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CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) MISHNAH: The Mishnah lays down the rules for partners who wish to divide their shared property.

2) Defining מחיצה

The Gemara states that its initial thinking is that the word מחיצה refers to a wall.

A Baraisa is cited that supports this translation.

The implication of this translation is that if one of the partners did not agree to divide their property Beis Din would not force him to do so because staring at another's property is not considered damage (היזק ראיה לאו שמיה היזק).

An alternative explanation of the term מחיצה is suggested that would lead to the conclusion that staring at another's property is considered damage.

A difficulty with the second approach is noted.

The first explanation is unsuccessfully challenged.

3) Building a wall in the middle of the yard

The Mishnah's ruling that the wall is built in the middle of the yard is challenged as being obvious.

The circumstance where the ruling is novel is identified.

4) Damage from staring

The Gemara challenges the premise that damage from staring at another's property is not considered damage.

Six unsuccessful attempts are made to demonstrate that staring at another's property is considered damage. ■

REVIEW and Remember

1. How do we determine the material that should be used to construct a partition between two properties?

_____

2. What is the meaning of the term מחיצה?

_____

3. What is היזק ראיה?

_____

4. What is the minimum size of a courtyard for one partner to be able to force the other partner to divide it in two?

_____

Distinctive INSIGHT

If the yard is not owned equally by the partners
בונין את הכותל באמצע

The halacha of the Mishnah is that when two partners divide their yard with a wall, the wall is to be built in the middle. Yad Rama explains that this halacha applies even if the yard ownership is not exactly half and half, but rather, for example, one partner owns two thirds of the yard while the other owns one third. Nevertheless, both the materials and the area upon which the wall is to be placed are still to be provided by each partner equally, and these are not adjusted proportional to the relative ownership each has in the yard. The only time an expense is divided proportionally to the degree of each one's ownership is when the expense is related to improving the land and its value. Building a wall or fence is not designed to improve the yard, but simply to remove or avoid the damage of having the one peer into the private property of the other (היזק ראיה). In this regard, each one is as much of a menace to his neighbor as the other, and the one who owns a larger segment of the yard is not more of a threat than his friend.

As a proof to his contention, Yad Rama notes that the Mishnah states as a matter of fact that the wall is to be built "in the middle," and it does not indicate that this issue is a function of the nature of the partnership. Furthermore, the Mishnah rules that when the wall falls, the materials and the area upon which it stood are divided equally. Now, although at the moment the wall falls we see that the yard may be owned equally between the two partners, this is not proof that the yards were owned equally when the wall was built. If unequal partnership in the yard translates to proportional contributions to the wall, the later division of the wall equally should not be a foregone conclusion. Rather, Yad Rama explains, the building of the wall to prevent invasion of privacy is always built equally among the neighbors.

גליון in the Shitta Mikubetzes also reads this view into the words of Rashi (ד״ה באמצע), where he says that "each [always]contributes half of the space needed to build the wall."

The comment of Rabeinu Gershom to the Mishnah shows that his text read that the wall is built "**לאמצע**", not "**באמצע**". According to this, the rule in the Mishnah is not legislating the relative contributions of materials and

(Continued on page 2)

HALACHAH Highlight

Ownership of a stone wall that collapses

לפיכך אם נפל הכותל המקום והאבנים של שניהם

Therefore, if the partition falls, the place and the stones belong to the two of them

Shulchan Aruch[1] writes regarding a stone wall constructed on the property of partners which collapses, that the place of the wall and the stones are divided equally between the two of them. Moreover, even if the wall collapsed onto the property of one of the partners or one of the partners moves the stones onto his undisputed property and claims that his partner sold him or gave him the stones as a gift he is not believed and the two partners will split everything equally unless he can bring proof to his claim. A second opinion cited by Shulchan Aruch maintains that this ruling applies only if it is evident that the stones came from this wall. Poskim disagree about the point of dispute between these two opinions.

Sema[2] explains that according to the first opinion it is obvious that one partner cannot successfully claim, without evidence, that he built the wall himself since there is a presumption (חזקה) that that is not the case. The novelty is that even when he claims that he purchased his partner's share of the wall and it is not evident that the stones are from this wall so that he has a מגו that he could have claimed that these stones are not from the collapsed wall, his claim is still not accepted. The reason is that once he admits that the stones come from the wall dividing their properties the assumption is that the wall remains the joint property of the two partners and that assumption is as strong as witness testimony. The second opinion maintains that the מגו is valid and thus only when the stones are recognized as coming from this wall is the claim rejected since he has lost his מגו. Shach[3] disagrees and writes that the dispute whether the מגו is sufficient applies only when one of the partners claims that he built the wall himself but if he claims that he purchased his partner's share all opinions agree that a מגו is believed.

Shach also adds that in the event the stones remained on the property of one of the partners for an extended period of time, longer than even partners would allow, without making a claim to those stones he is believed to claim ownership of those stones even without a מגו. ■

1. שו"ע חו"מ סי' קנ"ז סע' ה'.
2. סמ"ע שם ס"ק י"ז.
3. ש"ך שם סק"ח. ■

(Insight...continued from page 1)

space for the wall, but simply that the wall is to be situated between the two yards. If the yard is owned equally among the neighbors, it will be in the middle, but if one has a larger share in the yard, it could be that he contributeד a larger proportion of the area needed for the wall.

Mishnah l'Melech (to שכנים ב:טז) presents this question as a point to consider, and he does not resolve it.■

STORIES Off the Daf

Damages in the family

"הרי זה קידש וחייב באחריותו..."

Shortly after a certain young man married his wife he found that some of her movable property seemed to have vanished before it reached their home. Since the property was somewhat valuable and essential for her, he asked his in-laws to send it over as quickly as possible. A week passed and then another but the missing items never materialized. When the young man finally confronted his father-in-law about this issue, the man admitted that his wife had given it to tzedakah for a pidyon nefesh on behalf of their daughter.

This naturally astounded the young husband who immediately took his in-laws to beis din to recover the value of the missing objects. In court, the mother-in-law admitted that she had given the property away, but the beis din were not sure what the halachah was in such a case and consulted with the Rama MiPano, zt"l.

He answered, "It is clear that even a person who caused damage to his friend as a result of failing to fulfill his obligation is responsible to pay for the damages in full. For example, we see in Bava Basra 2 that if the wall between a vineyard and a wheat field fell down and the owner of the vineyard gave up on building the fence and the wheat became kelayim, the owner of the vineyard must pay for the damaged wheat. In our case, the mother-in-law—by taking items which did not belong to her and giving it to charity—is clearly obligated since this is certainly much worse than the example of wheat damaged through carelessness."

The Rama concluded, "But although in our case the woman is obligated to pay, practically speaking the young man cannot collect. Since the mother-in-law is completely supported by her husband, she cannot pay and her husband need not pay just like he is not obligated to pay for any damage caused by his wife, as we find in Bava Kama 89."[1] ■

1. שו"ת רמ"ע מפאנו, סי' פ"ט ■

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