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Digest
Mishna Berura
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Shabbos, Jan 18 2025 ■ י"ח טבת תשפ"ה
סימן שע"ו סעיף ב'-ד'

Overview

Siman 376 Seif 2:

A well in the middle of a path between the walls of two yards may be used even though it is four tefachim from each wall and it is not necessary for there to be protrusions and it is not necessary for there to be protrusions since a since a person does not prohibit his friend by virtue of his use of airspace. This applies when there is no entrance to airspace. o the path, just windows. Some authorities maintain that if the well is not four tefachim from the wall, they prohibit one another.

- There is a small alleyway between the two yards which belong to the residents of the yards. There is a well in that alleyway which each yard may access by lowering a pail through the window. (M.B. 11)
- The wording implies that this would certainly be true if it was separated by less than four tefachim and the reason is that this opinion maintains that usage via a window is always considered use of airspace regardless of the distance of the well from the window. (M.B. 12)
- This is as opposed to the opinion in the Gemara that each yard must have a protrusion in the wall that extends to the well. (M.B. 13)
- When there is an entrance from the yard to the path, each yard has full usage of the path and thus they prohibit one another even if they only use the windows. (M.B. 14)
- This opinion maintains the opposite position and contends that it is permitted only if the well is four tefachim from the wall of the yard so that their use is considered airspace usage but when it is less than four tefachim it is considered that they each have easy usage and they prohibit one another even though there is no entrance and they use the path via windows. Authorities subscribe to this latter opinion. (M.B. 15)

Siman 376 Seif 3:

If there are two yards and three broken homes betwe If there are two yards and three broken homes between them, en them, each yard may use the building adjacent to it via its windows by throwing items into it and the middle building may be used by both of them. If all three buildings are adjacent to the yards, i.e., the middle one was above the other two yards, i.e., the middle one was above the other two similar to similar to the top of three bottles, each one is permitted in the building adjacent to it and they prohibit one another in the third building that is adjacent to both of them. building that is adjacent to both of them.

- The broken buildings do not have residents and the breach between one and the next is more than ten amos. There is also a window from each yard to its adjacent building which allows them to use the building by throwing objects into it. (M.B. 16)
- Neither one has full usage since there is only a window rather than an entrance. (M.B. 17)
- One may not use the building adjacent to the other yard since they prohibit him. (M.B. 18)
- Since each one has easy usage of the building by lowering objects they prohibit one another. (M.B. 22)

Siman 376 Seif 4:

If there is a bathroom between two houses and they If there is a bathroom between two houses and they did not did not make a joint eruv, since they each have rights of usage they prohibit one another (See above prohibit one another siman 355).

- Shulchan Aruch refers to where each one has a separate place to sit but share the dugout ground beneath and that is the reason that they prohibit one another since it involves transporting something from a private domain to a shared domain. If they shared rights to the place for sitting it would be permitted. (M.B. 23)
- If they forgot and did not make an eruv it is permitted, b'dieved, due to the principle of human dignity. (M.B. 24)

Halacha Highlight

A well located in a path between two yards

Shulchan Aruch Siman 376 Seif 2
באר שבאמצע השביל

A well in the middle of a path

Shulchan Aruch (סע' ב') addresses the use of a well that is located in a small path between two yards. He rules that even if the well is four tefachim from the walls of the adjacent yards, the residents may draw water on Shabbos. The reason is that since they have use of the airspace of the path being that there is a window in each wall which gives them access to the well (מ"ב ס"ק י"א) rather than the actual passage that usage of airspace is not significant enough that they prohibit one another. Rema then adds that Shulchan Aruch's ruling applies when each yard has access to the well via a window in the wall but if there was an actual entrance from the yard to the path, it would be prohibited unless they made a joint eruv. The reason is that once there is an entrance each yard has full usage of the path and thus they prohibit one another (מ"ב ס"ק י"ד).

Sefer Tosefes Shabbos (סק"ז) challenges Rema's comment. As explained, the implication is that Rema is adding explanation to Shulchan Aruch's ruling but Shulchan Aruch is, in fact, recording Rambam's wording concerning this halacha and Magid Mishnah infers from Rambam's wording that if they gain access to the well via a window they do not prohibit one another even if they each have an entrance from their yard to the path. The reasoning behind Rambam's position is that although there is an entrance, nevertheless, halacha will follow the primary manner in which access is gained which is via the window. Accordingly, Rema should have introduced his comment with the words ויש אומרים to indicate that he is citing a dissenting position. He does not have an answer to his question. Machatzis HaShekel (סק"ד) explains that there are many times that when it is not explicit that Shulchan Aruch disagrees, Rema will not introduce his dissenting position with the words ויש אומרים.