The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שמ"ה סעיף ט'-י'

Overview

Siman 345 Seif 9:

When alleyways are thirteen and a third *amos* wide and the two ends open to the public domain that is sixteen *amos* wide, there are authorities who maintain that the alleyway is categorized as a public domain.

- It is wide enough for the public to use it and it is open on both ends to the public domain so that it can be considered part of the public domain. (M.B. 26)
- People travel from one public domain to another via the alleyway. In *siman* 364 when it is not considered a public domain it refers to where the alleyway is not thirteen and a third *amos* wide or where the public domain is not regularly used to access the alleyway since it is out of the way as opposed to here where the public domain leads directly to the alleyway. (M.B. 27)

Siman 345 Seif 10:

If something in the public domain is not (three) ***tefachim* high, it is part of the public domain, even if it is thorns or feces so that people do not walk upon it. If it between three and nine *tefachim* but not yet nine *tefachim* and contains area that is four *tefachim* by four *tefachim* it is a *karmelis*. If it is less than four *tefachim* by four *tefachim* it is a *makom petur*. If it is exactly nine *tefachim* and people unload things on it, it is considered a public domain even though it is not four *tefachim* wide. There is an opinion that maintains that as long as it is between nine and ten *tefachim* high, it is considered a public domain even though it is not four *tefachim* wide. If it is higher than ten *tefachim* and is four *tefachim* wide it is a private domain but if it is not four *tefachim* wide it is a *makom petur* even though there is a place that can be carved to complete its width to four *tefachim*.**

- Something smaller than three *tefachim* is not considered an independent domain and is subordinate to the public domain that surrounds it. (M.B. 28)
- Even if one side is wider than four *tefachim* it is not added to the side that is less than four *tefachim* since we require at least a square of four by four *tefachim*. (M.B. 30)
- If it is taller than nine *tefachim* it is not a public domain even if it is four by four *tefachim*. (M.B. 32)
- If it is not used by people to adjust their load it is not considered a public domain even though it is fit for that purpose. (M.B. 33)
- Even though an area that is not four by four *tefachim* is not considered a separate domain, since people adjust their load on this it is considered a public domain. (M.B. 34)
- *Halacha* follows the first opinion since that represents the majority opinion. (M.B. 36)
- For example, the post is adjacent to a wall so that the wall could supplement the necessary space to be four by four *tefachim*. (M.B. 38)

Halacha Highlight

Erecting a wall in the public domain

Shulchan Aruch Siman 345 Seif 9

יש אומרים שהוא רשות הרבים

Some authorities maintain that it is a public domain

Shulchan Aruch (סעי' ט') addresses an alleyway that is thirteen and a third *amos* wide with both ends open to the public domain that is sixteen *amos* wide. He writes that there are authorities who maintain that the narrow alleyway is categorized as a public domain. Biur Halacha (ד"ה יש אומרים) writes that Shulchan Aruch chose to present this ruling with the words יש אומרים since there are authorities who maintain that in this configuration the alleyway is not categorized as a public domain. Nevertheless, this position is not a position held by only one authority being that other authorities cite this ruling.

The rationale behind this ruling is that since it opens to the public domain on both sides and the public passes through the alleyway so that it is used in a similar manner as the public domain, it is categorized as a public domain. Mishnah Berurah (ס"ק כ"ז) then notes that in *siman* 364 Shulchan Aruch rules that an alleyway that opens on both ends to public domains is not categorized as a public domain which seemingly contradicts this ruling. He suggests that the ruling there must be referring to where the alleyway is not thirteen and a third *amos* wide or to where the alleyway opens to the side of the public domains so that traffic does not penetrate into the alleyways being that it requires a the traveler to change the course of his path.

In the event that one placed boards along the width of a public domain so that the area between the boards is even less than thirteen and a third *amos*, all opinions agree that it does not lose its classification as a public domain. Although there is a dispute whether traffic nullifies the private domain created by פסי ביראות, in this case that there are two boards rather than four all opinions would agree that the traffic nullifies the walls and they are considered non-existent.