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

Overview

Siman 345 Seif 17:

Cavities adjacent to a karmelis are not part of the karmelis, instead their status is determined by their height and width.

- Shulchan Aruch refers to cavities that open to a karmelis, for example, a wall that has cavities that are adjacent to open fields but do not open on the private domain side. (M.B. 70)
- If it contains four by four tefachim and is between three and ten tefachim tall, it is a karmelis but otherwise it is a makom petur. If it is less than three tefachim tall, even though it does not contain four by four tefachim it is a karmelis since it is subordinate to the adjacent ground. (M.B. 71)

Siman 345 Seif 18:

A *karmelis* cannot contain less than four by four *tefachim* and extends only to a height of ten *tefachim*. Higher than that is *makom patur*. Seas and rivers are measured from the surface of the water, therefore, from the surface of the water to a height of ten *tefachim* is considered *karmelis* and above that is *makom patur*. A pit located in a *karmelis* is a *karmelis* regardless of the depth of the pit unless it is four by four *tefachim* wide since there cannot be a *makom patur* in a *karmelis* as we will explain shortly.

- It has the leniency of a public domain that it only extends to a height of ten tefachim as well as the leniency of a private domain that it must be at least four by four tefachim but if it is smaller than that it is a makom patur. (M.B. 73)
- If one took an item that was at rest more than ten tefachim above the ground of a karmelis, it is treated as though it was taken from a makom patur. (M.B. 74)
- It is permitted to take water from the surface and transport it more than four amos if it is transported more than ten tefachim above the surface since that area is a makom patur. (M.B. 77)
- If the pit was located in a public domain and was not four by four tefacim it would be considered makom patur. (M.B. 78)
- In such a circumstance it is a private domain. (M.B. 80)

Siman 345 Seif 19:

A *makom patur* is less than four by four *tefachim* and its height is from three *tefachim* until the sky. The same is true concerning a hole that is not four by four *tefachim* wide and is at least three *tefachim* deep. An area surrounded by walls at least three *tefachim* tall and does not contain four by four *tefachim* is also a *makom patur*. This applies when these areas are located in a public domain but if they are in a *karmelis* these areas adopt the status of the surrounding *karmelis*. Some authorities disagree and contend that there is no difference between a public domain and *karmelis* regarding this matter but if located in a private domain, all agree that it is a private domain.

- It must have at least a four by four tefach square. (M.B. 81)
- It should say, "It three tefachim deep or more." (M.B. 83)
- Above ground a karmelis does not extend higher than ten tefachim but in the ground it extends as deep as the hole. (M.B. 86)
- Authorities follow the first opinion. (M.B. 87)

Halacha Highlight

Makom patur

Rema Siman 345 Seif 19

וכל זה דוקא בעומד ברשות הרבים

This applies when it is located in the public domain

Shulchan Aruch (סע' י"ט) describes the characteristics of a *makom patur*. After presenting its defining characteristics, Rema writes that such an area is categorized as a *makom patur* only if it is located in a public domain but if such an area is located in a *karmelis* we consider that area to be part of the surrounding *karmelis* and shares those same *halachos*. He then notes that there are authorities who disagree and maintain that there is no distinction between a public domain and a *karmelis*. Rashi (שבת ז.) explains that logically there must be such a thing as a *makom patur* in a *karmelis* because otherwise, it would emerge that we treat a *karmelis* more stringently (in that there is no *makom patur*) than a public domain (which can have a *makom patur*). Mishnah Berurah (ס"ק פ"ז) writes that later authorities follow the first view that there is no such thing as a *makom patur* in a *karmelis* but in Biur Halacha (ד"ה ויש חולקין) he acknowledges that there are other authorities who agree with Rashi and thus the opinion could be followed in a pressing circumstance.

Rema rules that when an area that has the characteristics of a *makom patur* and is surrounded by a private domain, all authorities agree that it is treated as part of the private domain. The reason is that any area within a private domain is subordinate to the private domain (מ"ב ס"ק פ"ז). If an area that has the characteristics of a *makom patur* is surrounded by private domain on three sides and on the fourth side is a public domain, Chazon Ish (או"ח סי' ע"ג סק"ו) rules that the area has the status of a *makom patur*. The rationale is that when an area is completely surrounded by private domain the possible *makom patur* area is not considered to be an independent and distinct area. However, when on the fourth side it is adjacent to a public domain, there is no reason it should be subordinate to the private domain and thus is independent and treated as a *makom patur*.