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

Overview

Siman 365 Seif 1:

A *mavoi* which is breached towards the front is permitted provided that there is a board four *tefachim* at the front and the breach may not be more than ten *amos*. If the board that remains is not more than four *tefachim* it is prohibited unless the breach is less than three *tefachim*.

- Since a significant size of the *mavoi* remains it does not lose its status as an entrance. (M.B. 2)
- Although an opening less than ten *amos* is considered an entrance in this circumstance we are concerned that people will use the smaller opening to shorten their walk rendering the *lechi* or beam at the entrance of the *mavoi* void. (M.B. 4)

Siman 365 Seif 2:

If it is breached away from the front, the breach may be up until ten *amos*, even if none of the preexisting wall remains provided that people do not penetrate through the breach. (If people do penetrate through the breach, even if it is only four *tefachim* it must be repaired.)

- This *seif* elaborates on the first *seif* and teaches that whenever a board four *tefachim* remains in place it is considered as though the breach is not at the front. (M.B. 6)
- The same is true if the bream is on the front side, for example, there was a small section of wall on the fourth side and one added a *lechi* or beam to permit transporting objects in the *mavoi*. If a breach developed in the small section of wall on the fourth side it is permitted provided that it is not ten *amos* and that there is more closed space than open space. In this case where there is breach in the section of wall on the fourth side there is a dispute where the beam should be placed. (M.B. 7)
- For example, if the area was dirty so that people do not walk there and certainly when three or four *tefachim* of the wall remain which impairs the public from walking through the breach. (M.B. 9)
- In such a case it is no longer considered an entrance and instead it is considered a public path. In a yard a breach of ten *amos* is allowed, even if people penetrate through there and Magen Avrohom is uncertain whether our *mavo'os* are categorized as a yard for this *halacha* or not and his conclusion is that one should be stringent. Beis Meir concludes that these *halachos* apply to our *mavo'os*. (M.B. 10)
- This is done by shortening it to less than four *tefachim* or constructing a *tzuras hapesach*. (M.B. 11)

Halacha Highlight

A breach in one of the side walls

Shulchan Aruch Siman 365 Seif 2

נפרץ מצדו שלא כלפי ראשו

If the side wall was breached away from the front

Shulchan Aruch (סע' ב') further elaborates on the *halacha* of a *mavoi* that has a breach in one of the side walls. He writes that if the breach is not towards the front of the *mavoi*, it is not significant unless it is more than ten *amos* wide. The reason is that when a breach is less than ten *amos* wide it is categorized as an entrance and the area is still considered enclosed. This is true even if none of the breached wall remains, provided that people do not enter the *mavoi* through the breached area. Mishnah Berurah (סק"ט) explains that Shulchan Aruch refers to where the area outside of the breach is filthy so that people are not interested in passing through that area to gain access to the *mavoi*. Alternatively, if the wall that is breached in that section is no longer ten *tefachim* tall but three or four *tefachim* of the wall remain, so that it is inconvenient for people to climb over the remnant of the wall, the area retains its status as being enclosed.

Bach (סי' שס"ב ד"ה ומשמע) rules that when the side wall of the *mavoi* is breached with three or four *tefachim* of the wall remaining intact but people traverse over the broken section of the wall to gain access to the *mavoi* the area is not considered enclosed unless one constructs a *tzuras hapesach* over the breached section. Pri Megadim (כאן א"א סק"ד) contends that according to Magen Avrohom the remnant of the wall is effective at enclosing the area even though people regularly climb over that remnant. Even HaOzer also follows Magen Avrohom's position that remnants of a wall are effective even if people traverse over them and explains a Beraisa in a manner that supports this ruling. The Beraisa (Eiruvin 22b) rules that if people enter a yard from one end and exit the opposite end, it is permitted. Rashi (ד"ה דלא ניחא) explains that the Beraisa refers to where remnants of a wall remain and consequently, even though people traverse over the wall, the area remains *halachically* enclosed.