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Digest
Mishna Berura
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סימן שנ"ח סעיף ט'

Halacha Highlight

A yard that has herbage growing

Shulchan Aruch Siman 358 Seif 9
אבל אם נזרע רבו
If one plants herbage in its majority

Shulchan Aruch discusses an area that is more than two *bais seah* that was enclosed for residential purposes and then one planted trees in that area. He rules that the presence of trees, even if there are many trees and they were not planted in rows, do not detract from the area retaining its status of being enclosed for residential purposes. Mishnah Berurah (ס"ק ס"ה) explains that people will commonly plant trees in their yard for the shade they produce and thus they are considered residential. However, if one planted herbage in the majority of the area, that herbage is not considered residential and as a result the entire area is now considered enclosed for non-residential purposes. The reason is that people do not dwell where there is herbage growing and the area is thus considered a garden rather than a residential yard.

Poskim debate whether the *halacha* that herbage nullifies an enclosure's residential status is limited to herbage that one planted intentionally or whether it also includes herbage which grew on its own. Teshuvas Imrei Yosher (ח"א סי' ק"ע) contends that herbage that grew on its own does not nullify the area's residential status and this is different than water that nullifies an area's residential status even if the water came on its own. The reason for the difference is that water makes the area uninhabitable altogether whereas it is possible, although with difficulty, to live in an area that contains herbage. Chazon Ish (או"ח סי' פ"ט סק"ז) writes that a *karpeif* is an area where people cannot walk and in his opinion it doesn't matter the cause of why one cannot walk in the area. Therefore, even if the herbage grew on its own the area loses its residential status. Similarly, if thorns grow in an area so that it is no longer possible to walk in that area, that area is no longer considered residential even though they grew on their own accord.

Overview

Siman 358 Seif 9:

If a *karpeif* more than two *seah* that was enclosed for residential purposes and then one planted numerous trees, even if they are not aligned in rows, they do not detract from its status of being for residential purposes. If one planted herbage over the majority of space it renders the area no longer residential, even if that area only contains two *bais seah*. If he planted on a minority of the space, if that area is not the size of two *bais seah*, it is permitted, if it is more than two *bais seah* it is prohibited.

- People commonly plant trees to enjoy their shade. (M.B. 65)
- People don't live where herbage is planted and the area is considered a garden. Consequently, it is prohibited to transport things even in the area that was not planted since it is subordinate to the majority of the area and it is treated as though the entire area is filled with herbage. (M.B. 66)
- Meaning, the area containing the herbage. Although an area that produces exactly two *seah* does not have to be enclosed for residential purposes, nevertheless, since the minority is subordinate to the larger, planted area, it is considered as though the entire area, which is larger than two *bais seah*, was planted. (M.B. 67)
- Together with the minority that was not planted there is an area larger than two *bais seah*. (M.B. 68)
- The same is true if he planted only 50% of the field. (M.B. 69)
- The minority cannot nullify the majority that was enclosed for residential purposes. (M.B. 71)
- The minority area is prohibited since it is larger than 2 *bais seah* and the herbage nullifies the partitions intended to enclose the area for residential purposes. (M.B. 72)