The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Thurs, Aug 15 2024 ■ י"א אב תשפ"ד
סימן שמ"ה סעיף ד'-ו'

Overview

Siman 345 Seif 4:

Cavities in the wall of a private domain that face the private domain are considered part of the private domain. If they are on the outside and do not open to the inside, their status is determined by their height and width as will be explained in *seif* 13.

- Even if the cavity extends from one end to the other, as long as it opens on the private domain side, it is considered part of the private domain. Therefore, an item may not be taken from there to a public domain or a *karmelis*. Tosafos contends that if the hole is not 4 x 4 *tefachim* one is not liable if he places an object from the public domain in this cavity but others disagree. (M.B. 9)
- Shulchan Aruch implies that this is true even if the cavity is lower than ten *tefachim*. Elya Rabba, however, writes that there are Rishonim who maintain that when it is below ten *tefachim* it is considered a hole belonging to the public domain. (M.B. 10)
- If it is ten *tefachim* tall and four *tefachim* wide it is a private domain but if it is not ten *tefachim* wide but is four *tefachim* wide it is a *karmelis* and if not, it is a *makom petur*. (M.B. 11)

Siman 345 Seif 5:

The airspace of a private domain, up to the sky, is all part of the private domain.

- This is relevant if one threw an object from the public domain and it landed on a post that is 100 *amos* tall standing in the private domain. (M.B. 12)

Siman 345 Seif 6:

If a utensil, e.g., a box, closet or basket, is large enough to contain 4 x 4 *tefachim* and is ten *tefachim* high, it is a private domain.

- Meaning the inside and outside of the utensil. If the utensil resting in the public domain is not ten *tefachim* it is considered the public domain since a utensil cannot be a *karmelis*. If it rests in a *karmelis* it is also considered a *karmelis* since it is subordinate to the area that surrounds it. A utensil fastened to the ground is considered a *karmelis* even if it rests in the public domain. (M.B. 16)

Halacha Highlight

Cavities in a wall that surrounds the private domain

Shulchan Aruch Siman 345 Seif 4

חורים שבכתלי רשות היחיד

Cavities that are in a wall surrounding a private domain

Shulchan Aruch (סעי' ד') discusses the status of a hole in the wall that surrounds a private domain. He rules that when the hole faces the private domain, the hole is categorized as part of the private domain. Mishnah Berurah (סק"ט) explains that even when the hole faces the public domain, as long as it also faces the private domain, it is considered part of the private domain. Consequently, it is prohibited to move an object that was at rest in the hole to the public domain or even to an adjacent *karmelis*.

Poskim debate the *halacha* of the following circumstance. There is a ledge beneath a window that is within ten *tefachim* of the ground. One lifts an object from the public domain and places it on that ledge. Even HaOzer (סי' שנ"ג סע' ב') contends that the person who does this violated the Rabbinic prohibition of transferring an object from the public domain to a *karmelis*. Although Biblically this ledge is considered a cavity connected to the private domain, nevertheless, Rabbinically since it is open entirely to the public domain it is a *karmelis*. This is similar to an area that Biblically is a private domain but one of the sides is completely breached to the public domain which is Rabbinically treated as a *karmelis*. Magen Avrohom (סי' שנ"ג סק"ד) disagrees and contends that since the ledge is categorized as a cavity adjacent to the public domain, the fact that they are open entirely to the public domain does not diminish their status. Shulchan Aruch implies that if the discussion was not about ledges but rather about the cavity itself, it would retain its status as a cavity adjacent to a private domain and it would be permitted to place an object taken from a private domain and place it in such a cavity even though on the public domain side it is open completely to the public domain.