

In Hilchos Shabbos

You have heard the shaylos . . .
Now learn the issues & the opinions

**Relying on a
Citywide
Eiruv**

**Part 2: The halachos of
Eiruvei Chatzeiros**

A summary of the weekly Wednesday night shiur by **Rabbi Shmuel Stein** at the Miami Beach Community Kollel / To receive a copy send an email to InHilchosShabbos@gmail.com

Last week we discussed the basics of *Hotza* and the requirement to enclose an area with *mechitzos* (partitions) to create a *reshus ha'yachid*, and the challenge of surrounding a city with proper *mechitzos* to make a citywide *eiruv*. There is another challenge with making a citywide *eiruv* which involves the halachos of *eiruvei chatzeiros*. Even after a city is surrounded with proper *mechitzos*, and it becomes a *reshus ha'yachid*, the halachos of *eiruvei chatzeiros* must be dealt with. In this chapter we will discuss the halachos of *eiruvei chatzeiros*, and the unique challenges it presents to making a citywide *Eiruv*.

The Prohibition of Chatzeiros: The decree of Shlomo Hamelech

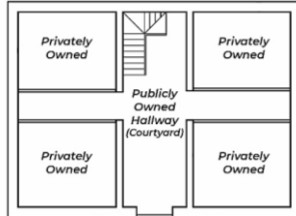
One of the earliest rabbinical prohibitions is the prohibition of *chatzeiros* (courtyards) which was enacted by Shlomo Hamelech.¹ The Gemara² writes that when Shlomo Hamelech enacted this prohibition, a heavenly voice proclaimed, "My son, you are wise [for enacting this decree], and thus my heart is happy."³

Shlomo Hamelech enacted the prohibition of *chatzeiros* as a safeguard for the *melacha* of *Hotza*. The Gemara⁴ writes that this decree was very significant as "before it the Torah was compared to a vessel which did not have handles, but after this decree was enacted, the Torah was compared to a vessel with handles." Meaning, that before this prohibition was enacted the Torah could not be easily "held," because it was easy for someone to inadvertently violate the *melacha* of *Hotza*. The prohibition of *chatzeiros* gave "handles" to the Torah, as it serves as a safeguard that makes sure that one would not inadvertently violate the *melacha* of *Hotza*.

The Prohibition of Chatzeiros (Courtyards)

Shlomo Hamelech decreed that it be prohibited to carry from a house to a *chatzer* (courtyard), and vice versa, on Shabbos. Technically, it should be permitted to carry from a house to a *chatzer* on Shabbos, since both the house and the *chatzer* are enclosed by *mechitzos* and are considered a *reshus ha'yachid mid'Oraisa*. Nevertheless, Shlomo Hamelech decreed that carrying from a house to a courtyard on Shabbos, as we will explain.⁵

Let us use an apartment building as an example: In an apartment building there are apartments which are privately owned, and hallways which are publicly owned. The publicly owned hallways are jointly owned by all of the residence, and is therefore a *chatzer*, a "courtyard." Since the entire apartment building (the apartments and the hallways) is enclosed by *mechitzos* it is considered a *reshus ha'yachid mid'Oraisa*. Nevertheless, Shlomo Hamelech decreed that one may not carry from the privately owned apartment (house) to the publicly owned hallways (a courtyard) even though *mid'Oraisa* it is considered one *reshus ha'yachid*,⁶ as we will explain.



The concern of Shlomo Hamelech. Shlomo Hamelech realized that if it were permitted to carry from a *privately owned* area to a *publically owned* area, people would mistakenly assume that it is also permitted to carry an object from a *reshus ha'yachid* to a *reshus ha'rabim*. For example, if people were allowed to carry an object from an apartment, which is a *privately owned* area, to a hallway, which is a *publically owned* area, people would mistakenly conclude that it is also permissible to carry an object from a *reshus ha'yachid* to a *reshus ha'rabim* and the entire *melacha* of *Hotza* would be forgotten.

To prevent this error, Shlomo Hamelech instituted the prohibition of *chatzeiros*, which prohibits carrying an object from a *privately owned* area to a *chatzer* (a *jointly owned* area). The following are other examples of the prohibition of *chatzeiros*:

- Residents in a bungalow colony may not carry an object from a bungalow (privately owned) to a communal area outdoors (jointly owned), or the other way around, because doing so violates the prohibition of *chatzeiros*.⁷ Although the bungalow colony is enclosed by *mechitzos* and *mid'Oraisa* is considered a *reshus ha'yachid*, nevertheless, since the outdoor communal area is jointly owned by all

of the residents of the colony, it is rabbinically considered a *reshus ha'rabim* and thus one may not carry from a bungalow to the outdoor communal area. (We will later discuss how to permit this by making an *eiruvei chatzeiros*.)

- We discussed last week that a city which is surrounded by a citywide *eiruv* is *mid'Oraisa* considered a *reshus ha'yachid*. Nevertheless, carrying an object from a house which is *privately* owned to the street which is *jointly* owned by all of the residents is rabbinically prohibited.⁸ (We will later discuss how to permit this by making an *eiruvei chatzeiros*.)

The enactment of Eiruv Chatzeiros

Along with the prohibition of *chatzeiros*, Shlomo Hamelech also enacted a way to permit this prohibition. He designed a procedure called *eiruv chatzeiros* (joining the courtyard), which the joint owners of the *chatzer* can perform to permit the prohibition of *chatzeiros*.⁹

What is Eiruv Chatzeiros?

Eiruvei chatzeiros is made by collecting bread (or *matza*)¹⁰ from all the parties who share the public areas.¹¹ For example, to make an *eiruvei chatzeiros* in an apartment building, all the residents in the building contribute bread which is used as the *eiruvei chatzeiros*. One of the residents then takes hold of the *eiruv chatzeiros* and proclaims, "With this *eiruv* (i.e., the shared food), it shall be permitted for us to transfer objects from the houses to the courtyard, and from the courtyard to the houses... for us, and for anyone who joins us, this Shabbos and the entire year."¹² The *eiruv chatzeiros* is then placed in one of the apartments of the building.¹³ So long as the bread or *matza* remains edible, the *eiruvei chatzeiros* remains effective to permit the prohibition of *chatzeiros*. [The custom is to use *matzos* (which are kosher for Pesach)¹⁴ since they do not easily become moldy, and therefore can be used as the *eiruv chatzeiros* for the entire year.¹⁵] The Shulchan Aruch¹⁶ writes that "it is a *mitzva* to arrange an *eiruv chatzeiros*," since this prevents people from carrying on Shabbos in a prohibited manner.¹⁷

How does an eiruvei chatzeiros prevent the concern of Shlomo Hamelech?

An *eiruv chatzeiros* joins all the residents in the courtyard to become "one party," as the words "Eiruv chatzeiros" suggests: "joining the courtyard." The Rambam¹⁸ explains how making an *eiruvei chatzeiros* circumvents the initial concern of Shlomo Hamelech: When the *eiruv chatzeiros* is made the residents of the courtyard join as one and are viewed as **one party**. Since the bread is placed in one location, we consider the residents to be residing together in the place of the *eiruv*, and thus we can consider them to be one party.¹⁹ Once the residents are considered one party, the *chatzer* is no longer an area owned by *multiple parties*, rather it is an area which is owned by *one party*. Therefore, it is now permitted to carry from an apartment to the hallway because the hallway is no longer considered a "publically owned" area but a "privately owned" area since it is owned by one party. For example,

- When the residents of an apartment building make an *eiruv chatzeiros*, they join together to become one party, and this transforms the hallway to an area owned by "one party." This permits carrying an object from the apartments to the hallway because it is transferred from a *privately owned* area (the apartment) to another *privately owned* area (the courtyard, which is now owned by "one party").
- When the residents of a bungalow colony make an *eiruv chatzeiros*, they join to become one party. It is now permitted to carry an object from one of the bungalows to the outdoors communal area, because the communal areas are now owned by "one party."
- After building proper *mechitzos* around a city, all of the residents of the city can make an *eiruv chatzeiros* which joins them to be viewed as *one party*.²⁰ It is now permitted to carry from a house to the street, because the street is no longer an area owned by *multiple parties*, but as an area which is owned by *one party*. Transferring an object from a house to the street no longer gives off the appearance of carrying to a *reshus ha'rabim*, since the street is no longer owned by *multiple parties*.

1 Gemara Eiruvim 21b 2 ibid 3 Mishlei 23:15 4 Eiruvim 21b 5 Based on Rambam Eiruvim 1:1-5 6 Orchos Shabbos 28:73 7 The 39 Melochos p.1373 8 Orchos Shabbos 28:73 9 Eiruvim 21b 10 The Mishna Berura (366:3,12) explains that since the purpose of the *eiruv chatzeiros* is to consider all of the residents to be dwelling in the place where the *eiruv* is kept (see Mishna Berura 366:12), bread (or *matza*) is used because a person's dwelling can be defined by where his meal is, and the main part of the meal is his bread. One may also use *pas haba b'kisin* for the *eiruvei chatzeiros* (Arch HaShulchan 366:15) 11 The Shulchan Aruch (368:3) writes that each resident must contribute the amount of a *grogres*. However, once there eighteen or more houses in the courtyard, it suffices to have eighteen *grogres* for the entire courtyard. This is equivalent to 6-8 eggs. In modern-day terms this is at most 12 machine matzos, or as little as 6 matzos. (see *Sefer Eiruvei Ha'Iyar v'haShechunos*, p. 63) 12 Shulchan Aruch 366:15 (see Mishna Berura 366:83) 13 See Shulchan Aruch 336:3. The Shulchan Aruch (366:4) writes that all of the food must be kept in the same vessel, because if they are kept in separate vessels it looks as if the *eiruv* is separated (Mishna Berura 336:31). The Mishna Berura (ibid) explains that the name "eiruv" means *mixed* (or joined) together, and therefore all of the food of the *eiruv* must be kept together in the same place. 14 Since the matzos need to be fit to be eaten the whole year, even on Pesach. The *poskim* discuss using machine matzos for *eiruv chatzeiros* since some people do not eat machine matzos on Pesach. See Arch HaShulchan (386:8) where he writes that so long as the *eiruv* is fit for some people the *eiruv* is valid, if so this would permit using machine matzos since many people eat machine matzos on Pesach. Furthermore, the Mishna Berura (386:47) writes that if someone doesn't eat the food only as a *chumra*, it is still valid for *eiruvei chatzeiros*. If so, since most people who do not eat machine matzos on Pesach do so only as a *chumra*, the *eiruv* is valid. 15 see *Sefer Eiruvei Ha'Iyar v'haShechunos*, p. 62, *Orchos Shabbos* 3:28: note 130) 16 336:13 17 Mishna Berura 366:78 18 Rambam Eiruvim 1:6-8 19 Mishna Berura (366:4) citing the Rambam. See also Shulchan Aruch 366:1. Just as we can consider all of the members of a family that live in the same house to be considered one party, because they live in the same house, we can also consider all of the residence in the courtyard who "live in the same house" to be considered one party in the courtyard.

One person making the *eiruv chatzeiros* for the entire *chatzer*. Although all the residents in the *chatzer* must contribute to the *eiruv chatzeiros*, the Shulchan Aruch²¹ writes that if one person wishes he may contribute *all* the bread needed for the *eiruv chatzeiros* on behalf of the rest of the residents. This works based on the principle of *zechiya*, which states that one may acquire an object for another person even without him knowing about the acquisition (so long as the acquisition is beneficial for the other person).²² When making an *eiruvei chatzeiros*, one of the residents acquires the bread on behalf of the rest of the residents giving everyone a portion in the *eiruv chatzeiros*. The Shulchan Aruch²³ writes, that when one resident acquires the *matzos* for the rest of the residents there are a couple of halachos to keep in mind:

- ❖ The one who is donating the bread (or *matza*) for the *eiruv* cannot acquire it for the other residents on his own, rather a third party must acquire the bread for the other residents. [In order for the acquisition to take place we must see the *matza* leave the domain of the owner. When the owner himself performs the *kinyan* (the method within *halacha* for acquiring ownership), we cannot consider that the *matza* has left his ownership because the *matza* is in his still in his hand.²⁴ Therefore, another person must perform the *kinyan* behalf of the other residents.]
- ❖ The Shulchan Aruch²⁵ writes that when one should not use his children or wife as the third party who acquires the *matza* on behalf of the other residents. The Mishna Berura²⁶ explains that this is because, “the hands of his family are like his own hands,” and therefore when they lift the *matza* it still has not left his possession. Therefore, one should ask someone who is not part of his household to make the *kinyan* on behalf of the other residents.²⁷
- ❖ The owner of the bread tells the other person: ‘accept this bread and acquire it for all of the residents of the courtyard.’ The other person, then picks up the *eiruv* (a *tefach* [3.54 inches] off the ground²⁸) and has in mind that by doing so he is acquiring the *eiruv* for all the residents of the courtyard and that they now all own a portion of the bread.²⁹

The Beracha. The Shulchan Aruch³⁰ writes that before making the *eiruv chatzeiros* the beracha of “*al mitzvas eiruv*”³¹ is recited.³²

Including Non-Jewish residents in the *Eiruv*

Until this point, making an *eiruv chatzeiros* can be accomplished quite easily, and thus the prohibition of *chatzeiros* can be easily avoided through making an *eiruv chatzeiros*. However, making an *eiruv chatzeiros* gets more complicated when there are also non-Jewish residents in the courtyard, as a non-Jew may not be included in the *eiruv chatzeiros*. For example, when making an *eiruv chatzeiros* in an apartment building, the non-Jewish residence cannot be included in the *eiruv chatzeiros*. This presents a problem with making an *eiruv chatzeiros* in an area where a non-Jew lives, because the common areas or hallways of the building are now owned by more than one party (the Jewish residents and the non-Jewish residents) and the non-Jewish residents cannot be included in the *eiruv chatzeiros*. The Mishna Berura³³ explains that Chazal purposely made it difficult to create an *eiruv chatzeiros* together with a non-Jew, because they wanted Jewish people to distance themselves from living together with non-Jews so that they not learn from their ways. Therefore, they did not easily permit carrying on Shabbos in a *chatzer* which is shared by non-Jews.³⁴ Chazal did however create a way to make an *eiruv chatzeiros* in the courtyard where non-Jews live, albeit more with more difficulty, by performing an act of *sechirus reshus*, renting out the non-Jew's share in the courtyard.

Sechirus Reshus: Renting the ownership from the non-Jewish residents

Although Chazal did not want Jews to live together with non-Jews, they understood that there will be pressing times when Jews must live near non-Jews, therefore they created a way to make an *eiruv chatzeiros* in a courtyard where a non-Jew resides.³⁵ The Gemara³⁶ explains that one may rent the ownership of the non-Jewish resident in the courtyard, thereby viewing the non-Jew as merely a guest in the courtyard.³⁷ Now that the Jewish residents are the only ones who have ownership of courtyard, they can make an *eiruv chatzeiros* among themselves.³⁸ The Gemara says that this rental is not a contractual rental, but a *Sechirus Reuah*, a “weak rental.” Meaning, that one does not need to write a contract for this rental,³⁹ and it can be made for any amount of money, even for a penny (less than a *shavah peruta*).⁴⁰ The Shulchan Aruch⁴¹ writes that one does not need to explain in detail to the non-Jew the purpose of the rental, he can just explain that he would like to “rent” his ownership in the communal areas for the purpose of his Shabbos needs. For example, when making an *eiruv chatzeiros* in an apartment building one would first need to “rent” the ownership from all the non-Jewish residents in the building and then perform an *eiruv chatzeiros*. However, renting the ownership from every non-Jew in an apartment building can be quite difficult and very impractical as there can be many non-Jews who reside in the building. Certainly,

when making a citywide *eiruv* it would be practically impossible to rent ownership from every non-Jew who resides in the city to be able to make an *eiruv chatzeiros*. The Shulchan Aruch and later *poskim* discuss several ways which can make it more practical to perform a *sechirus reshus* in these situations.

Leniency #1: *Sechiro v'Likito*. The worker of the non-Jew

The Shulchan Aruch⁴² writes that when one rents the ownership from the non-Jewish resident, he does not necessarily need to rent the residents from the owner, but he may rent the ownership from the *Sechiro v'Likito*, the worker of the non-Jew. For example, when making an *eiruv chatzeiros* in an apartment building, instead of renting the ownership from each non-Jewish resident individually, one may rent the ownership of all the non-Jews in the building from the superintendent of the building. Since the superintendent works for all of the residents in the building, he is considered a *Sechiro v'Likito* of all of the residents and may rent out the ownership.⁴³ As we mentioned, the *sechirus reshus* is basically a token arrangement, which can usually be made by offering the superintendent any amount of money (even a penny) for the rights to the hallways and common areas in the building.⁴⁴ However, this leniency would not explain how to create an *eiruv chatzeiros* for a citywide *eiruv*, where not all of the residents of the city share a superintendent or worker who can perform *sechirus reshus* on behalf of all the residents of the city.

Leniency #2: *Sa'ar Ha'Iyar*. The Governor of a City

The Gemara⁴⁵ recounts a story where several of Jews stayed at an inn for Shabbos. There was a non-Jew who rented a room in the inn for Shabbos as well. When the Jews wanted to rent his area for Shabbos and make an *eiruv chatzeiros* they realized that he had left the inn, and they were not able to “rent” his ownership in the inn. The Gemara states that the Jews can go to the owner of the inn to rent the area if the owner of the inn has the right to force the non-Jew out the inn, because then it can be considered to have enough possession to rent the ownership to the Jews. The Shulchan Aruch⁴⁶ writes that based on this Gemara, one may rent the ownership of all the non-Jewish residents in the city from the governor of the city (or his workers). Since the governor has the right to force the residents out of their homes during a time of war, he is considered to have enough possession of the area to rent it for *sechirus reshus*.

The Mishna Berura⁴⁷ asks, although the governor has the right to force the residents out of their homes during a time of war, he cannot force them to leave their homes when there is no active war, how then can he rent out the area when there is no active war? The Biur Halacha answers that since the governor can wage a war at any time he wishes, and then force the residents out of their homes, we can consider him to have enough possession to rent the ownership.

Based on the ruling of this Shulchan Aruch, some *poskim*⁴⁸ explain that when making a citywide *eiruv* nowadays, one may rent the ownership of all the non-Jews in the city from the governor of the city. However, other *poskim*⁴⁹ argue that we cannot compare the governors nowadays to the governors in the times of the Shulchan Aruch. The governors nowadays do not have the ability to wage war or to force residents out of their homes as they did in the times of the Shulchan Aruch. Therefore, according to these *poskim*, it is questionable whether making an *eiruv chatzeiros* in a citywide *eiruv* is at all possible, since there is no realistic way to perform *sechirus reshus* from each non-Jewish resident in the city individually.

To Summarize: After enclosing an area with *mechitzos* and making it a *reshus ha'yachid*, one may still not carry from a privately owned house to a publicly owned *chatzer*, due to Shlomo Hamelech's enactment of *chatzeiros*. To permit carrying, one must make an *eiruv chatzeiros* which creates a joint ownership within the *chatzer* and it no longer has the appearance of a public area. However, if there are non-Jewish residents who reside in a courtyard, they may not be included in the *eiruv chatzeiros*. To permit carrying in the courtyard one must first “rent” ownership from the non-Jew, and then make the *eiruv chatzeiros*. When making an *eiruv chatzeiros* in an apartment building, one may “rent” the ownership of all the non-Jewish residents from the superintendent, because he works for all the non-Jewish residents and is considered a *Sechiro v'Likito* and may “rent out” their ownership in the courtyard on their behalf. However, creating an *eiruv chatzeiros* in a citywide *eiruv* is more complicated since there is no shared superintendent to rent from. Some *poskim* rule, that one may “rent” the ownership of all the residents in the city from the governor of the city. Since a governor has the ability to force people out of their houses in a time of war. While others rule that since the governors nowadays do not have the ability to force residents out of their homes, they do not have the ability to “rent out” their ownership and thus it would remain impossible to make a valid *eiruv chatzeiros* in a citywide *eiruv*.

20 See Sefer Daas Torah (382:4) where he cites the opinion of the Rivash who rules that one should first build the *mechitzos* and create the *reshus ha'yachid*, and then make the *eiruv chatzeiros*. However, if the order is reversed the *eiruv* is still valid (see Sefer Eiruvei Ha'Iyar v'haShechunos, siman 12) 21 366:9 22 Mishna Berura 366:50 23 366:9,10 24 366:49 25 366:10 26 366:55 27 See Shulchan Aruch (ibid) cites two opinions on this issue, therefore, the Rema (366:10) concludes that b'dieved one may rely on his family members (other than a child under bar/bas mitzva who is still living in the home of his father) to acquire the *eiruv* for the other residence. One may ask a guest that is staying at his home for Shabbos to acquire the *matza* on behalf of the other residents, because they are not considered part of his household (Orchos Shabbos 3:28, note 127) 28 The Mishna Berura (366:51) cites the opinion of the Taz, that even if the bread is already lifted in the air a *tefach* off the ground when the other person takes it, he must still lift up the bread another *tefach* above the place that he accepted the bread. 29 366:50 30 336:14 31 ברוך אתה ה' אלוהינו מלך העולם אשר קדשנו במצוותיו 32 When one person is contributing the *eiruv* for the rest of the residents, first the beracha is recited, then the other person acquires the *matza* for everyone in the courtyard. Then he recites the passage of “*b'hadein eiruvah*, with this *eiruv* it is permitted...” (Shulchan Aruch 366:15, Mishna Berura 336:82; see Biur Halacha d'h b'shah) 33 382:5 34 In fact, the Gemara (Eiruvim 62a) writes that Chazal gave the house of a non-Jew the status of a “residence” in order to make it more difficult for Jews to live among the non-Jews so that we do not learn from their actions. 35 See Gaon Yakov, Eiruvim 62a 36 Eiruvim 62a 37 Shulchan Aruch 382:1 38 The Biur Halacha (382:1, d'h Tzarich) writes that l'chatchila one should first perform the *sechirus* (renting) from the non-Jew and then make the *eiruv chatzeiros* among the Jewish residents. If one wishes to perform the *eiruv chatzeiros* first he should not recite a beracha. But b'dieved it works even if he did reverse the order. 39 Shulchan Aruch 382:4 40 Shulchan Aruch 382:5 41 Shulchan Aruch 382:4 42 382:11 43 The 39 Melochos, pp. 1376-1377 44 The 39 Melochos, p. 1377 45 Eiruvim 65b 46 391:1 47 Biur Halacha 391:1 d'h shelo 48 Rav Shlomo Zaman Auerbach (Orchos Shabbos 3:28, note 148) 49 Rav Yosef Shalom Elyashiv (Orchos Shabbos 3:28, note 148)