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Digest
Mishna Berura
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סימן שנ"ח סעיף ז'-ח'

Halacha Highlight

An enclosure that is swallowed into the ground

Shulchan Aruch Siman 358 Seif 8

בנה מחיצות על הראשונה

If one constructed a partition on the first one

Shulchan Aruch (סע' ח') continues to address different methods of addressing a circumstance in which an area was enclosed for non-residential purposes which will mean that one may not transport objects more than four *amos* within the enclosure. In this *seif* he discusses the effect of adding additional height to the existing wall. He rules that this does not transform the area into one that was enclosed for residential purposes since the additional height does not provide any benefit since the area was anyways enclosed. However, in the event that the lower part of the wall becomes swallowed into the ground so that the added height is now what encloses the area, it is now considered an area enclosed for residential purposes. Mishnah Berurah (ס"ק נ"ז) points out that it is not necessary for the lower part of the wall to be swallowed in the ground entirely, rather as long as ten *tefachim* of height do not remain from the lower part of the wall but with the added section the wall rises to a height of ten *tefachim*, the area can now be considered enclosed for residential purposes. Sha'ar HaTziyun (ס"ק נ"ה) notes that Rambam seems to disagree and would not consider an area enclosed for residential purposes if the new section adds only a small amount of height to the existing wall, but nevertheless, he contends that Rema's ruling in *seif* 2 proves the *halacha* correct.

Sefer Tosefes Shabbos (ס"ק כ"ב) writes that the *halacha* that an area is considered enclosed for residential purposes when the lower part of the wall is swallowed into the ground leaving the added, upper, section to enclose the area is true even if the lower part of the wall was absorbed on Shabbos. He explains that it is no different than the *halacha* (סי' שס"ב סע' ג') that a partition that was inadvertently constructed on Shabbos is considered a *mechitza*.

Overview

Siman 358 Seif 7:

If one added plaster to the original wall to minimize its space and it is thick enough that it could stand on its own, the space is effectively diminished but if not, it was not diminished.

- The added plaster must be at least ten *tefachim* tall and three *tefachim* thick. (M.B. 54)
- Some disagree and contend that even if it can only stand while attached to the wall it is effective and one could be lenient when necessary. If the space is not minimized it is certainly prohibited even though the plaster was added for residential purposes and is capable of standing on its own. (M.B. 55)

Siman 358 Seif 8:

If one constructed a partition on the existing partition so that it should now be considered enclosed for residential purposes, it is ineffective. If the lower part was swallowed and the upper part remains, the area is now considered enclosed for residential purposes. If there is a mound that contains space larger than two *beis seah* and he added partitions to the mound for residential purposes, it is effective since he is dwelling within the partitions that he constructed.

- The partitions were constructed for residential purposes but were not needed. Once the upper portion sunk into the ground the area is now enclosed for residential purposes. (M.B. 58)
- If one distanced the partition from the edge of mound three *tefachim* it is certainly effective. (M.B. 60)
- Even one partition constructed for residential purposes is sufficient. Furthermore, even that one partition need not run the entire length of that side and it is sufficient if it is more than ten *amos*. (M.B. 62)