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

Overview

Siman 364 Seif 1:

A *mavoi* that opens on both ends to the public domain or if one end opens to the public domain and the other end to a *karmelis* or if both ends open to a *karmelis* **it is necessary to construct a *tzuras hapesach* on one end and a *lechi* or beam on the other end. However, if one end opens to the public domain and the other end to a yard that did not make an *eruv*, a *lechi* or beam on both ends is sufficient.** This assumes that it has the characteristics mentioned above in *siman* 363:26 regarding a *mavoi* but if it is only a yard it requires the rectification of a yard on the two ends.

- The *tzuras hapesach* makes it as if the entrance is closed and it thereby becomes a *mavoi* closed on three sides and thus it is sufficient to add a *lechi* or beam to the fourth side. (M.B. 2)
- Since the yard has walls the *mavoi* is not considered open and a *lechi* or beam is sufficient rather than a *tzuras hapesach*. Some are stringent and require a *lechi* rather than a beam on the side of the yard. If the residents of the yard regularly use the *mavoi* even a *tzuras hapesach* or doors will prove ineffective if they did not previously make a *shituf* and if they did make a *shituf* no further rectification is necessary. (M.B. 3)
- Even if it is open on both ends to the public domain and people use the yard to access the public domain, the rectification of a yard on both ends is sufficient, meaning two boards, one on each end or one board the length of four *tefachim*. (M.B. 4)

Siman 364 Seif 2:

A public domain is only permitted with doors that close at night. Some maintain that it is sufficient even if they do not actually close but have the capacity to close but if they are stuck in dirt one must remove the dirt and make the necessary repairs so that the doors could close. After the repairs to the doors were performed it is considered one yard and the *mavo'os* do not require further rectification.

- A *tzuras hapesach* is ineffective even if constructed on both ends. Some maintain that it is sufficient to construct a door on one end that could be closed at night. Once that end is considered closed it is sufficient to add a *lechi* or beam to the other end. (M.B. 6)
- Since the first opinion was presented without an introduction and the second opinion was introduced with the words יש אומרים the implication is that Shulchan Aruch subscribes to the first opinion. It is common in our cities to rectify the area with *tzuras hapesach* even though the streets have the characteristics of a public domain. It must be that we rely on the opinion that states that if 600,000 people do not traverse the area it is not a public domain. However, since many Rishonim disagree, although there is no reason to protest against those who follow the lenient opinion and rely on a *tzuras hapesach*, nevertheless, a *ba'al nefesh* should be stringent and should not transport something with just a *tzuras hapesach*. (M.B. 8)

Halacha Highlight

Enclosing a public domain

Shulchan Aruch Siman 364 Seif 2
והוא שננעלות בלילה
Provided that they are locked at night

Shulchan Aruch (סעי' ב') rules that the only method of enclosing a public domain is to construct doors. Mishnah Berurah (סק"ו) explains that regarding a public domain it is not sufficient to construct a *tzuras hapesach* and actual doors must be constructed. He then mentions that there are authorities who maintain that a door on one side that closes at night is sufficient provided that the other end of the public domain has a *lechi* or beam. Shulchan Aruch then notes that there is a disagreement whether those doors must be actually closed at night for the area to be considered a yard rather than a public domain or whether it is sufficient if the doors are capable of being closed, even though they are not actually closed. Mishnah Berurah (סק"ח) emphasizes that according to Shulchan Aruch the only manner of enclosing a city is with doors, but observes that common practice is to utilize *tzuras hapesach* rather than actual doors. He explains that it must be that people follow the opinion that maintains that an area is not categorized as a public domain unless there are 600,000 people there. However, since many authorities reject this as a prerequisite for an area to be a public domain a *ba'al nefesh* should be stringent and not transport objects relying on an enclosure of *tzuras hapesach*.

Be'er Heiteiv (סי' שמ"ה סק"ז) cites Chacham Tzvi in the name of Rashba who rules that regarding a market area (פלטיא) that it is considered a public domain even if the area could be closed at night with doors. He explains that doors that could be closed at night are effective only for *mavo'os* which are primarily used by the residents of the *mavoi*. However, a market area which is used by everyone equally cannot be transformed into a yard by erecting doors. Rav Yaakov Emden (שאלת יעב"ץ סי' ז') expresses surprise at his father's position since there is no doubt that actual walls surrounding a market area would categorize it as a yard and there is no reason to think that doors would not accomplish the same.