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

Overview

<u>Siman 365 Seif 3:</u>

A *mavoi* that is breached entirely to a yard and the yard is breached on the second side to the public domain, if an *eruv* was not made between the residents of the yard and the *mavoi* it is permitted to transport objects in the yard, even if the breach is aligned with the breach in the *mavoi* and even if people penetrate through that breach provided that the breach is not more than ten *amos*. It is prohibited to transport objects within the *mavoi* even if the breach to the yard is not aligned with the breach to the public domain. The reason is that since they did not make a common *eruv* the residents of the yard prohibit the residents of the *mavoi*. An example of this would be where the walls of the *mavoi* extend into the yard so that the remnants of the walls of the yard are not visible to one standing in the *mavoi*. If those remnants are visible they are considered a *lechi* and it is permitted. If the residents of the yard and *mavoi* made a joint *eruv* and the breach from the *mavoi* to the yard is not adjacent to the corner of the *mavoi* and the breach on the other end of the yard is not aligned with the breach into the *mavoi* and the yard is used by the public, the *mavoi* is also permitted. If they did not make a joint *eruv* or if they did but the breach is near the corner of the yard, or if the breaches are aligned or if the yard belongs to an individual, it is prohibited. If it is breached to a backyard that is smaller than two *bais seah* or if it more than two *bais seah* but was enclosed for residential purposes, it is considered as though the yard is breached into another yard. If the backyard is larger than two *bais seah* and was not enclosed for residential purposes, it is considered as though it is breached into a *karmelis* and a rectification is necessary.

- The *seif* discusses the *halacha* of a *mavoi* that is separated from the public domain by a yard but the walls of that yard were breached. (M.B. 12)
- If remnants of the wall remain they would be considered a *lechi* and the residents of the yard would not prohibit them. (M.B. 13)
- The emphasis is that although it is prohibited for the residents of the *mavoi* to transport items it remains permitted for the residents of the yard to transport items. (M.B. 14)
- The breaches in the yard [that are less than ten *amos*] are treated as entrances and the residents of the *mavoi* do not prohibit them since they do not have rights of passage in the yard. (M.B. 15)
- Although regarding the *mavoi* if the two breaches are aligned it would be prohibited, regarding a yard we are not so stringent. (M.B. 16)
- Regarding a yard we are not concerned if people penetrate through the breach. (M.B. 17)
- If the breach is more than ten *amos* it is considered as though it is breached to a place that is prohibited and requires a *tzuras hapesach*. (M.B. 18)
- Although the two breaches are not aligned, it is prohibited to transport objects since there is no *eruv* and it is prohibited even if people do not penetrate from the public domain to the *mavoi* via the yard. (M.B. 19)
- Meaning, the side walls of the *mavoi* enter the yard but if they did not enter the yard the remnants of the walls of the yard could be considered *lechaya'yim* and the residents of the yard do not prohibit the residents of the *mavoi*. (M.B. 20)
- If it was breached in the corner and the *mavoi* and yard shared a common wall that extended from one to the other, we would consider it a long *mavoi* and it would be prohibited. (M.B. 21)
- In such a case even if the walls did not extend into the backyard it would be prohibited to transport objects within the *mavoi*. If the 4th side of a *mavoi* opens to a river that has a *tel hamislaket* it does not require further rectification since water does not nullify a wall. If the *tel hamislaket* is on the far side of the river, even if the space is less than ten *amos* it is possible one should be stringent since it could lead people to erroneously conclude that an open *mavoi* is permitted without any rectification. (M.B. 24)

Halacha Highlight

<u>A *mavoi* breached into a yard</u>

Shulchan Aruch Siman 365 Seif 3

מבוי שנפרץ במלואו לחצר

A *mavoi* that is breached entirely to a yard

Shulchan Aruch discusses a circumstance of an open *mavoi* that on one end does not open to the public domain and instead opens to a yard. That yard, however, is not only breached on the side that is adjacent to the *mavoi* but it is also breached on the side that is adjacent to the public domain. Since as a result of the breaches one standing in the *mavoi* sees directly into the public domain, the question is do we treat the *mavoi* as though it is an open *mavoi* and what effect do the residents of the yard and *mavoi* have on one another as far as transporting objects within their respective domains (מ"ב ס"ק י"ב). Shulchan Aruch rules that when the residents of the yard and *mavoi* did not make a joint *eruv* it is permitted to transport objects within the yard, even if people penetrate through the yard to go from the public domain to the *mavoi* or vice versa provided that neither the breach that leads to the public domain nor the breach that leads to the *mavoi* is more than ten *amos*. In the *mavoi* it is prohibited to transport objects since the residents of the yard prohibit the residents of the *mavoi*.

Mishnah Berurah (ס"ק י"ח) explains that if one of the breaches was more than ten *amos* it would create what he describes as a "full-breach" and the yard would be open to a prohibited place which can be rectified only with a *tzuras hapesach*. Sha'ar HaTziyun (ס"ק י"ג) further explains that it does not matter whether the breach more than ten *amos* is adjacent to the public domain or whether it is adjacent to the *mavoi*. However, concerning an *eruv* there would be a difference. If the breach is on the side of the public domain it would not matter if the residents of the yard and *mavoi* had made a joint *eruv*. On the other hand, if the breach was on the side of the *mavoi* and they made a joint *eruv* the residents of the yard may transport objects and the *halacha* concerning the residents of the *mavoi* is discussed by Shulchan Aruch below.