The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שנ"ה סעיף ב'-ג'

Overview

Siman 355 Seif 2:

A bathroom that is located above water may be used if it has suspended walls provided that the walls were constructed to permit use of the bathroom but if they were constructed to provide privacy for the bathroom they are ineffective for this purpose. If one added a board or reed within three *tefachim* of the bottom of the bathroom so that the excrement would fall on it before it hits the water, walls are not required since it constitutes transporting something via one's force into a *karmelis* and that is permitted. The same is true if the bathroom is constructed in a manner in which the waste hits the sides of the walls and then rolls and falls into the *karmelis*. If the board breaks on Shabbos it is permitted to use the bathroom on Shabbos due to the value of human dignity.

- The wall must be ten *tefachim* even though it does not reach the water. (M.B. 22)
- The wall was added to permit the use of the bathroom on Shabbos. (M.B. 23)
- Meaning it is within three *tefachim* of the hole so that it is connected by *lavud*. (M.B. 24)
- It is permitted to use the bathroom that Shabbos. (M.B. 25)

Siman 355 Seif 3:

If a bathroom extends beyond the wall of a city and excrement falls into a hole that is outside the city that contains more than 2 *beis se'ah* which is a *karmelis*, a hanging wall is not sufficient to permit its use since a hanging wall is only permitted above water but it is permitted if one uses a board since it involves the use of one's force into a *karmelis*. Some maintain that if the bathroom is more than ten *tefachim* above the bottom of the hole it is permitted since it involves transporting something from a private domain to a *karmelis* via a *makom patur* (See above *siman* 346 for authorities who disagree). Some maintain that if there was excrement there before Shabbos it is permitted in all circumstances since the excrement is a *makom patur* being that people do not trample upon it. See above *siman* 345 for authorities that differ and contend that there is no such thing as a *makom patur* in a *karmelis*. According to what was explained above in *siman* 345 that there is no *makom patur* in a private domain according to all opinions, if there is a bathroom located between two houses, it is prohibited to use the bathroom if they did not make an *eruv* or any other rectification before Shabbos as explained in *seif* 2 since in such a case it would be permitted since it would constitute a courtyard that does not have an *eruv* as mentioned below in *siman* 357. See below *siman* 376:4. The above is true *l'chatchila* but *b'dieved* if people forgot and did not make an *eruv* it is permitted due to the weight of the principle of human dignity. Those who travel by sea relieve themselves from the משוטה to the sea since the משוטה is not ten *tefachim* high it is considered a *karmelis* and this involves transporting from one *karmelis* to another.

- Since it was not enclosed for dwelling it is considered a *karmelis* and thus this would involve transporting from a private domain to a *karmelis*. (M.B. 26)
- The walls must reach the ground. (M.B. 27)
- The airspace above the *karmelis* is *makom patur* and the waste is going from a private domain to a *karmelis* via a *makom patur*. (M.B. 29)
- Some authorities prohibit transporting items from a private domain to a *karmelis* via a *makom patur*. Gra explains that this is due to the fact that it is not coming to rest in the *makom patur* between the private domain and the *karmelis*. (M.B. 30)
- One relieves himself directly onto the preexisting waste. (M.B. 31)
- Although generally, something less than three *tefachim* high is subordinate to the ground around it, since people do not trample on excrement it is not subordinate to the ground surrounding it and constitutes a makom patur. (M.B. 32)
- Rema is discussing a bathroom where the pit belongs to two people who did not make an *eruv* and thus it is prohibited since there is no *makom patur* in a private domain. (M.B. 33)
- Each bathroom is owned separately but the pit beneath is jointly owned and thus without an *eruv* it is prohibited. If the bathrooms are also jointly owned there is no transfer from one domain to another and would be permitted. (M.B. 34)
- The same is true if it was not possible to make the necessary rectification. (M.B. 37)
- From the boat to the sea is prohibited since that involves transporting from a private domain to a *karmelis*. If one has no alternative it is permitted out of concern for human dignity. (M.B. 39)

Halacha Highlight

A bathroom located above a body of water

Shulchan Aruch Siman 355 Seif 2

דהוה לה כחו בכרמלית ושרי

It involves his indirect force in a *karmelis* which is permitted

Shulchan Aruch (סע' ב') discusses a bathroom that is located above a body of water. Since the bathroom is considered a private domain and the water is a *karmelis,* relieving one's self would constitute a prohibited act of transporting from a private domain to a *karmelis*. Shulchan Aruch adds that if one constructed hanging partitions beneath the bathroom for the purpose of rendering the bathroom usable on Shabbos it is permitted. Alternatively, if one placed a board or reed within three *tefachim* of the opening so that that excrement will land on the board or reed before it rolls into the water it is permitted to use the bathroom and it is not even necessary to construct hanging partitions around the bathroom. Mishnah Berurah (ס"ק כ"ד) explains that when the board or reed is within three *tefachim* of the hole at the bottom of the bathroom, *lavud* considers that board or reed to be a cavity adjacent to the private domain and is assigned the status of the private domain. Therefore, the excrement is falling from one private domain to another which is permitted. Although the excrement will then fall into the water that is a *karmelis* that is not his concern since that step is happening indirectly from his force and we are lenient regarding the transporting of something by indirect force into a *karmelis*.

Interestingly, elsewhere (סי' שנ"ז סע' ג') Rema cites opinions that maintain that Chazal did prohibit transporting items by indirect force into a *karmelis* out of concern that it could lead to transporting objects in a public domain as well. Mishnah Berurah does not reference that opinion and provide guidance whether one should be stringent in accordance with that opinion. Shulchan Aruch HaRav (סע' י"א) does write that according to the stringent opinion one should not be lenient unless the *karmelis* is outside of the city. Chazon Ish (או"ח סי' ק"ג ס"ק כ"ח) asserts that all opinions agree that in this case it is permitted. His rationale is that the person does not intend for the excrement to fall into the *karmelis* and as far as he is concerned, it would be acceptable even if the excrement remains on the board.