The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Monday, Oct 28 2024 ■ כ"ו תשרי תשפ"ה
סימן שנ"ב סעיף א'-ג'

Overview

Siman 353 Seif 1:

If there are two houses on opposite sides of the public domain which belong to one person, or two people who made an *eruv*, it is permissible to throw items from one to the other provided that they are on an equal plane. If one is higher than the other it is prohibited to throw from one to another unless the item is earthenware or something similar so that if it falls, it will break. These parameters apply when it is a public domain that passes between them but if it is a *karmelis* it is permitted in all circumstances.

- Since they are on the same plane it is unnecessary for him to train his hand to throw in a manner in which the item will not fall to the ground. (M.B. 2)
- The item must remain higher than ten *tefachim* from the ground so that it goes from one private domain to another via *makom patur*. (M.B. 3)
- The concern is that it will fall to the ground and someone will transport it inside one of the houses. (M.B. 4)
- Since the prohibition of transporting from a *karmelis* is only Rabbinic, Chazal did not make an injunction. (M.B. 5)
- Even if one is higher than the other provided that they made an *eruv*. (M.B. 6)

Siman 353 Seif 2:

If a ledge projects from a wall over the public domain and is higher than ten *tefachim* above the ground, contains an area of four *tefachim* by four *tefachim* and has a window that opens to it, it may be used on Shabbos. If there are two ledges, one above the other that belong to two different people, even though both are higher than ten *tefachim* if the upper ledge, in front of the window is four *tefachim* by four *tefachim*, it is prohibited to use it since it is an independent domain and the ledge beneath it is an independent domain and they prohibit one another. If neither contains four by four *tefachim*, it is permitted to use them both as well as the entire wall until the last ten *tefachim* above the ground. If the lower one contained four *tefachim* but the upper one did not, one may only use the part of the upper one that is directly in front of the window but the ends that extend past the window may not be used since the ledge beneath it constitutes its own domain.

- It is certainly permitted if the ledge extends over a *karmelis*. (M.B. 7)
- If the ledges are within three *tefachim* of one another, it would certainly be permitted but even if they are a distance from one another they are considered a *makom patur* provided that they are higher than ten *tefachim*. The implication is that if it was within ten *tefachim* of the ground it would be prohibited to use since the people in the public domain could easily use it and it would be considered a *karmelis* rather than a cavity adjacent to a private domain. (M.B. 8)
- Shulchan Aruch refers to utensils that will break if they fall and even if the ledge does not contain four by four *tefachim* it is permitted to use it even though it is likely for items to fall from the ledge. (M.B. 9)
- If they belong to one person or two people who made an *eruv* it is permitted. (M.B. 10)
- Objects that were on the ledge during *bein hashemashos* may be transported from one ledge to the other. (M.B. 11)
- There is a dispute whether it is permitted to use the lower ledge. There is also a dispute whether the lower edge prohibits use of the upper ledge if the lower ledge is smaller than four by four *tefachim*. (M.B. 12)
- And thus it is prohibited to use even the lower ledge. According to the lenient opinion referenced above this would be permitted. (M.B. 14)

Siman 353 Seif 3:

When a ledge extends over a public domain in a manner in which it is permitted to use it, it is only permitted to place or remove items such as earthenware, glass or the like that will break if they fall but it is prohibited to use other utensils out of concern that if they fall he will go to retrieve them. This is true only for a ledge but regarding something wide such as a roof where one can stand on it and make use of it, it is permitted to use any type of utensil. **If a single ledge extends over the airspace of a *karmelis* and is more than ten *tefachim* from the ground, it is permitted to use it, whether it is wide or narrow and even with utensils that will not break since Chazal did not prohibit the use of a ledge that is above a *karmelis*.**

Halacha Highlight

A ledge within ten *tefachim* of the public domain

Shulchan Aruch Siman 353 Seif 2

למעלה מעשרה

Higher than ten *tefachim*

Shulchan Aruch (סעי' ב') discusses a ledge that extends over a public domain. He writes that if the ledge is more than ten *tefachim* above the public domain, contains an area of at least four *tefachim* by four *tefachim* and a window opens to the ledge, it is permitted to use the ledge. Mishnah Berurah (סק"ח) explains that when the ledge is within three *tefachim* of the window it is certainly permitted to use the ledge since it is considered a cavity adjacent to a private domain and is thus assigned the status of a private domain. Moreover, even if it is more than three *tefachim* from a window it is permitted to use the ledge because anything more than ten *tefachim* above the public domain is considered *makom patur*.

Mishnah Berurah (שם) notes that Shulchan Aruch's presentation of this *halacha* makes it obvious that if the ledge is within ten *tefachim* of the ground one may not use the ledge. Furthermore, even if there is a window within three *tefachim* of the ledge, it may not be used. The reason is that when the ledge is within ten *tefachim* of the ground it is available for the public to use and thus it cannot be considered a cavity adjacent to a private domain and is instead assigned the status of a *karmelis*. As such, it is prohibited to move items from the window (private domain) to the ledge or from the public domain to the ledge (ע' שער הציון סק"ז). Even HaOzer contends that Biblically the ledge is considered a private domain and someone who transports an object from the public domain to the ledge is liable. Chazal, however, prohibited transporting items from a private domain to the ledge since it is completely open to the public domain. Chazon Ish (מכתב הנדפס בספר שערי לימוד) questions this explanation since the restriction that is generated when something is open to another domain results from the absence of partitions but a cavity adjacent to a private domain is treated like the private domain because it is subordinate to it and thus partitions are not necessary.