

A בס"ד

Intro

Today we will learn בע"ה of בבא בתרא דף נ"ט
Some of the topics we will learn about include.

The Mishnah's Halachah of

סולם

Regarding proof of חזקה for keeping one's ladder in the neighbor's yard;

For סולם המצרי, a small ladder, there is no חזקה, but
For צורי, a tall ladder, there is חזקה.

חלון

Regarding proof of חזקה for a window facing the neighbor's yard;

For מצרית, a small window, there is no חזקה, but
For צורי, a large window, there is חזקה.

The distinction of whether the חלון צורי was within four
אמות of the ground, or higher than four אמות from the
ground.

The Mishnah's Halachah of

הזיז

One's rod protruded from his wall into the neighbor's
yard;

עד טפח

יש לו חזקה

If the rod was at least one טפח in length, a חזקה is
established and the neighbor cannot remove it.

B פחות מטפח

אין לו חזקה

If the rod was less than one טפח in length a חזקה is not
established and the neighbor can remove it, because

דלא קפיד

The neighbor did not mind a short rod, and therefore he
did not object, but now he does object.

The Machlokes regarding

פחות מטפח

בעל החצר בבעל הגג

יכול למחות

Whether or not the owner of the yard may prevent the בעל
הגג from placing the rod over his yard?

The Mishnah's Halachah of

לא יפתח אדם חלונותיו

לחצר השותפין

A person may not build a window opposite a yard that he
shares with others, because of ראייה.

A

סולם

סולם המצרי

צורי

חלון

מצרית

צורי

הזיז

עד טפח
יש לו חזקה

פחות מטפח
אין לו חזקה

B

פחות מטפח
בעל החצר בבעל הגג
יכול למחות

לא יפתח אדם חלונותיו
לחצר השותפין

C And
לקח בית בחצר אחרת
לא יפתחנה בחצר השותפין
If a person has a house and is a partner in one חצר and then
bought another house in the neighboring חצר, and this new
house's front door opens into the neighboring חצר, and the
back of this house borders the first חצר;
He may not open a back door from the new house to the
first shared חצר, because as the Gemara explains
שמרבה עליהן את הדרך
He increases the number of people entering and exiting
through the shared yard; and this causes congestion and
the loss of some privacy.

The distinction regarding
בנה עלייה על גבי ביתו
If a person built a loft above his house, in whether he
extended the outside, or he merely partitioned off the
inside.

C

לקח בית בחצר אחרת
לא יפתחנה בחצר השותפין

שמרבה עליהן את הדרך

בנה עלייה על גבי ביתו

1 So let's review ...

The previous Mishnah taught

סולם המצרי

אין לו חזקה

ולצורי

יש לו חזקה

If a person placed in his neighbor's yard a small ladder, which the Gemara explains as

כל שאין לו ארבעה חווקים

A ladder that has less than four rungs;

A חזקה is not established even after three years, because ®

לאו מילתא דקביעותא הוא

ולא חשש למחות

This ladder is moveable and temporary, and a person would allow such usage even without permission.

Therefore, the בעל החצר did not need to protest.

However, if it was a tall ladder with at least four rungs, a

חזקה IS established after three years because ®

מילתא דקביעותא הוא

והיה לו למחות

This ladder is permanent, and a person would not allow such usage without permission. Therefore, the בעל החצר should have protested.

1

מלפני

סולם המצרי - אין לו חזקה

ולצורי - יש לו חזקה

If a person placed in his neighbor's yard a small ladder,

which the Gemara explains as

כל שאין לו ארבעה חווקים

A ladder that has less than four rungs;

A חזקה is not established even after three years,

because

לאו מילתא דקביעותא הוא

ולא חשש למחות

This ladder is moveable and temporary,

a person would allow such usage even without permission.

Therefore, the בעל החצר did not need to protest.

However, if it was a tall ladder with at least four rungs, a חזקה is established after three years

because

מילתא דקביעותא הוא

והיה לו למחות

This ladder is permanent, and a person would not allow such usage without permission.

Therefore, the בעל החצר should have protested.

2 The Mishnah continues

חלון המצרית
אין לה חזקה
ולצורית
יש לה חזקה

If a person built a small window facing his neighbor's yard and its purpose was not לאורה, for daylight, but rather for him to observe his fields, a חזקה is not established even after three years, because ®
לאו מילתא דקביעותא הוא
ולא חשש למחות

However, if it was a large window, then even if it was not לאורה, a חזקה is established after three years because
מילתא דקביעותא הוא
וצריך למחות

As the Mishnah elaborates

איזו היא חלון המצרית
כל שאין ראשו של אדם יכול ליכנס לתוכה
A small window is one that is not large enough for a person's head to fit through it.

says רבי יהודה

אם יש לה מלבן
אף על פי שאין ראשו של אדם יכול ליכנס לתוכה
הרי זו חזקה

If the small window has lintels on all four sides, even if it was not large enough for a person's head, a חזקה is established because

מילתא דקביעותא הוא
וצריך למחות

3 Regarding חלון המצרית the Gemara says

ולאורה
אפילו כל שהוא יש לו חזקה

If the small window was for daylight, regardless of how small it was, a חזקה is established after three years because
מילתא דקביעותא הוא
וצריך למחות
=====

2

משנה

חלון המצרית - אין לה חזקה
ולצורית - יש לה חזקה

If a person built a small window facing his neighbor's yard and its purpose was not לאורה - for daylight, but rather for him to observe his fields, a חזקה is not established even after three years,

because

לאו מילתא דקביעותא הוא
ולא חשש למחות

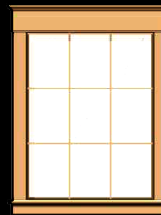
However, if it was a large window - even if it was not לאורה, a חזקה is established after three years

because

מילתא דקביעותא הוא
וצריך למחות

איזו היא חלון המצרית
כל שאין ראשו של אדם יכול ליכנס לתוכה

A small window is one that is not large enough for a person's head to fit through it.



רבי יב/דב

אם יש לה מלבן
אף על פי שאין ראשו של אדם
יכול ליכנס לתוכה
הרי זו חזקה

If the small window has lintels on all 4 sides, even if it was not large enough for a person's head, a חזקה is established

because

מילתא דקביעותא הוא
וצריך למחות

3

חלון המצרית

ולאורה
אפילו כל שהוא
יש לו חזקה

If the small window was for daylight, regardless of how small it was, a חזקה is established after three years

because

מילתא דקביעותא הוא
וצריך למחות

4 Regarding חלון צורית the Gemara mentions a Machlokes; רבי זירא says למטה מד' אמות יש לו חזקה ויכול למחות Only if the large window was less than four אמות from the ground, a חזקה is established, because as the Rashbam explains כיון דאיכא תרתני שהוא גדול ונמוך ויכולין להסתכל ממנו בחצר לא היה מניחו לעשות Since the window is both, large and within view of the neighbor's yard, the neighbor would certainly object to it, and since he did not protest, the חזקה is proof that the neighbor gave permission to build this window. And therefore ויכול למחות The neighbor can initially object to his building such a window, because ויכולין להסתכל ממנו בחצר

However למעלה מארבע אמות אין לו חזקה ואינו יכול למחות

If the large window was more than four אמות from the ground, a חזקה is not established, because אין חבירו מקפיד Since the window is not within view of the neighbor's yard, he does not object, and therefore אינו יכול למחות The neighbor cannot initially object to his building such a window.

4 **חלון צורית**
רבי זירא
למטה מד' אמות
יש לו חזקה
ויכול למחות
Only if the large window was less than four אמות from the ground, a חזקה is established

because
 כיון דאיכא תרתני שהוא גדול ונמוך ויכולין להסתכל ממנו בחצר לא היה מניחו לעשות
Since the window is both, large and within view of the neighbor's yard, the neighbor would certainly object to it, and since he did not protest, the חזקה is proof that the neighbor gave permission to build this window.

ויכול למחות

The neighbor can initially object to his building such a window, because ויכולין להסתכל ממנו בחצר

למעלה מארבע אמות
אין לו חזקה
ואינו יכול למחות

If the large window was more than 4 אמות from the ground, a חזקה is not established,

because

אין חבירו מקפיד

Since the window is not within view of the neighbor's yard, he does not object, and therefore

אינו יכול למחות

The neighbor cannot initially object to his building such a window.

5 למעלה מארבע אמות
אין לו חזקה
However
ויכול למחות
The neighbor can initially object to his building such a
window, because he can claim
זימנין דמותבת שרשיפא תותך וקיימת
וקא חזית
You might stand on a stool and look into my yard.

While רבי זירא holds
לא חציפי אינשי כולי האי למיעבד הכי
A person does not have the audacity to do this.
=====

5

רבי אילעא
Although
**למעלה מארבע אמות
אין לו חזקה**
However
ויכול למחות
The neighbor can initially object to his building such a
window, because he can claim
**זימנין דמותבת שרשיפא תותך
וקיימת
וקא חזית**
You might stand on a stool and look into my yard.

While רבי זירא holds
**לא חציפי אינשי כולי האי
למיעבד הכי**
A person does not have the audacity to do this.



6 Zugt Di Mishnah

הזיז

If someone's rod protruded from his wall into his neighbor's yard, it depends;

עד טפח
יש לו חזקה

If the rod was at least one טפח in length, a חזקה is established and the neighbor cannot remove it, because as the Rashbam explains

לא שביק ליה בעל החצר
להוציא זיז טפח בלא רשותו

The neighbor would certainly object to a long rod, and since he did not protest, the חזקה is a proof that the neighbor gave permission.

And therefore

ויכול למחות

The neighbor can initially object to his placing a long זיז over his yard.

פחות מטפח

אין לו חזקה

If the rod was less than one טפח in length, a חזקה is not established and the neighbor can remove it, because

דלא קפיד

The neighbor does not object to a short rod, and therefore he did not protest, but now he objects to it because he wants to build there.

And

ואין יכול למחות

6

מאריך

הזיז

If someone's rod protruded from his wall into his neighbor's yard, it depends;

עד טפח

יש לו חזקה

If the rod was at least one טפח in length, a חזקה is established and the neighbor cannot remove it.

Because

לא שביק ליה בעל החצר

להוציא זיז טפח בלא רשותו

The neighbor would certainly object to a long rod, and since he did not protest, the חזקה is a proof that the neighbor gave permission.

ויכול למחות

The neighbor can initially object to his placing a long זיז over his yard.

פחות מטפח

אין לו חזקה

If the rod was less than one טפח in length, a חזקה is not established and the neighbor can remove it,

because

דלא קפיד

The neighbor does not object to a short rod, and therefore he did not protest, but now he objects to it because he wants to build there.

ואין יכול למחות



7 And the Gemara cites a Machlokes regarding פחות מטפח אין יכול למחות

makes the following distinction:

בעל הגג בבעל החצר אין יכול למחות

Only the owner of the roof cannot prevent the owner of the yard from using his rod, because the בעל הגג suffers no loss from the use of the בעל החצר.

אבל בעל החצר בבעל הגג יכול למחות

The owner of the yard can prevent the owner of the roof from using the rod over his yard, because the בעל החצר does suffer a loss from the use of the בעל הגג.

disagrees and says there is no distinction, and אפילו בעל חצר בבעל הגג

אינו יכול למחות

Even the owner of the yard cannot prevent the owner of the roof from using the rod over his yard, because he does not suffer a loss either.

The Gemara initially assumes that the Machlokes is as follows

לימא בהיזק ראייה שמייה היזק קמיפלגי

They disagree in whether it is forbidden to look into someone's private yard or not.

holds

היזק ראייה שמייה היזק

And therefore

בעל החצר בבעל הגג

יכול למחות

Because while the בעל הגג uses his rod, he might look into the yard and cause ראייה היזק;

While holds

היזק ראייה לא שמייה היזק

And therefore

בעל חצר בבעל הגג

אינו יכול למחות

Because there is no concern for ראייה היזק;

7

רב פנא

אבל בעל החצר
בבעל הגג
יכול למחות

The owner of the yard can prevent the owner of the roof from using the rod over his yard, because the בעל החצר suffers a loss from the use of the בעל הגג.

בעל הגג
בבעל החצר
אין יכול למחות

The owner of the roof cannot prevent the owner of the yard from using his rod, because the בעל הגג suffers no loss from the use of the בעל החצר.

רב יב/דפ

אפילו בעל חצר בבעל הגג
אינו יכול למחות

Even the owner of the yard cannot prevent the owner of the roof from using the rod over his yard, because he does not suffer a loss either.

?

לימא

בהיזק ראייה שמייה היזק
קמיפלגי

They disagree in whether it is forbidden to look into someone's private yard or not.

רב יב/דפ

היזק ראייה
לא שמייה היזק

And therefore

בעל חצר
בבעל הגג
אינו יכול למחות

Because there is no concern for ראייה היזק;

רב פנא

היזק ראייה
שמייה היזק

And therefore


בעל החצר
בבעל הגג
יכול למחות

Because while the בעל הגג uses his rod, he might look into the yard and cause ראייה היזק;



8 The Gemara concludes that this is not necessarily so. Perhaps in general all hold
 היזק ראייה שמיה היזק
 And רב יהודה holds that in this case there is no היזק ראייה because
 למאי חזי למתלא ביה מידי
 מהדרנא אפאי ותלינא ביה
 The rod can only be used for hanging something from it, and the בעל הגג is able to turn away from the yard while he hangs his items. Therefore, there is no היזק ראייה.
 While רב הונא holds;
 א"ל זימנין דבעיתת
 The הגג might not turn away because he is afraid of falling, and therefore there is היזק ראייה.
 =====

8


 All hold

היזק ראייה שמיה היזק

רב יהודה holds
 Here there is no היזק ראייה
**למאי חזי
 למתלא ביה מידי
 מהדרנא אפאי
 ותלינא ביה**

רב הונא holds;
**א"ל זימנין
 דבעיתת**
 The בעל הגג might not turn away because he is afraid of falling, and therefore there is היזק ראייה.

The rod can only be used for hanging something from it, and the בעל הגג is able to turn away while he hangs his items. Therefore, there is no היזק ראייה.

9 Zugt Di Mishnah
 לא יפתח אדם חלונותיו לחצר השותפין
 A person may not build a window opposite a yard that he shares with others, because of היזק ראייה.
 And the Gemara explains that even though, סוף סוף הא קא בעית אצטנועי מינאי בחצר
 The neighbors must be cautious of him anyway, because he can see them from his doorway? However, they can claim
 עד האידנא בחצר הוה בעינא אצטנועי מינך השתא אפילו בבית נמי בעינא אצטנועי מינך
 While you had only a door, we needed to be cautious only while you were outside.
 However, now that you also have a window, we need to be cautious even while you are inside.
 =====

9

משנה

לא יפתח אדם חלונותיו לחצר השותפין

A person may not build a window opposite a yard that he shares with others, because of היזק ראייה.

וכן

**סוף סוף
 הא קא בעית אצטנועי מינאי בחצר**

The neighbors must be cautious of him anyway, because he can see them from his doorway?

However, they can claim

**עד האידנא
 בחצר הוה בעינא אצטנועי מינך השתא
 אפילו בבית נמי בעינא אצטנועי מינך**

While you had only a door, we needed to be cautious only while you were outside.

However, now that you also have a window, we need to be cautious even while you are inside.



10 The Mishnah continues:
 לקח בית בחצר אחרת
 לא יפתחנה בחצר השותפין
 If a person has a house and is a partner in one חצר and then bought another house in the neighboring חצר, and the new house's front door opens into this חצר, and the back of this house borders the first חצר;
 He may not open a back door from the new house to the first shared חצר, because as the Gemara explains שמרבה עליהן את הדרך
 And the Rashbam explains:
 שהרי מוסיף דיורין בחצר
 שרוב בני אדם יוצאין ונכנסין עכשיו בחצר יותר מבתחלה
 He increases the number of people entering and exiting through the shared yard; and this causes two disadvantages to the other residents of the shared yard:
 שמרבה עליהן דריסת הרגל
 וליכא צניעות כדמעיקרא
 It gets more congested;
 And they lose some of their privacy.

10 *The Mishnah continues:*

**לקח בית בחצר אחרת
 לא יפתחנה בחצר השותפין**
 If a person has a house and is a partner in one חצר and then bought another house in the neighboring חצר,

חצר אחרת **חצר השותפין**

בית

The new house's front door opens into this חצר, and the back of this house borders the first חצר;

He may not open a back door from the new house to the first shared חצר,

because as the Gemara explains
שמרבה עליהן את הדרך
And the Rashbam explains:
 שהרי מוסיף דיורין בחצר
 שרוב בני אדם יוצאין ונכנסין עכשיו בחצר יותר מבתחלה
 He increases the number of people entering and exiting through the shared yard; and this causes two disadvantages to the other residents of the shared yard:
 שמרבה עליהן דריסת הרגל
 וליכא צניעות כדמעיקרא
 It gets more congested;
 And they lose some of their privacy.

11

Similarly

בנה עלייה על גבי ביתו
לא יפתחנה לחצר השותפין

If one added a second story to his house, he may not open it with a staircase directly to the yard, because

שמרבה עליהן את הדרך

He causes more traffic in the yard.

However, what he may do, is

אלא אם רצה בונה את החדר לפנים מביתו
ובונה עלייה על גבי ביתו ופותחה לתוך ביתו

And the Rashbam explains:

He may partition off the inside of his house for an additional room; and within this room he may split the height of the room to create a loft; but he may not extend his house sideways or upwards.

According to the Rashbam, he may do this if

דרך פתח שלו יוצאין לחצר

They exit through his original door;

Because, as the Rashbam explains

שיכול למלאות כל ביתו דירין

A person has the right to fill his entire home with as many people as he wants.

11

Similarly

בנה עלייה על גבי ביתו
לא יפתחנה לחצר השותפין

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אלא אם רצה

בונה את החדר לפנים מביתו
ובונה עלייה על גבי ביתו
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And the Rashbam explains:

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