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

Overview

Siman 356 Seif 1:

If a stream of water that is ten *tefachim* deep and four *tefachim* wide passes through a courtyard, one may not draw water from it on Shabbos unless one constructed a partition that is ten *tefachim* high at the entrance and exit and at least one *tefach* of that partition must be in the water. If most of the partition is in the water it is necessary to have a *tefach* rise above the water. If one started construction on a partition from each side but the two ends do not meet in the middle so that water should be able to pass in between, as long as they are not three *tefachim* apart it is permitted because of *lavud* but if they are three *tefachim* apart, it is prohibited. If the holes through which the water passes are not three *tefachim* wide, even a partition is unnecessary.

- If one has a pool of water in his yard that is completely enclosed by walls no additional rectification is necessary since it is part of the private domain. (M.B. 1)
- If it is not ten *tefachim* deep or four *tefachim* wide, it is subordinate to the private domain and an additional rectification is not necessary. (M.B. 2)
- The partitions that are added must appear as though they were added to permit drawing water. (M.B. 3)
- The partitions must be within the width of the stream. (M.B. 4)
- This is done to distinguish between the water inside and the water outside. (M.B. 5)
- Even if the other side is open more than three *tefachim* an additional rectification is not necessary since on one side it is considered completely closed. (M.B. 9)

Siman 356 Seif 2:

If a courtyard was breached and part of the sea passes through the breach, if it is not breached entirely and is not ten *amos* wide, it is permitted to draw water from it and bring it into one's house. If the side is breached entirely or if the breach is more than ten *amos* wide, if there remains remnants of the original partition that are ten *tefachim* tall but the water covers them, it is permitted to draw water into the yard but prohibited to transport that water into the house unless a partition ten *tefachim* tall was constructed over the water. If remnants of the original wall do not remain, it is prohibited to draw water even into the yard.

- This circumstance is more lenient since the water does not pass from one end of the yard to the other. Therefore, provided that it is not breached ten *amos* it is considered an entranceway. (M.B. 10)
- Meaning the entire partition on the side of the water was breached. (M.B. 11)
- If remnants remain it is considered as though the wall remains intact. (M.B. 12)
- The reason is that sometimes the water level drops and the partitions become visible. (M.B. 13)
- One must close the gap so that a separation of ten *amos* should not remain. (M.B. 14)
- Meaning remnants ten *tefachim* tall do not remain. (M.B. 15)
- If the part of the sea is ten *tefachim* deep, the wall of the sea constitutes a valid partition and it is permitted to carry in the yard but it is prohibited to draw water from the sea since there is no partition between the water in the yard and the sea that is beyond the yard. (M.B. 16)

Halacha Highlight

A stream that travels through a courtyard

Shulchan Aruch Siman 356 Seif 1

אמת המים העוברת בחצר

A stream of water that passes through a courtyard

Shulchan Aruch (סעי' א') addresses the circumstance of a stream of water that is ten *tefachim* deep and four *tefachim* wide and passes through a courtyard. He rules that one may not draw water from that stream on Shabbos unless he constructs a partition at the place where the water enters the yard and the place where it exits the yard. That partition must be a total of ten tefachim high with at least a tefach in the water and at least a tefach above the water. Mishnah Berurah (סק"ג) explains that the partitions serve to separate the water in the courtyard from the water outside the courtyard. Generally, whatever is contained in a courtyard is subordinate to it and is considered part of the private domain. However, since the water in this instance is connected to water outside of the courtyard, it is not subordinate to the courtyard and is considered a separate and distinct domain. He adds that even if the preexisting walls of the courtyard are in the water, they do not serve this purpose since partitions that were constructed specifically for this purpose are necessary.

Chazon Ish (או"ח סי' ק"ג סק"ז) cites authorities who maintain that when a body of water is between two courtyards it is necessary to have a partition in the water in order to divide the water into two parts so that we do not consider the water of one courtyard to be intermingling with the water of the other courtyard. Accordingly, in our case where the water is being separated from a *karmelis* rather than another courtyard, the same concern does not exist and it should not be necessary for the partition to be in the water. In fact, Shoneh Halachos (סעי' ג') writes that there is room for leniency in accordance with these opinions but Chazon Ish does write that one should be stringent when it is possible to comply with the stringent opinion.