



Overview

Halacha Highlight

Using people to form a partition

Shulchan Aruch Siman 362 Seif 7

שלא יעמיד אותם אדם שהוא רוצה להשתמש במחיצה זו

One should not utilize people as a partition if he intends to use that partition

Shulchan Aruch (סעי' ז') continues to discuss a partition that is formed by people standing in close proximity to one another. He references Rambam's opinion that just like the people being utilized as a partition may not be aware that they are serving as a partition for someone else, so too, the one who will utilize the partition formed by others may not be aware that these people are serving as a partition for his purpose. Mishnah Berurah (סי'ק מ"ב) adds that once the people have formed a partition there is no issue for the person who will utilize those people as a partition to be aware of the fact that they are being used for that purpose. This follows Shulchan Aruch's statement in *seif 6* that even the people who will form the partition may be aware of their function after they have already formed a partition.

Although Rambam is the source of the opinion that is cited by Shulchan Aruch, nevertheless, Magen Avrohom challenges this ruling from the Gemara. The Gemara Eiruvin (44a) states clearly that one may utilize his friend as a partition for his *sukkah*. That ruling is cited by Rambam (פ"ד מה"ל סוכה ה"ט"ז) and Shulchan Aruch (סי' תר"ל סעי' י"ב) and when citing the Gemara's ruling they do not add the qualification that the person who will serve as a partition may not be aware that he is being used as a partition. One possible resolution to this apparent contradiction was suggested by Teshuvos HaElef L'cha Shlomo (אור"ח סי' ק"י"ט). He suggests that there is a difference between a case in which people are formulating a partition for the purpose of fulfilling a *mitzvah*, e.g., a *sukkah* and formulating a partition for a discretionary purpose, e.g., to transport items on Shabbos more than four *amos*. When the purpose is to fulfill a *mitzvah* there is greater room for leniency and the one using others as a partition may be aware, even *l'chatchila*, that the others are forming a partition for his benefit.

- ❖ The person relying on the partition that they form may also not realize that they were positioned for the purpose of forming a partition. However, once they were in place there is no issue if it is known their function. (M.B. 42)
- ❖ Rashba disagrees and contends that the person himself may position them and the only issue is when the people themselves intend to form a partition and Elya Rabba maintains that this is the implication of the other *Poskim* and this latter opinion is primary. (M.B. 43)
- ❖ The child may not realize that the object being transported belongs to his father and must intend for his personal benefit but if he realizes that it is his father's object it is assumed that he has his father's benefit in mind and everyone must protest against the child doing this and certainly may not bring the child there so that he transports this item. A father must always protest when his son is violating Shabbos, even if it is for the child's benefit and even if it is only a Rabbinic prohibition. Obviously, the child may not be brought there for this purpose. (M.B. 44)

Siman 362 Seif 5:

A partition may be made from any object, even objects and saddles. It can also be constructed horizontally, e.g., with ropes, or vertically, e.g., with reeds inserted into the ground. It is permitted to transport items in an area surrounded by such partitions up until two *bais seah* even if the area is inhabited provided that there is not three *tefachim* of space between the ropes or reeds. Even animals may be utilized provided that they are bound. People may also be utilized if they stand next to one another within three *tefachim*. Even if they are walking they may still constitute a partition and the area between them is a private domain provided that they do not realize that they are serving as partitions. If even one person realizes that he is serving as a partition it is prohibited. Even if they do not realize that they are being used as a partition now but it is likely that they will realize, for example, they were used as a partition once, they may not be used as a partition again in the future.

- ❖ Even if the area was enclosed for residential purposes it is ineffective since the walls are inferior. (M.B. 32)
- ❖ Even though in an inhabited place one could obtain other materials, nevertheless, we are lenient up until the size of two *bais seah*. (M.B. 33)
- ❖ It is possible to form a partition that is ten *tefachim* tall with four ropes. (M.B. 34)
- ❖ We do not consider the area as having more open space than closed space since *lavud* closes the open spaces. (M.B. 35)
- ❖ The animal must be bound before Shabbos and then may be used as a partition on Shabbos. In such a case the animal must be ten *tefachim* tall even when lying down. (M.B. 36)
- ❖ It is a full-fledged partition and is effective even in a public domain. (M.B. 38)
- ❖ Although there is no issue of construction on Shabbos, nevertheless it is prohibited when the people are aware to avoid treating Shabbos lightly in the future. (M.B. 39)
- ❖ Whether another person may form a partition out of them is uncertain since they may realize what is happening. (M.B. 40)
- ❖ The *halacha* that they constitute a partition even while walking is limited to where they walked of their own volition or when there is a large group of people who are walking so that it is not discernable that one in their midst is using them as a partition. (M.B. 41)

Siman 362 Seif 6:

If they initially did not realize but subsequently realized there is no reason for concern.

Siman 362 Seif 7:

There is an opinion that maintains that people should not be used as a partition for one who realizes that the others are being used as a partition, rather it should be used only for one who does not realize that he is serving as a partition. A partition comprised of people should not be utilized unless it is a circumstance of necessity and great need. If one forgot something in the public domain, it is preferable to bring a child to that location to transport it even though there is no partition rather than to construct a partition of people so that an adult should transport the object.