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Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שמ"ה סעיף ט"ו-ט"ז

Overview

Siman 345 Seif 15:

If the inside of a house is not ten tefachim tall but together with the roof it is ten tefachim and it contains four by four tefachim, the inside is a karmelis and the top is a private domain. If one carves out a four tefach by four tefach square, even if it is in the middle and distant from one of the walls, the entire inside is considered a private domain.

- If the inside is not four *tefachim* by four *tefachim*, it is not categorized as a *karmelis*. (M.B. 59)
- Meaning, even though the carved out area is more than three *tefachim* from the wall so that *lavud* does not apply, it is considered a private domain. The area beyond thecarve out is considered a cavity adjacent to the public domain and treated like a private domain. The implication is that if the wall were not ten *tefachim* tall on the outside, the inside would not be considered a private domain unless the carve out is within three *tefachim* of the walls but Elya Rabba is uncertain about this matter. (M.B. 63)

Siman 345 Seif 16:

If the roof extends over the walls of a house so that the walls are not visible to those that stand on the roof, the roof is a karmelis even if it is tall and very wide. If a skylight from the house opens to it, it is categorized as a private domain. Similarly, if a ledge protrudes from a wall and contains an area of four by four tefachim, it is a karmelis unless a window from the house opens to it.

- A roof is a private domain only if the walls are visible so that we can apply the principle of גוד אסיק but when they are not visible it is prohibited to carry beyond four *amos* since the area is categorized as a *karmelis*. (M.B. 65)
- The roof is a *karmelis* only up to the height of ten *tefachim*. Elya Rabba and others maintain that a *karmelis* never extends higher than ten *tefachim* above ground level and thus the roof and ledge would never be categorized as a *karmelis* if it is more than ten *tefachim* above ground level. (M.B. 66)
- The roof is thereby considered a cavity adjacent to a private domain. (M.B. 67)
- Since the ledge does not have a surrounding wall it is considered a karmelis. (M.B. 68)
- The ledge is thereby categorized as a cavity adjacent to a private domain. (M.B. 69)

Halacha Highlight

A *karmelis* higher than ten *tefachim*

Shulchan Aruch Siman 345 Seif 16

ואפילו הוא גבוה

Even if it is very high

Shulchan Aruch (סע' ט"ז) discuss the status of a roof whose walls are not visible to one standing on the roof. He rules that when the walls are not visible we cannot apply the principle of גוד אסיק מחיצות—we extend the walls upwards, and consequently, it is treated like a *karmelis*. Shulchan Aruch then adds that this is true even if the roof is high and wide. The possibility of having a *karmelis* higher than 10 *tefachim* above ground level is actually subject to debate. Tosafos (עירובין פ"ט:) argues that the Gemara's statement that a *karmelis* does not extend higher than ten *tefachim* is absolute and ledges or rooftops that are higher than ten *tefachim* from the ground are categorized as a *makom patur* rather than a *karmelis*. Rosh (פ"ט עירובין סי' ב') contends that the Gemara's statement is limited to a *karmelis* that is on ground level but if there is an area that contains four *tefachim* by four *tefachim* it is categorized as a *karmelis* even though it is higher than ten *tefachim* from ground level.

Shulchan Aruch obviously, ruled in accordance with Rosh's position. Mishnah Berurah (ס"ק ס"ו) therefore, explains that Shulchan Aruch's statement below (סע' י"ח) that a *karmelis* only extends to a height of ten *tefachim* is limited to where the *karmelis* is on ground level but when the area is a roof top, it is categorized as a *karmelis* even though it is more than ten *tefachim* above the ground but does not extend more than ten *tefachim* higher than the roof. Mishnah Berurah then notes that Elya Rabba and Vilna Gaon points out that many authorities disagree with Rosh's position and lean towards the view of Tosafos that a *karmelis* will never be higher than ten *tefachim* above ground level. Mishnah Berurah's language below (סי' שנ"ג סק"ח) seemingly indicates that he subscribes to the view that there is no such thing as a *karmelis* higher than ten *tefachim* above ground level.