The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שמ"ח סעיף א'

Overview

Siman 348 Seif 1:

If one was standing in a private domain and stretched out his hand that was filled with fruit to the public domain and within ten *tefachim* of the ground – if it was done inadvertently, it is permitted for him to return his hand to his courtyard but it is prohibited to place it in another courtyard. If he did this intentionally, it is prohibited for him to return his hand even to his own courtyard. Some maintain that this is true if he stretched out his hand before Shabbos but if he stretched out his hand after Shabbos began, it is permitted for him to take back his hand due to the concern that he will throw down the contents in his hands and become liable to offer a Chatas. This is true if he extended his hand to a public domain but if he extended his hand to a *karmelis*, in all cases he may pull back his hand.

- Higher than ten *tefachim* is *makom patur* and he would be permitted to pull back his hand even if he extended it intentionally. (M.B. 1)
- His intent to remove the item from his courtyard was fulfilled and we are concerned that another time he will drop it in the public domain. Some maintain that if his original intent was to drop it in the public domain it is permitted to deposit it in another private domain. (M.B. 4)
- He must hold it in his hand until dark. (M.B. 5)
- Meaning, to the same courtyard. (M.B. 7)
- Since it was intentional he will not have to offer a Chatas, rather the concern is that he will perform an action that could make one liable to offer a Chatas if it was done inadvertently. In contrast, if he removed the item before Shabbos he would not be liable since the lifting was performed before Shabbos. Elya Rabba subscribes to the lenient position since that is the majority opinion. (M.B. 8)
- Whether intentionally or whether inadvertently but it may only be returned to the same courtyard, not to another courtyard. Gra prohibits placing it in a *karmelis* and treats it the same as a public domain. If one lifted one side of a stick and then flipped it to the other side so that both sides were not lifted at the same time he is exempt. If he drags the item four *amos* he is liable since rolling something is comparable to lifting it. (M.B. 10)

Halacha Highlight

Stretching one's hand from a private domain to the area above a public domain

Shulchan Aruch Siman 348 Seif 1

והוציא ידו מלאה פרות לרשות הרבים בתוך עשרה

He stretched out his hand that was filled with produce to the public domain within ten *tefachim* of the ground

Shulchan Aruch discusses someone who was standing in a private domain and stretched out his hand that was filled with produce into the public domain, meaning within ten *tefachim* of the ground. The issue is whether he is permitted to bring back his hand or not. The *halacha* depends on whether he did so intentionally or not and whether he stretched out his hand on Shabbos or whether he stretched out his hand before Shabbos. Mishnah Berurah (סק"א) notes that Shulchan Aruch emphasized that the question must refer to a circumstance in which one stretched out his hand within ten *tefachim* of the ground since if it was stretched out above that into the area that a *makom patur*, he would certainly be permitted to bring his hand back into the private domain where he is standing even if he stretched out his hand intentionally.

Biur Halacha (ד"ה בתוך עשרה) cites Tosafos (שבת ג: ד"ה כאן) who maintains that it is permitted even *l'chatchila* for one to stretch out his hand into the *makom patur* that is above the public domain. However, Rashba (בחידושיו שם) rejects Tosafos' position and prohibits one from stretching out his hands higher than ten *tefachim* out of concern that he will stretch out his hands within ten *tefachim* which would be prohibited. He also points to Pri Megadim who references Rashi who also maintains that although it is permitted to transport an item from a private domain to a *makom patur* one may not stretch out his hand to the *makom patur* that is airspace above the public domain. Tangentially, he expresses surprise that Pri Megadim did not mention the Rashba who discusses this issue explicitly. In practical terms this means that a person standing on his balcony may not stretch out his hand holding an item above the public domain that is beneath it.