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

# Overview

Siman 540 Seif 1:

**Construction, even in the slightest amount, is prohibited. If the fence to one's garden became breached** (or the wall between his yard and his neighbor's) **it may rebuilt in a non-professional manner by piling the rocks without plastering them or by making a fence with canes, reed and the like. Similarly, one who will build a fence on his roof may only do so in a non-professional manner. However, if the wall of his yard that is adjacent to the public domain collapsed it may be rebuilt in the normal manner. If it is about to fall, it may be dismantled due to the danger and rebuilt in the normal manner.** Even if it is leaning towards the yard or the alleyway it is permitted to dismantle it due to the danger and rebuilt in the normal manner. The same principle applies to other dangers in that one may dismantle and rebuild in the normal manner.

- Since there is no concern for thieves it may only be rebuilt in a non-professional manner. (M.B. 2)
- Plastering is a craftsman's work but plastering a roof is non-professional work and permitted for the needs of the *moed*. (M.B. 3)
- The implication is that only repairs are permitted but one may not enclose the entire garden even in a non -professional manner. (M.B. 4)
- When the breach is adjacent to the public domain there is a concern for thieves and thus the repair may be done in a professional manner. Magen Avrohom only permits rebuilding if it already collapsed but dismantling and rebuilding is permitted only in a circumstance of danger. Pri Megadim is lenient when there is an obvious concern for thieves or if there is a concern for one's life because of the thieves, provided that one did not plan to do the *melacha* during the *moed*. (M.B. 5)

Siman 540 Seif 2:

**It is permitted to remove a mound that is in a house.**

- Although it involves a *melacha*, it is permitted since it does not involve exertion. (M.B. 7)

Siman 540 Seif 3:

**One may fill cracks in the roof with one's hand or feet but not with professional tools.**

- Water enters the cracks. If the job is done well it is permitted since it is not done in the professional manner. (M.B. 8)
- This would constitute a full-fledged *melacha* and involves exertion. When a *melacha* is permitted for a *moed* need that is done in a non-professional manner, one may not plan to do the *melacha* during the *moed*. (M.B. 9)

# Halacha Highlight

## Constructing a fence on one's roof

Shulchan Aruch Siman 540 Seif 1
**וכן אם עשה מעקה לגגו**
**Similarly, one who will build a fence for his roof**

Shulchan Aruch (סע' א') rules that construction is prohibited even if the project is very small. However, there are numerous exceptions to this prohibition. One of the exceptions mentioned by Shulchan Aruch is one who will build a *ma'akeh* – a fence for his roof to prevent people from falling. Shulchan Aruch notes that in such a case although it is permitted to build the fence, it must be built in a non-professional manner. Biur Halacha (ד"ה וכן אם עשה) references the Rashba who asserts that the Mishnah that permits constructing the fence for one's roof refers to a roof that is not actually obligated to have a fence since people do not regularly walk on the roof. It is just that the owner would like to be extra cautious. The reason this must be the intent of the Mishnah is because if he was fulfilling the *mitzvah* why would he not be permitted to build it in a professional manner? Precedent for this is the *halacha* (ביה"ל סי' תרל"ז סע' א' ד"ה עושה) that permits one to build a *sukkah* during *chol hamoed* even if professional work must be done since it is necessary to fulfill a *mitzvah*. Biur Halacha concludes by noting that other *Poskim* do not draw such a distinction.

Rav Shlomo Zalman Auerbach (שמירת שבת כהלכתה פס"ז הע' קפ"א) questions why it is permitted to repair a door to prevent thieves from stealing even when professional work is necessary and in our case where the owner intends to save a life, we do not permit the job to be performed in a professional manner. He answers that in our case if the goal is to prevent someone from harm the homeowner could take steps to assure that no one goes up to the roof during *chol hamoed* rather than professionally install a fence on the roof. Therefore, since the only obligation is the *mitzvah* to build the fence rather than to actually prevent someone from falling, the *mitzvah* could be fulfilled by constructing a non-professional fence.