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

Overview

Siman 361 Seif 1:

If a roof is adjacent to the public domain and is not ten *tefachim* high when measured from the public domain but is ten *tefachim* high when measured from the yard, it is categorized as a public domain since people regularly use it. Consequently, it is prohibited for the homeowner to use it from his yard unless he affixes a ladder to it from his yard. What is considered an affixed ladder? One which remains in place during the week, as well as during Shabbos.

- If it was not ten *tefachim* from the yard, the presence of the ladder would not be effective since it would be considered an actual public domain and if people do not use it to adjust their loads it would be categorized as a *karmelis*. Affixing a ladder indicates that he is restricting the public from using his roof. If the roof is not more than ten *tefachim* high from either side but one dug into the floor so that internally it is ten *tefachim* high, there is a debate whether a ladder is necessary. (M.B. 1)
- It is permitted to transport things throughout the roof area. (M.B. 4)
- If the ladder is occasionally removed it is treated as though it is not there. (M.B. 5)

Siman 361 Seif 2:

If a yard's wall is breached fully or at least a length of ten *amos* to the public domain, the area where the wall stood is categorized as the "sides of the public domain" which is essentially a *karmelis*, similar to the yard. If the enclosure is breached in the corner, even if the breach is less than ten *amos* it is prohibited. Similarly, if a corner of a house is breached, even if less than ten *amos* and the roof is also breached so that all that remains is the sloped section, it is prohibited. If the breach is not in the corner we apply the principle of פי תקרה יורד וסותם, even if greater than ten *amos* provided that the roof is not sloped in which case it is does not have a mouth. Some maintain that the width of the beam must also be four *tefachim*. The principle of פי תקרה could be utilized even for two walls if there are two actual walls that are adjacent to one another rather than opposite one another.

- Although there is no separation between the yard and the public domain and consequently people enter and traverse the area, nevertheless, it is considered the "side of the public domain" and is treated like a *karmelis* and prohibited to transport items from there to the public domain. If it is a *karmelis* adjacent to the yard it would be permitted. One should be stringent concerning our public domains. (M.B. 6)
- It is permitted to transport items from the place of the wall to the yard since they are now both considered a *karmelis*. (M.B. 7)
- The Gemara implies that even if there are breaches of less than ten *amos* in multiple walls it is permitted, however, Tosafos writes that the physical wall must be greater than the open spaces in the walls because if that is not the case it is prohibited when there are breaches in two walls. (M.B. 8)
- If one constructed a *tzuras hapesach* and certainly if one constructed two side posts and a lintel it is permitted since one has an actual doorframe. (M.B. 9)
- If the breach is smaller than an *amah* it is permitted but Rashba indicates that if the gap is three *tefachim* one must add two *lechaya'yim* and if the gap is four *tefachim* the gap must be shortened. (M.B. 10)
- This is true even if the entire wall is breached. Shulchan Aruch does not indicate whether we apply פי תקרה to more than one wall but Rema cites authorities who maintain that it can be applied to multiple walls. (M.B. 13)
- If the roof is sloped פי תקרה cannot be applied unless there is a flat roof beneath the sloped section. (M.B. 14)
- *Halacha* follows this opinion. (M.B. 15)
- The beam of a *mavoi* may be only a *tefach* thick since its function is to serve as a reminder. (M.B. 16)
- The roof that was above the missing walls remains in place. (M.B. 17)
- Since it is open on both ends the principle of פי תקרה cannot be applied. (M.B. 18)

Halacha Highlight

A breach in the corner of an enclosure

Shulchan Aruch Siman 361 Seif 2
ואם נפרץ בקרן זוית
And if the breach is in the corner

Shulchan Aruch (סעי' ב') discusses the circumstance of an enclosed yard where one of the walls either collapses completely or a section more than ten *amos* collapses. He rules that in such a circumstance the area where the wall stood is categorized as "sides of a public domain – צדי רשות הרבים" which is treated the same as a *karmelis*. Mishnah Berurah (סק"ז) explains that Shulchan Aruch is addressing two different points. The first point is that once one of the walls enclosing the yard collapses, that yard is now categorized as a *karmelis* and thus it is prohibited to transport objects that are in the yard more than four *amos*. Secondly, it is permitted to transport items from the location of the wall to the yard, provided that the object is not transported more than four *amos* since both areas are now categorized as a *karmelis*.

Shulchan Aruch then notes that if the enclosure is breached in one of the corners, even if the breach is less than ten *amos* it is prohibited. In other words, when the breach is in the corner the area becomes categorized as a *karmelis* even if the breach is less than ten *amos* and one may not transport items within the yard more than ten *amos*. Chazon Ish (או"ח סי' ע"ב סק"א) explains why a breach in the corner of an enclosure is treated more stringently than a breach in another part of a partition so that even if it is less than ten *amos* the area is no longer considered enclosed. When there is breach in the middle of a partition we can look at the remaining wall that exists on both sides of the breach as though the two ends reach one another and close off the area. However, when the breach is in the corner of the enclosure we cannot close the breach by merely extending the existing walls since there is nothing on the second side of the breach to allow us to close off that area. However, if one placed a post in the corner so that the two breaches can now be enclosed on both sides, we consider there to be two breaches less than ten *amos* rather than a breach in the corner.