the owner finds out he says: Why did you set aside this produce? Turn toward the high-quality ones, i.e., you should have gone to find better produce to use as teruma, then the teruma that was separated is considered teruma, provided there was indeed quality produce in that place. The reason is that the owner has demonstrated his retroactive acquiescence to the other person's setting aside of teruma. Therefore, the latter is considered his agent for this purpose. The same applies to our issue. If a person intended to permit both himself and others to carry in a courtyard by means of establishing an eiruv but forgot to do so, by renouncing his rights after nightfall, he retroactively makes plain his desire that his domain should be mingled with that of his neighbors. What he then does on Shabbat is not a complete action, but merely a demonstration of his intentions.

Abaye said: This explanation is unsatisfactory, as when a gentile dies on Shabbat, what connection is there to the concept: Turn toward the high-quality ones? When a gentile dies on Shabbat, his Jewish neighbors may renounce their rights in the courtyard to each other and thus render carrying in the courtyard permitted, even though such renunciation would have been ineffective prior to his passing. Consequently, it cannot be said that it works retroactively.
Rather, the Gemara rejects Ulla’s explanation and states that here they disagree over the following: Beit Shammai hold that renunciation of a domain is equivalent to acquisition of a domain, and acquisition of a domain is prohibited on Shabbat. And Beit Hillel hold that it is merely withdrawal from a domain, and withdrawal from a domain seems well on Shabbat, i.e., it is permitted. As such, there is no reason to prohibit renunciation as a form of acquisition, which is prohibited as a part of a decree against conducting commerce on Shabbat.

MISHNA If a homeowner was in partnership with his neighbors, with this one in wine and with that one in oil, they need not establish an eiruv, for due to their authentic partnership they are considered to be one household, and no further partnership is required.

If, however, he was in partnership with this one in wine and with that one in oil, they must establish an eiruv. As they are not partners in the same item, they are not all considered one partnership. Rabbi Shimon says: In both this case and that case, i.e., even if he partners with his neighbors in different items, they need not establish an eiruv.\(^6\)

GEMARA Rav said: The halakha that one who is in partnership in wine with both his neighbors need not establish an eiruv applies only if their wine is in one vessel. Rava said: The language of the mishna is also precise, as it teaches: If he was in partnership with this one in wine and with the other one in oil, they must establish an eiruv. Granted, if you say that the first clause of the mishna deals with one vessel, and the latter clause deals with two vessels, one of wine and one of oil, it is well. But, if you say that the first clause of the mishna speaks of two vessels, and the latter clause also speaks of two vessels, what difference is it to me if it is wine and wine or wine and oil? The halakha should be the same in both cases.

Abaye said to him: This is no proof, and the first clause can be referring to a case where the wine was in separate vessels as well. The difference is that wine and wine is suitable for mixing together, and therefore can be considered a single unit even if divided into two containers. Wine and oil, however, are not suitable for mixing.

We learned in the mishna: Rabbi Shimon says: In both this case, where they are partners in wine alone, and that case, where the partnerships are in wine and oil, they need not establish an eiruv. The Gemara poses a question: Did he say this even if the partnership is with this one in wine and with the other one in oil? But these are not suitable for mixing. Rabba said: With what are we dealing here? We are dealing with a courtyard positioned between two alleys, and Rabbi Shimon follows his usual line of reasoning.

As we learned in a mishna: Rabbi Shimon said: To what is this matter comparable? It is comparable to the case of three courtyards that open into one another and also open into a public domain. If the two outer courtyards establish an eiruv with the middle one, it is permitted for residents of the middle one to carry with the two outer ones, and it is permitted for residents of the two outer ones to carry with the middle one. However, it is prohibited for the residents of the two outer courtyards to carry with each other, as they did not establish an eiruv with each other. This teaches that the residents of one courtyard can establish an eiruv with a courtyard on each side, and need not choose between them. Here too, the residents of the courtyard can participate in an eiruv with both alleys, one by means of wine and the other by means of oil.

Abaye said to him: Are the cases really comparable? There it teaches: It is prohibited for the residents of the two outer courtyards to carry with each other, whereas here it teaches: They need not establish an eiruv, indicating that it is permitted for residents of all three domains to carry with each other.
Oil was floating on the surface of wine – שֶׁמֶן שֶׂצָּב עַל גַּבֵּי יַיִן

In the Jerusalem Talmud it is explained that Rabbi Shimon’s rationale is that even if the convert died before Shabbat, the Jew renders carrying in the courtyard prohibited. However, if the convert died after Shabbat, he rendered carrying permissible. His criteria are applicable only with regard to eiruv, as his death is NOT considered retroactive.

And Rav Yosef said: In fact we are dealing here with a single alleyway, and Rabbi Shimon and the Rabbis disagree about the same point of dispute between Rabbi Yoĥanan ben Nuri and the Rabbis. As we learned in a mishna: If terumah oil was floating on the surface of wine, and one who immersed during the day, touched the oil, he disqualified only the oil alone. However, he did not disqualify the wine, because it is considered separate from the oil. Only the oil is disqualified, and it does not render other items ritually impure.

The Gemara explains: The opinion of the Rabbis in our mishina is in accordance with the opinion of the Rabbis in the other mishina, who maintain that wine and oil are not connected and therefore cannot be used together in an eiruv, and the opinion of Rabbi Shimon is in accordance with the opinion of Rabbi Yoĥanan ben Nuri, who holds that wine and oil are connected, and may be used together in an eiruv.

It was taught in a baraita: Rabbi Eliezer ben Taddai says: In both this case, of wine and oil, and that case, of wine and oil, they must establish an eiruv. The Gemara expresses wonder: Did he say this even if the partnership is with this one in wine and also with the other one in wine? Why should these partnerships not be sufficient to consider the items merged?

Rabba said: If they partnered in the following manner, such that this one came with his wine-filled jug and poured its contents into a barrel, and the other came with his jug and poured his wine into that same barrel, everyone agrees that it is a valid eiruv, even if they did not act specifically for that purpose.

Where they disagree is in the case where they bought a barrel of wine in partnership. Rabbi Eliezer ben Taddai holds: There is no principle of retroactive clarification, i.e., there is no halakhic assumption that the undetermined halakhic status of items can be retroactively clarified. Consequently, after the wine is consumed, it is not possible to clarify retroactively which portion of the wine belonged to each person. Therefore, they cannot each be said to own a particular part of the wine, which renders it unfit for an eiruv. But the Rabbis hold that there is retroactive clarification, and therefore they may rely on this partnership to establish an eiruv.

Rav Yosef said that this dispute should be understood differently, as Rabbi Eliezer ben Taddai and the Rabbis disagree about whether one may rely on a merging of an alleyway instead of an eiruv, i.e., whether the merging of an alleyway to permit carrying in the alleyway, exempts the courtyards that open into the alleyway from having to establish an eiruv for the purpose of carrying from one courtyard to the other.

As one Sage, Rabbi Eliezer ben Taddai, holds that one may not rely on it in that case, as carrying in the courtyards requires specifically an eiruv, and the merging of alleyways is insufficient. And one Sage, i.e., the Rabbis, maintains that one may rely on and use the merging of alleyways to permit carrying between the courtyards as well.

Rav Yosef said: From where do I say this, that this is the subject of their dispute? As Rav Yehuda said that Rav said: The halakha is in accordance with the opinion of Rabbi Meir, which will be detailed later, that one may not rely on a merging of alleyways instead of an eiruv. And Rav Beruna said that Rav said: The halakha is in accordance with the opinion of Rabbi Eliezer ben Taddai, that in both cases they must establish an eiruv. What is the reason he ruled in this manner? Is it not because the rationale for both rulings is one and the same?
Abaye said to him: But if it is one reason, why do I need two rulings? On the contrary, it would be enough to rule in one case, from which we could infer the other as well. Rav Yosef replied: There is nevertheless a reason for both rulings, as this comes to teach us that we do not act in accordance with two stringencies of one tanna in matters of eiruv. Had Rav ruled only in accordance with Rabbi Meir, we would have known only that the halakha is in accordance with his opinion with regard to one specific detail of the case. He therefore ruled in accordance with two Sages: Rabbi Elezer ben Taddai with regard to a merging of alleyways with wine, and Rabbi Meir with regard to a merging of alleyways with bread. Each is stringent with regard to a different detail of the case.

Having mentioned Rabbi Meir, the Gemara now asks: What is the statement of Rabbi Meir, and what is the statement of the Rabbis? As it was taught in the following baraita: One may establish an eiruv with bread between courtyards that open to one another, but if one wanted to establish an eiruv with wine, one may not establish an eiruv in that manner. One may merge the courtyards that open into an alleyway with wine, and if one wanted to establish a merging of alleyways with bread, one may merge the courtyards of alleyways in this manner.

Why does one establish an eiruv between courtyards and also merge the courtyards that open into an alleyway? It is so as not to cause the halakhic category of eiruv to be forgotten by the children, as if a merging of alleyways alone were used, the children would later say: Our fathers never established an eiruv. Therefore, an eiruv is established for educational purposes; this is the statement of Rabbi Meir. And the Rabbis say: One may either establish an eiruv or merge alleyways.

Rabbi Nahumi and Rabba disagreed about this issue. One of them said: In the case of bread, which may be used both for an eiruv and for a merging of alleyways, everyone agrees that one, either an eiruv or a merging of alleyways, is enough. When they disagree is in a case where an eiruv was established with bread: Rabbi Meir maintains that both a merging of alleyways and a joining of courtyards are required, whereas the Rabbis say that one is sufficient.

And one said: In the case of wine, everyone agrees that two are required, both a merging of alleyways and a joining of courtyards. When they disagree is in a case where an eiruv was established with bread: Rabbi Meir maintains that both a merging of alleyways and a joining of courtyards are required, whereas the Rabbis say that one is sufficient.

The Gemara raises an objection from the baraita itself. And the Rabbis say: One may either establish an eiruv or a merging of alleyways. What, does it not mean that one either establishes an eiruv in the courtyard with bread or a merging in the alleyway with wine, which indicates that they also disagreed in a case where a merging of alleyways was established with wine?