



Overview

Halacha Highlight

Bais HaKnesses and Prison: Residential or not?

Shulchan Aruch Siman 358 Seif 1
כל הקף שלא הקף לדירה

Any enclosure that was not constructed for residential purposes

Shulchan Aruch introduces the Rabbinic injunction that applies to areas that were enclosed for non-residential purposes. He rules that one is not permitted to transport objects more than four *amos* in an enclosure that was not constructed for residential purposes if the area enclosed is larger than two *bais seah*, or 70 *amos* 4 *tefachim* by 70 *amos* 4 *tefachim*. Although any area enclosed by partitions that are ten *tefachim* tall is a private domain and Biblically one is permitted to transport things throughout the area, nevertheless Chazal prohibited transporting items more than four *amos* when the enclosure was not constructed for residential purposes since such an area resembles a public domain or a *karmelis*. Examples of areas that are subject to this injunction are gardens, orchards and huts erected for guards. Mishnah Berurah (סק"י"ד) explains that although such huts were constructed to provide the guard with a place to sleep, it is not considered an area enclosed for residential purposes. The reason is that the hut is there just to allow the guard to perform his job of watching the surrounding area that is not residential and thus the hut does not have independent significance.

Regarding the status of a *bais haknesses*, Pri Megadim (א"י"א סי' שס"ו סק"י) writes that if the *bais haknesses* is located within the city it is considered enclosed for residential purposes whereas if it is located outside of the city it is considered as though it was constructed for non-residential purposes. Chazon Ish (ארו"ח סי' צ"י ס"ק כ"ז וסי' ק"י סק"ב), on the other hand, contends that a *bais haknesses* is always considered an area enclosed for residential purposes. Aruch HaShulchan (סעי' ט"ו) writes that a prison is categorized as an area that was enclosed for residential purposes even though the prisoners are there against their will. He further explains that it is for this reason that a prison also requires a *mezuzah*. Interestingly, there is a disagreement between Noda B'Yehudah (מהדו"ת ארו"ח סי' מ"ז) and Chasam Sofer (ארו"ח סי' צ"ה) whether the definition of residential is the same for Shabbos as it is for *mezuzah*.

Siman 358 Seif 1:

If an area was enclosed for non-residential purposes, for example, gardens, orchards or huts which are constructed for guards, Chazal prohibited one from transporting items more than four *amos* if the enclosed area is larger than two *bais seah*. If the area is two *bais seah* which is 70 *amos* and four *tefachim* square it is permitted to transport items throughout the enclosure, regardless of whether it is square, circular or long and narrow provided that its length is not be double its width plus one *amah*. If the area was enclosed for residential purposes, even if it contains many *mil* it is permitted to carry throughout the area. See below *siman* 401 regarding the *halachos* of cities that were enclosed for residential purposes. Some maintain that a regular enclosure is assumed to have been constructed for residential purposes since commonly people open an entrance and the construct the enclosure. Some assert further that any enclosure adjacent to a person's house is considered enclosed for residential purposes since he has this in mind but others disagree.

- ❖ Even if it has a roof it is not considered residential since it was made for guarding the yard rather than for only residential purposes. (M.B. 4)
- ❖ Such a large enclosure that was not constructed for residential purposes resembles the public domain and a *karmelis* and thus one may not transport items more than four *amos*. (M.B. 5)
- ❖ As long as it does not have five-thousand *amos* there is no issue. (M.B. 9)
- ❖ Its length should not be more than 100 *amos* since it thereby resembles a public domain and a *karmelis*. (M.B. 11)
- ❖ This assumes that in total there is at least two *bais seah*. (M.B. 12)
- ❖ The house opens to it. (M.B. 14)
- ❖ Rema refers to where no one recalls if the enclosure was constructed before or after the houses. This is not an absolute rule and practically should be determined based on time and place. (M.B. 15)
- ❖ Anything close to the city is considered close to one's house, according to this opinion. (M.B. 16)
- ❖ Even according to this opinion they must have built the house and then enclosed the surrounding area. (M.B. 17)
- ❖ According to this opinion the same is true if the enclosure is directly adjacent to his home if he did not open the entrance before constructing the enclosure. Authorities subscribe to this view. (M.B. 18)