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Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שנ"ה סעיף א'

Overview

Siman 355 Seif 1 (a):

If a platform (A board or structure that extends in front of houses) **that is above water and a window opens to it from a house, it is prohibited to draw water from it unless one constructs a partition around the edge of the platform. Alternatively, one may construct a partition around the hole through which water is drawn provided that it is four *tefachim* by four *tefachim*. There is no difference whether the partition is located below the hole in the platform or above the hole in the platform. Once a partition is in place it is also permitted to pour out water through the hole. Similarly, one who travels by boat may not draw water unless he construct a board four *tefachim* by four *tefachim* and cut out a hole through which to draw the water. In this instance it is not necessary to also add partitions since we bend the edges downwards and then extend those "walls" to the water. This is a unique leniency that applies to a boat since one cannot take the same steps he takes in a house.**

- This would involve transporting the water from a *karmelis* to a private domain and thus it is necessary to construct a partition ten *tefachim* around the hole so that the area contained within the hole and downwards is categorized as a private domain. (M.B. 1)
- The platform is also considered a private domain since a window opens to it. (M.B. 2)
- The hole must be at least four *tefachim* by four *tefachim* because otherwise the walls around the hole would not be considered a *halachic* partititon. (M.B. 3)
- It would certainly be effective to construct a partition ten *tefachim* tall on the surface of the water. (M.B. 4)
- There are authorities who maintain that when the partitions are constructed around the hole on the platform they are not effective and one should, *l'chatchila* be stringent about this matter. (M.B. 5)
- Even though the waste water will flow beyond the area beneath the partitions that surround the hole, it is permitted since his intent is not to transport them to the public domain. (M.B. 6)
- Regarding a boat we look at the edges as if they bend and then extend them downwards employing two virtual *halachos*. (M.B. 9)

Halacha Highlight

A hanging partition above water

Shulchan Aruch Siman 355 Seif 1 (a)
בין אם יעשנה למטה
Whether it was made below the platform

Shulchan Aruch discusses the permissibility of drawing water from a platform that is located above water and there is a window from the house to the platform. The *halacha* is that one may not draw water to the platform unless there is either a partition constructed around the edge of the platform or a partition that surrounds the hole in the platform through which one draws water. Regarding the partition constructed around the hole in the platform, Shulchan Aruch writes that it doesn't matter whether that hole is below the platform, closer to the water or above the platform, further from the water. Mishnah Berurah (סק"ה) cites authorities who maintain that the partition around the hole must be below the platform, closer to the water, so that we can apply the principle of גוד אחית מחיצתא — we extend the edge of a partition down but that principle does not apply if the partition is on top of the ledge.

Mishnah Berurah (סק"א) wonders why such a partition is effective when generally *halacha* is that a suspended partition is not a valid partition. He answers that this represents a leniency that is applied to water. There are two explanations why a suspended partition is not valid. One approach is that when baby goats can walk beneath the partition it invalidates its function as a partition. Accordingly, the leniency with regards to water is that although it is possible for fish to swim beneath the hanging partition, it is nonetheless, valid (שו"ע הרב סע' י'). Chazon Ish (או"ח סי' ס"ח סק"י) rejects this position and contends that a hanging partition is not valid because a partition must begin at ground level and even if baby goats cannot go beneath it, the partition is invalid. Accordingly, the leniency of a hanging partition above water is that even though the partition does not extend down to the surface, it is a valid partition.