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

Overview

Siman 363 Seif 1:

Chazal prohibited transporting items in an area enclosed by three walls until one makes some sort of repair to the fourth wall.

- Shulchan Aruch refers to a *mavoi* that is open on the fourth side or a courtyard with a breached wall regardless of whether it is breached to a *karmelis* or a public domain. (M.B. 1)

Siman 363 Seif 2:

A yard that has a wall that is breached up until the size of ten *amos* can be permitted with a board four *tefachim* wide placed near the edge of one of the sides of the breach. If one wishes to repair the breach on both sides, it is sufficient to use two boards of any size. The same is true if the fourth wall retains four *tefachim* of the original wall in one spot or if a *tefach* remains on the two ends. All of this assumes that the remnants or additions are ten *tefachim* tall. Even if the breach is not four *tefachim* it must be repaired at least to a gap of less than three *tefachim* since the entire wall is breached. If the breach is more than ten *amos*, even if that entire wall is not breached, it must be repaired with a *tzuras hapesach*.

- Although generally a breach of ten *amos* is seen as an entrance, in a case where the entire wall is breached we cannot consider the breach an entrance. (M.B. 6)
- It must be placed adjacent to one of the existing walls (M.B. 7)
- It does not have to be a *tefach*, two minimum size boards are sufficient. (M.B. 8)
- The added board does not have to be the same height as the existing wall. (M.B. 9)
- Even if the wall is not breached entirely, as long as the remaining section is smaller than the breached section a repair is necessary. However, when the closed section is greater than the breached section we follow the majority of the area and consider it closed. (M.B. 10)
- Even if there was more closed space than breached space it is prohibited once the breach is more than ten *amos* since it is considered as though the entire wall was breached. However, a *tzuras hapesach* would be effective even to close an entire side that is breached. (M.B. 12)

Halacha Highlight

An area enclosed by three walls

Shulchan Aruch Siman 363 Seif 1
מקום שיש לו שלש מחיצות
An area that has three walls

Shulchan Aruch (סעי' א') writes that Chazal prohibited transporting items in an area that is enclosed by only three walls until one makes some sort of repair to the fourth side. Mishnah Berurah (סק"א) explains that Shulchan Aruch refers to both a *mavoi* that is breached on the fourth side as well as to a yard that is breached on the fourth side to either a *karmelis* or a public domain. The reason for this enactment was that when the fourth side is entirely open the area somewhat resembles a public domain and if transporting items was freely permitted in such an area it could lead to transporting items in a public domain more than four *amos* as well (מ"ב סק"ב). Biur Halacha (ד"ה אסרו חכמים וכו') presents a dispute whether an area enclosed by three walls is Biblically considered a private domain so that someone who throws something from a public domain into an area enclosed by three walls is liable or not. Rambam maintains that Biblically an area is not considered enclosed if it does not have four walls whereas most other authorities maintain that three walls are sufficient for an area to be considered, Biblically, a private domain.

Chazon Ish (או"ח סי' ע"ג סק"ט) addresses the circumstance of an area that has three walls but, for example, the northern and southern walls are angled outwards rather than follow a direct line from east to west. Is such an area considered a private domain in accordance with the majority view that three walls is sufficient for an area to be considered a private domain or not? He answers that when the angle of the northern and southern walls are wide enough that over the span of four *amos* the walls do not extend ten *tefachim* from the eastern wall, they are not considered walls that enclose an area so that it should be considered a private domain. However, he does conclude his piece by stating that the matter requires further research.