

## Bava Basra – Simanim

### דף 59 – נט

### פרק ג – חזקת הבתים

#### 1. If a neighbor can protest a window above four *amos*

The Mishnah taught that a חלון המצרית – *Egyptian window* (i.e., a small window) has no *chazakah*, but a חלון צורית – *a Tyrean window* (a large window) does have a *chazakah*. Rebbe Zeira says it only has a *chazakah* when it is less than four *amos* above the ground, and the neighbor can protest its opening. Since the window is large and near the ground, he can easily observe his neighbor and threaten his privacy. However, למעלה מארבע אמות – if it is *above four amos*, אין לו חזקה ואינו יכול למחות – *it has no chazakah, and [his neighbor] cannot protest* his opening it initially, since this high window does not interfere with his privacy. Rebbe Ila'a says that although a high window has no *chazakah*, his neighbor can still protest its opening. The Gemara suggests they argue about כופין על מדת סדום – if *we force* people regarding *the trait of Sedom*, i.e., to allow others to benefit where one suffers no loss. However, it concludes that although all agree that כופין על מדת סדום, Rebbe Ila'a holds the neighbor can still protest, arguing that the other person can stand on a bench and watch him through the window.

#### 2. *Chazakah* of a זיז – *beam protruding into a neighbor's chatzeir*

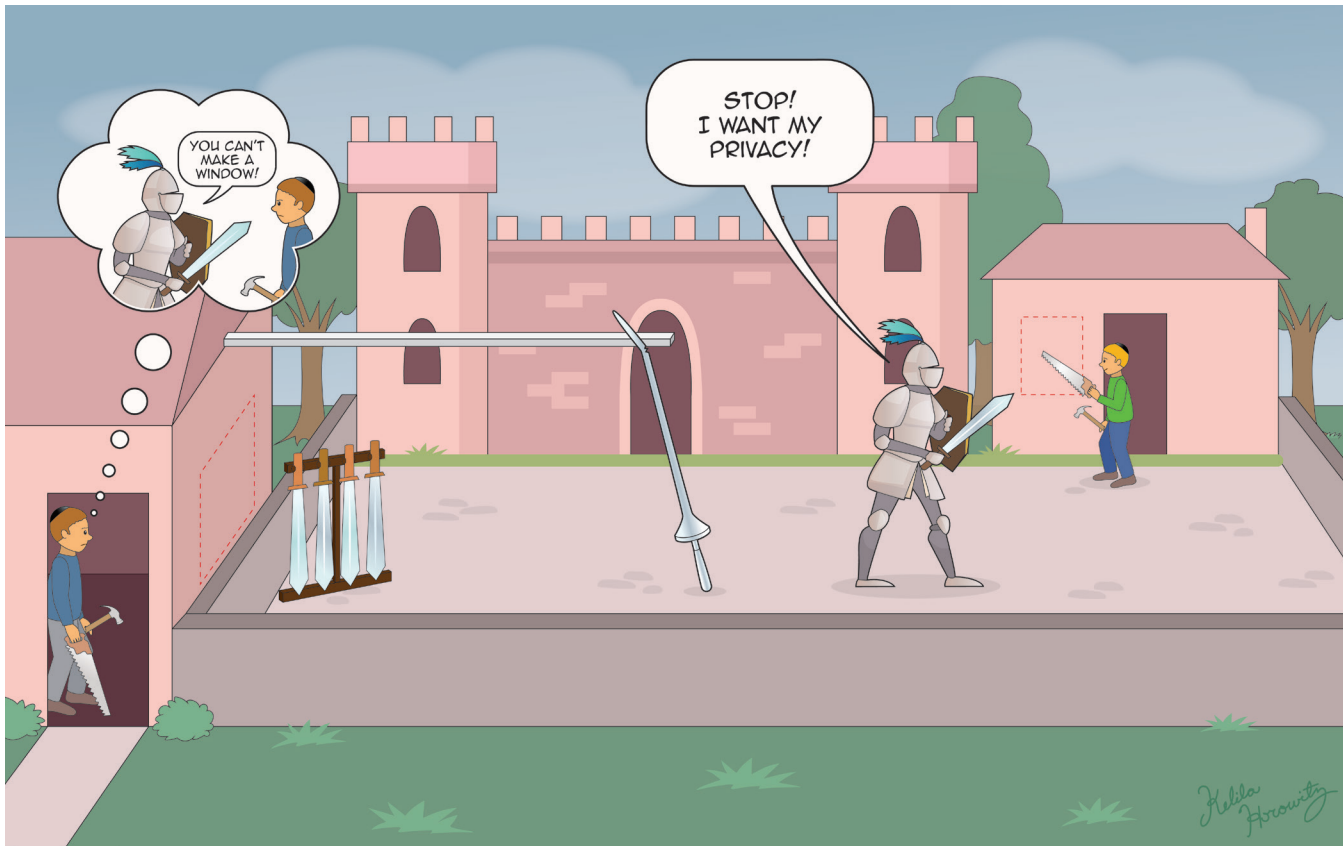
The next Mishnah states: הזיז – *A beam* (used for hanging objects) which protrudes into a neighbor's airspace, עד טפח יש לו חזקה – if it is *at least a tefach*, it has a *chazakah* if his neighbor did not protest it for three years, ויכול למחות – *and [his neighbor] can protest* his installing the beam. If it is smaller, it has no *chazakah*, and “he” cannot protest. Rav Huna says this means the owner of the roof (and beam) cannot prevent the *chatzeir's* owner from using his beam, since he cannot see onto the roof when using it. However, the *chatzeir's* owner can protest against the roof owner from installing a beam, or using an existing beam, since he can view his lower neighbor while doing so. Rav Yehudah disagrees. The Gemara concludes that all agree that היזק ראייה – *visual “damage”* is considered damage, but Rav Yehudah holds the owner can argue that since it can only be used for hanging items, he can turn his face away while using it (and would not want to be caught intentionally gazing at his neighbor). Rav Huna holds that since the owner may be afraid to fall, he can gaze at his neighbor without appearing to intentionally do so.

#### 3. Opening a window into a חצר השותפין

The next Mishnah states: לא יפתח אדם חלונותיו לחצר השותפין – *a person may not open windows onto a jointly owned courtyard*, since he will be able to view his neighbor's private activities. This means to prohibit opening a window even onto a jointly owned property, where one might have thought that his neighbor had to conceal his private activities anyway, since he shared the *chatzeir*. The Mishnah teaches otherwise, because his neighbor can say: עד האידנא בחצר הוה בעינא אצטנועי מינך – *“Until now, I only had to conceal myself while you were in the chatzeir, but not when you were inside your house; השתא אפי' בבית – now, even when you are in your house I need to conceal myself from you, since you can view my activities through your window!”* Someone once opened windows into a jointly owned *chatzeir*, and Rebbe Yishmael bar Rebbe Yose told him: החזקת בני החזקת – *“You have established a chazakah, my son; you have established a chazakah,”* even without three years, from the neighbor's immediate silence. Rebbe Chiya told him: יגע ופתחת [לך] יגע וסתום – *you toiled and opened windows; go toil and close them, because three years are required.*

#### Siman – Knight in Shining Armor

The knight in shining armor **who protested his neighbor from opening a window into his *chatzeir* where he practiced swordsmanship and for sticking a beam into it which got in the way of his lance, also protested his *shutaf* from opening a window, even though he had a right in the *chatzeir*.**



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### 3 things to remember

1. If a neighbor can protest a window
2. *Chazakah* of a זיז – beam protruding into a neighbor's *chatzeir*
3. Opening a window into a חצר השותפין

