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

Overview

Siman 626 Seif 3:

If one constructs his sukkah inside his house by removing the roof tiles the sukkah is valid even though the beams that support the tiles remain in place. Similarly, it is permitted to build a sukkah beneath a roof that is designed to open and close and it is permitted to close the roof because of rain and then open it again. One may even open and close the roof on Yom Tov if it has hinges that allow it to open and close and it is not considered as though one is building or dismantling on Yom Tov nor does it pose an issue of תעשה ולא מן העשוי. One must be careful, however, that he does not sit in the sukkah with the roof closed since at that moment the sukkah is invalid.

- It is even permitted to sit under those beams since they were not put there to produce shade. If one did not take off the tiles to make a sukkah, the beams are considered to be invalid schach. Some authorities are more stringent and maintain that one must have enough schach so that even if he removed the schach under the beams he would have enough schach remaining for a valid sukkah. Although this does not present a problem nowadays due to the abundance of schach that we use it is nevertheless best to make sure that there is at least three tefachim between the beams. (M.B. 17)
- If the schach is placed atop the beams the sukkah is valid. (M.B. 17)
- One may even construct his sukkah while the roof is closed. Bach, however, adopts a stringent attitude and asserts that the roof must be opened before putting on the schach and if the schach was put on the sukkah while the roof was closed he must "shake" the schach. (M.B. 18)
- Opening the roof after the rain is allowed even according to the stringent position metioned earlier in M.B. 18. (M.B. 19)
- Pri Megadim is uncertain whether one may ask a gentile to transgress a Biblical prohibition to construct a Jew's sukkkah on Yom Tov and he refuses to issue a lenient ruling about the matter but if it is bein hashemashos it is permitted. (M.B. 20)
- One must be careful that the roof is opened entirely since sitting in the sukkah one in a spot that is covered by the roof does not fulfill the mitzvah. (M.B. 21)
- Pri Megadim writes that a sukkah is exempt from the mitzvah of mezuzah and the implication is that even something that is used as a room during the year is exempt if during sukkos it is one's sukkah since a sukkah is, by definition, a temporary structure. (M.B. 21)

Halacha Highlight

A sukkah under a retractable roof

Rema Siman 626 Seif 3

וכן מותר לעשות הסכה תחת הגגות העשויות לפתח ולסגר

And it is permitted to make a sukkah under roofs that are made to open and close

Rema writes that it is permitted to construct one's sukkah under a roof that is designed to open and close and when it rains he may close the roof to keep the sukkah dry and then reopen it when the rains stops. Furthermore it is even permitted to open and close the roof on Yom Tov if the roof is attached with hinges. In the event that it rains on Shabbos or Yom Tov and one does not have a roof to close over their sukkah, it is permitted to spread out a tarp or plastic over the schach. The reason spreading out the tarp or plastic does not violate the prohibition against making an ohel is that assuming that it will rest on the schach or at least within a tefach of the schach it is being spread on an existing ohel which is permitted. One must be mindful, however, that as he spreads out the tarp or plastic that he may not move the schach since it is muktzah. If the schach moves indirectly from the spreading out of the tarp or plastic, the prohibition against moving muktzah was not violated (פסקי תשובות אות ו).

Rema warns that one must be careful not to sit in the sukkah when the roof is closed since the sukkah is invalid at that time. Bikurei Yaakov (ס"ק י"ב) explains that Rema means one must be careful not to recite the beracha on the sukkah when the roof is closed but there is no concern to sit in the sukkah when the roof is closed. Moreover, Poskim write that if the roof is made from boards that are wider than four tefachim one should sit in the sukkah even though the roof is closed, because a sukkah made from boards that are four tefachim is invalid only Rabbinically. Since, however, Biblically the sukkah is valid even if the rain cannot enter the sukkah, it is preferable to remain in the sukkah and fulfill the mitzvah on a Biblical level (פסקי תשובות אות ז').

Stories to Share

Neighborly Differences

מ"ב ס ' תרכ"ו, ס "ק י"ז : "יראה שיהיה רוח ביי העצים הדקים בין אחד לחבירו

In Israel most people install bars on their windows protection. Bars often serve another purpose besides providing protection in Israel, however. If they jut out of the window they can be used for storage, and children enjoy sitting in them for a bird's-eye view of the street below. Since the price difference is not significant, most parents cannot come up with a reason not to purchase the bars that bow outward.

When one person put in such bars he was surprised when his neighbor below tendered a halachic complaint. "My sukkah is directly below your window. How can you put up bars which make part of the sukkah problematic? After all, the Bach holds that things which are within three tefachim of each other are considered connected l'chumrah. It is as if you erected a wall over part of my sukkah!"

But the man who had put in the bars was hardly ignorant of the halachah. "But the Mishnah Berurah rules that the Bach is a chumrah. The halachah is that we don't say lavud l'chumrah."

The downstairs neighbor protested, "Why are you preventing me from being stringent like the Bach when the Mishnah Berurah writes that this is preferable?"

When this question came before Rav Nissin Karelitz, zt"L, he ruled that the bars need not be removed. "It is possible that this principle doesn't apply to such bars. And even if it does, the Bach is merely a chumrah."

He added that there was a way to rectify this, however, to satisfy both parties. "The proper thing to do is to lay a mat of schach between the bars above so that even the Bach would permit!"

חוט שני, סוכה, ע' קצ"ד