



Overview

Halacha Highlight

Tel hamislaket

Shulchan Aruch Siman 345 Seif 2

וכן תל גבוה עשרה

And similarly, a mound that is ten *tefachim* high

Shulchan Aruch (סעי' ב') defines a private domain as follows. If an area is surrounded by walls that are ten *tefachim* high and the area inside is at least 4 *tefachim* by 4 *tefachim*, the area inside is a private domain. Similarly, a ditch that is ten *tefachim* deep and contains four *tefachim* by four *tefachim*, the area inside of the ditch is categorized as a private domain. The last case mentioned by Shulchan Aruch is a mound that contains at the top four *tefachim* by four *tefachim* and the mound must rise to a height of ten *tefachim*. Mishnah Berurah (סקי"ה) points out that it is not necessary for the side of the mound to be vertical. If the mound slopes to a height of ten *tefachim* within a span of four *amos* it is considered as though it is a vertical wall and the area on top is a private domain. This type of *mehitza* is called *tel hamislaket*.

There is a debate regarding the mechanics behind considering a slope a *mehitza*. Sha'arei Tziyon (סי' ד') writes that the *mehitza* is the vertical line that follows the slope and we imagine as though the slope does not exist. Rav Chaim Soloveichik (על הרמב"ם הלי סוכה פי"ד הי"א ד"ה אכ"ך) explains that the mound is seen as a composite of small steps, each one adding some height. The novelty of considering *tel hamislaket* as a *mehitza* is that it is acceptable to combine different parts of a *mehitza* into a single entity. Chazon Ish (אור"ח סי' קי"ח סקי"ט) contends that the slope is merely a *mehitza* that slopes and the novelty is that it is not necessary for a *mehitza* to stand perfectly vertical. Regarding the status of the slope, when the mound is surrounded by a public domain, the Biur Halacha (בי"ד ד"ה בענין) writes that it is subject to debate. According to Ramban and Ritva the slope is considered part of the public domain whereas according to Tosafos and Rashba it is categorized as a *karmelis* unless the area is used by the public to unload their packages, in which case they would agree that it would be considered a public domain.

Siman 345 Seif 3:

The top of walls that surround a private domain are also considered a private domain even if they are not four *tefachim* wide.

- ❖ Since they create a private domain the walls themselves should certainly be categorized as a private domain. (M.B. 8)

Siman 345 Seif 1:

There are four domains for Shabbos, a private domain, a public domain, a *karmelis* (An acronym of the words כר and למ, meaning, neither wet nor dry, rather in between. Similarly, it is a domain that is neither a private domain since it lacks walls nor is it a public domain since it does not resemble the encampment in the wilderness being that it is not designed for public traffic) and a *makom patur*.

- ❖ Transferring an item from one domain to another is Biblically prohibited the same as the other *melachos* and Chazal cited a *pasuk* that proves this correct. The prohibition is violated whether one transfers something from a private domain to a public domain or from a public domain to a private domain. It is Biblically permitted to transfer items to and from a public or private domain and a *karmelis* but Rabbinically it is prohibited. It is permitted even *l'chatchila* to and from a public or private domain to a *makom patur*. (Introduction)

Siman 345 Seif 2:

What is a private domain? An area surrounded by ten *tefachim* tall walls that contains four by four *tefachim* or more. Similarly, a ditch that is ten *tefachim* deep and four *tefachim* by four *tefachim* is a private domain as is a mound that is ten *tefachim* tall and four *tefachim* by four *tefachim* wide. Some maintain that an area is a private domain only when one draws a square around a diamond that is four *tefachim* by four *tefachim*.

- ❖ *Seif 19* indicates that the thickness of the walls do not count towards the 4 x 4 *tefachim*. A minority of *Poskim* maintain that the thickness of the walls does count towards the 4 x 4 *tefachim*. Elya Rabba writes that if the walls are thick enough that one could use the top of the walls, they count towards the 4 x 4 *tefachim*. Later authorities write that this discussion relates to whether the top of the wall is considered a private domain but all opinions agree that the space between the walls must be 4 x 4 *tefachim*. (M.B. 3)
- ❖ If the mound or wall are less than ten *tefachim* the area is not a private domain, even if they are very wide. Even if the wall is sloped but rises to a height of ten *tefachim* over the course of 4 *amos* (*tel hamislaket*), it is considered as though it is straight. (M.B. 5)
- ❖ An area is not a private domain unless it includes the diagonal so that each side is actually 5 & 3/5 *tefachim*. Levush does not mention this opinion and Elya Rabba explains that he did so since it is a minority opinion. (M.B. 6)