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

Overview

Siman 345 Seif 11:

If there is a pit in the public domain but it is less than three *tefachim* deep it is part of the public domain. If it is between three and ten *tefachim* deep and is four *tefachim* wide it is a *karmelis* but if it is less, it is a *makom petur*. If it is ten *tefachim* deep it is a private domain, provided that it is four *tefachim* wide.

- It remains a private domain even if filled provided that one can still discern the walls, e.g. if it is filled with water, but if the walls cannot be discerned, e.g. it is filled with fruit, it is not a private domain. Rashba contends that only fruit that cannot be moved nullifies the walls. (M.B. 41)
- If it is not four *tefachim* wide it is a *makom petur* even if it is twenty *amos* deep. (M.B. 42)

Siman 345 Seif 12:

The public domain occupies ten *tefachim* of height but higher than that is *makom petur*.

- If one throws something sticky from a public domain and it landed on a wall, if it is higher than ten *tefachim* he is exempt but if it is below ten *tefachim* he is liable. (M.B. 43)
- The space higher than ten *tefachim* is not even a *karmelis*. If one inserted a pole in the public domain and placed a utensil that is ten *tefachim* high and four *tefachim* wide, it is considered a private domain even though the area beneath it is a public domain. (M.B. 44)

Siman 345 Seif 13:

If a cavity in a wall faces the public domain but is higher than three *tefachim* it is not part of the public domain and instead its status is determined by its dimensions.

- The cavity does not open to the private domain. (M.B. 45)

Halacha Highlight

Covering a public domain

Shulchan Aruch Siman 345 Seif 12
אבל למעלה מעשרה הוי מקום פטור
But above ten *tefachim* is considered a *makom petur*.

Shulchan Aruch (סעי' י"ב) rules that the public domain does not extend higher than ten *tefachim* above street level. The area that is more than ten *tefachim* above street level is categorized as a *makom petur*. Mishnah Berurah (ס"ק מ"ג) writes that a practical difference for this matter is whether one is liable if he would throw an object that stuck to the wall. If the object landed on the wall within ten *tefachim* of the ground, since it is considered as though it landed in the public domain he is liable but if it landed on the wall higher than ten *tefachim* from street level he would be exempt since it landed on a *makom petur*. Sha'ar Hatziyun (ס"ק מ"ז) notes that *l'chatchila* it is prohibited to throw the object even with the intent that it will land higher than ten *tefachim*. This is due to the concern that it will fall to the ground thus completing the act of transporting the item four *amos* in the public domain.

Mishnah Berurah (ס"ק מ"ד) writes that if one would insert a tall pole into the public domain and on the top of the pole was a utensil that is ten *tefachim* tall and four *tefachim* wide, although the area beneath it is a public domain, the utensil constitutes a private domain and if one throws something from the public domain and it lands on that utensil he is liable. Although we learned (סעי' ז') that a public domain that is covered with a roof is not categorized as a public domain, one could suggest that a small covering that is even less then four *tefachim* (once the area of the pole is subtracted) does not detract from the area being classified as a public domain. It is also possible that a covering that is temporary does not change the status of a public domain (34 אות דרשו מהד' מ"ב).