

Managing an Eruv Emergency in Cambridge, Massachusetts

Late Friday Eruv Repairs

Whenever I receive a phone call late Friday afternoon from an out of town caller typically it is about an Eruv emergency in one of the many communities that I help with their Eruvin. Last Friday, the rabbi from Cambridge, Massachusetts called with the following conundrum. The Boston area had suffered from a major storm and about a dozen points in the Eruv required repair.

Since the Eruv repair company also services the much larger greater Boston Eruv, the company attended to the many repairs needed by the greater Boston Eruv first and only on Friday afternoon did the work begin on the Cambridge Eruv. The non-Jewish technician reported to the community about an hour and half before sunset that he was unsure if he would complete the repairs before Shabbat. Hence, the phone call from the local rabbi as to how to manage the situation.

Asking a Non-Jew to Repair the Eruv

The first question is whether it is permitted for the community to ask the Eruv repair person to complete the work even after Shabbat had begun. The answer is a resounding yes as stated explicitly by the Mishna Berura 276:25. It is clear from the Gemara that one may ask a non-Jew to do work on Shabbat if the work is necessary to benefit the community.

The classic case is recorded on Gittin 8b where the Gemara permits asking a non-Jew to write a deed to acquire property in Eretz Yisrael (when visiting my son Binyamin learning in his second year at Yeshivat Shaalvim, he reminded me of the story in which this Gemara was applied in practice when Shaalvim was located on the former border with Jordan). We see that we may ask a non-Jew even to perform what for us are Biblically forbidden activities on Shabbat for community needs.

The Halachic Trustworthiness of the Nochri Repairman

Halacha accords Ne'emanut, credibility, only to those Jews who observe Halacha. A Nochri therefore does not enjoy Halachic Ne'emanut. Could the community rely on the presumption that the Nochri professional completed the work? We should note that the people inspecting the Eruv and the Eruv repairman who have a very satisfactory relationship for many years. He has proven dozens of times that when asked to complete a job he does so, and does so in a superlative manner. We should also clarify that the locations repairs were far from where people live and are not readily accessed on Shabbat for inspection.

I felt that we may make this assumption since the prohibition to carry without an Eruv is only rabbinic in nature. In such a situation we may rely on a Nochri worker due to a convergence of three Halachic principles: 1) Mirtat (Avoda Zara 61b): fear of being discovered (when the Eruv is inspected the next Friday) that he did not do the work (which would result in him losing the Cambridge Eruv account). 2) Uman Lo Mareih Anfashei – A professional does not wish to risk losing his reputation (see Chullin 97a Tosafot s.v. Samchinan). 3) Milta D'avidit Le'lgaluyei (Bechorot 36a) that people do not lie about something that may be discovered.

Regarding rabbinic prohibitions we may assume that a Shaliach (representative) has fulfilled his Shelichut (Eruvin 31b and Shulchan Aruch Yoreh Dei'ah 331:34). Even though a Nochri is not regarded as a Shaliach (Kiddushin 41b, since we are speaking of a Po'eil, a trusted hired worker, we may assume that he has done the work (at least according to the Machane Ephraim Hilchot Sheluchim number 11 and Minchat Chinuch 216:6 based on Bava Metzia 10a). Rav Baruch Simon told me he agreed that may we rely on this in a rare case of special need (as was this situation).

May We the Assume the Eruv is Up Once Shabbat has Begun?

The question then emerged if we may assume that the Eruv was completed before Shabbat. Perhaps we may argue that since we are dealing with a doubt (Safeik) regarding a rabbinic prohibition we may be lenient. This, however, is subject to great dispute as to whether we may rely on the principle of Safeik

D'Rabanan L'Kula when there is a Chezkat Issur (a status quo of being prohibited). The Aruch HaShulchan (Yoreh Dei'ah 110:106) rules that when there is a Safeik as to whether an act occurred that would render the situation permissible (such as ours), one must rule strictly.

Conclusion

I advised the Cambridge community to announce that one should refrain from relying on the Eruv on that particular Friday evening as there is a Safeik as to whether the Eruv repairs were completed. However, on Shabbat day I felt they may rely on the Eruv since we can safely assume the Eruv repairs were completed.

A benefit from declaring the Eruv down that Friday evening was to remind the community of the prohibition of Hotza'ah (carrying) and the need for regular Eruv inspection and maintenance (Shelo Tishtakach Torat Eruv, Eruvin 59a and Rashi ad. loc. s.v. V'Shel Rabbim).