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

Overview

Siman 362 Seif 1:

Any partition that was not constructed for dwelling but to provide privacy, to protect the contents of an area or to dwell while one is guarding a field, is a partition that allows one to transport items but is not a partition that encloses an area for dwelling if the area is more than two *bais seah*. Therefore, if the branches of a tree extend downwards, are not more than three *tefachim* above the ground and the place where they attach to the tree is more than ten *tefachim* above ground level, it is considered a partition and it is permitted to transport objects throughout the area. However, one must fill the space between the branches with wood or straw and tie the branches so that they should not sway in the wind since any partition that cannot stand firm in a regular wind does not constitute a partition. The enclosed area may not be more than two *bais seah* because if it is more than two *bais seah* it is prohibited even if the trees were planted for this purpose since people do not reside in such an area and people merely walk around in the shade produced by the trees.

- The same would be true if the branches connect to the tree within ten *tefachim* but the branch arcs upwards to a height of ten *tefachim*. In both cases the tree must be four *tefachim* wide at the height of ten *tefachim*. (M.B. 5)
- One may transport objects even in areas where the branches are not ten *tefachim* high since that area is considered the "sides of the private domain." (M.B. 6)
- By adding wood or straw one strengthens the branch so that it should not sway in the wind but nevertheless they must be anchored to the ground. (M.B. 7)
- Meaning they were planted so that one could enjoy their shade. (M.B. 9)
- If one added straw with the intent for dwelling, the area is then considered enclosed for residential purposes, provided that most of the partition is filled with straw. (M.B. 10)

Siman 362 Seif 2:

If a mound is five *tefachim* tall and one added a partition five *tefachim* raising the total height to ten, it is considered a partition that permits transporting objects as well as for all other matters.

- The same is true concerning a pit that is five *tefachim* deep and one adds a five *tefach* wall around it. (M.B. 11)
- For example, it can serve to separate between two yards. (M.B. 15)

Halacha Highlight

Swaying partitions

Shulchan Aruch Siman 362 Seif 1
שלא ינידם הרוח
So that the wind does not move it

Shulchan Aruch (סע' א') mentions that when utilizing a branch as a partition to enclose an area it is essential that the branch is anchored so that it should not shake when the wind blows. The reason it is essential that the wind not blow the branch is that any partition that does not remain in place when a common wind blows is not categorized as a partition. With this statement, Shulchan Aruch makes it clear that a partition that could be moved around as a result of a common wind blowing is sufficient to disqualify a partition. This principle is repeated in *hilchos sukkah* (סי' תר"ל ס"ק מ"ח) where Mishnah Berurah rules that if the wind will move the branches that one intends to use as partitions for his *sukkah*, the *sukkah* is invalid, even if the partitions are not so weak that the wind would topple them over altogether. However, one can infer from his comments (שם ס"ק מ"ז) that if the wind moves the partition only slightly it retains its status as a *halachic* partition. Aruch HaShulchan (סי' שס"ג סע' ח'), in fact, writes explicitly that branches may not be used as a partition only when they sway greatly as a result of the blowing wind but when they sway only slightly they retain their status as *halachic* partitions.

Chazon Ish (או"ח סי' ע"ז סק"ו) explains that branches that sway do not lose their status as *halachic* partitions unless they separate a distance of three *tefachim* from one another. When there is even the potential that they can separate such a great distance, they are not considered a partition even when the wind is not blowing. Regarding the use of sheets or curtains as a partition, Sefer Tosefes Shabbos writes that although Shulchan Aruch (סי' תר"ל סע' י') rules that one should not use sheets as a partition for one's *sukkah,* it may be that it is acceptable for use as a partition on Shabbos. The reason for the distinction is that on Sukkos it is necessary for the partition to remain in place for seven days, in contrast to Shabbos where it only needs to remain in place for one day and one will be attentive to whether it becomes detached from its place.