

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

The Gemara unsuccessfully challenges the third interpretation of the Mishnah.

2) The right to have a neighbor's gutter flow into one's field

R' Yehudah in the name of Shmuel teaches that Reuven has the right to prevent Shimon from redirecting his gutter away from Reuven's field.

The Gemara presents a dispute about this matter.

3) Clarifying the Mishnah

D'vei R' Yannai define an Egyptian ladder.

The Gemara explains why the Tanna does not define ladders but does define windows.

All opinions agree that a window below four amos has a chazakah and therefore one could protest against its presence. R' Zeira and R' Ila'a disagree whether one could protest a window that is higher than four amos even though they agree that it has no chazakah.

One explanation of the dispute is suggested but rejected in favor of another explanation.

A related incident is presented.

Shmuel asserts that a window that was made for light has a chazakah even if it is small.

4) MISHNAH: The Mishnah discusses whether one can establish a chazakah on his neighbor's airspace.

5) Chazakah on airspace

R' Mani is quoted as ruling that one who establishes a chazakah on a tefach of his neighbor's airspace has established a chazakah on four tefachim.

Abaye explains the meaning of this ruling.

R' Huna and R' Yehudah disagree about the precise application of the Mishnah's ruling that if Reuven uses less than a tefach of Shimon's airspace he cannot protest.

One explanation of the dispute is suggested but rejected in favor of another explanation.

6) MISHNAH: The Mishnah discusses opening a window or an entrance into a courtyard.

7) Clarifying the Mishnah

The Gemara explains why the Mishnah discusses the case of opening a window to a jointly-owned courtyard rather than a neighbor's courtyard.

A Baraisa is cited that further elaborates on the topic of opening a window into a jointly owned courtyard. ■

Distinctive INSIGHT

Opening a Tzuri window above four amos

לימא בכופין על מדת סדום קא מפלגי

The Gemara discusses the laws of a חלון צורי—a relatively large window, which overlooks a neighboring yard. R' Zeira rules that if it is situated lower than four amos from the ground, and the owner of the yard did not protest about it for three years, the owner of the wall with the window can claim that he purchased the rights to have his window overlooking the yard. Furthermore, if the owner of the yard now wishes to build a wall across from the window, which will block it or darken the light entering the window, the owner of the window can insist that the new wall be located at least four amos away from his window. If the חלון צורי is above four amos off the ground, having the window without the protests by the owner of the yard does not constitute a chazakah. This window is not considered imposing on the functions performed in the yard, so the owner of the yard cannot protest the opening of the window, and his lack of protest is not seen as his admitting that he sold the rights to anything.

Rabbi Ila'ah rules that a window above four amos does not pose an imposition to the next-door neighbor, because the resident of the house cannot see out from a window which is so high. Having such a window does not establish a chazakah, but R' Ila'ah holds that the owner of the yard may, nevertheless, protest the opening of the window and prevent it from happening. The Gemara initially suggests that the dispute between R' Zeira and R' Ila'ah is whether we enforce the "laws of Sedom." In other words, the reason R' Ila'ah allows the yard owner to protest the opening of the window is that although he does not suffer by the window being there, he can stop the house owner from benefit. Ritva comments that it is unreasonable to say that any Amora would say that we allow a yard owner to insist on acting as was done in Sedom. Rather, the issue is that there is a risk that when the house owner takes a stool and stands on it in order to clean his window, he might look out at the yard and at his neighbor's private affairs. All opinions agree that this is an unusual event, but R' Ila'ah holds that this may happen often enough to expect that the window not be opened in the first place, while R' Zeira feels that the yard owner would be acting "close to" how the people of Sedom acted in being particular for almost no reason, and the window may be built.

The Gemara concludes that both Amoraim agree that the yard owner cannot act in a way which is even close to how the people of Sedom acted, and the dispute is whether placing a stool near the window is common enough to be a problem. ■

Today's Daf Digest is dedicated

In memory of
 ר' בערל בן ר' יחיאל

HALACHAH Highlight

Looking into someone else's property

מהדרנא אפאי ותלינא ביה

I will turn my face away when I hang things on the small beam

Ri MiGash¹ writes that even in a circumstance where one is permitted to maintain a ledge or a window it is prohibited to use the ledge or window to stare into his neighbor's property since staring into a neighbor's property is considered a damaging act. Concerning the duration of time it takes to constitute staring Rashbam² writes that the owner of the window or ledge should not stare so that people will think that he is a thief. Based on this, Nimukei Yosef³ writes as a general matter that one may not stare into someone else's house in a way that one appears to be a thief. This ruling is cited by Rema⁴.

S"ma⁵ notes an inconsistency in Rema. In our halacha Rema ruled that one should not stare into his friend's house in a way that makes him look like a thief and later in the same Siman, Rema⁶ wrote that one may not look into his friend's field because staring will inflict damage. Is the reason to refrain from looking into a friend's property to not look like a thief or to not inflict damage? Furthermore, Rema wrote that one should be careful (צריך לזהר) from looking into a friend's property. If looking into another's property causes damage it is prohibited rather than something that one should be careful from doing.

S"ma answers that Rema is referring to two different ha-

STORIES Off the Daf

"How goodly are your tents..."

"שתשרה עליהם שכניה..."

On today's daf we find that when Bilaam saw that the Jewish people set up their tents facing away from one another so that they would not risk transgressing the sin of hezek re'iyah, he proclaimed that it is fitting that the Shechinah rest upon the Jewish people.

The Vilna Gaon, zt"l, made an interesting remark in this regard. "When a person says 'גזלנו' in his confession, he should never think that this doesn't relate to him personally. Even if he is absolutely straight in business it is very un-

likely that he has never violated this prohibition since the halachos of theft are like 'mountains hanging by a thread' and they are consequently very easy to violate.

"Who thinks about theft when he pours water on another's wall which is consequently damaged, or when he looks through another person's window into his house?"¹

Yet not every action that a person views as hezek re'iyah is truly a violation of this prohibition and constitutes a form of theft. A certain person once built a porch which cut off his neighbor's nice view. Instead of seeing mountains from his window, the person now saw the brick wall of the enclosed porch. Although the person who built the

REVIEW and Remember

1. What is the issue disputed by R' Oshaya and R' Chama?
2. Explain the principle of כופין על מדת סדום.
3. What is היזק ראייה?
4. What was the point of dispute between R' Yismael the son of R' Yosi and R' Chiya?

luchos. One halacha is the prohibition against looking into another's property since gazing into another's property causes damage (איסור ראייה). The second halacha is that one should avoid giving the impression to others as if he is staring into the property of another even if one cannot see into that property (מפני החשד). When dealing with damages Rema uses stronger language indicating that such an activity is prohibited but when discussing the issue of appearing like a thief Rema advises caution that one should not conduct himself in a way that gives the impression that he is a thief.

1. רי"י מיגש ב: ד"ה טעמא.
2. רשב"ם ד"ה ושאיני.
3. נמוקי יוסף ד"ה אבל.
4. רמ"א חו"מ סי' קנ"ד סעי' ג'.
5. סמ"ע שם ס"ק י"ד.
6. רמ"א שם סעי' ז. ■

porch was careful not to place a window where he could look into his friend's apartment, the man who lost his view was furious and demanded that the porch be removed immediately since it was stealing his prospect. In addition, this seemed to be forcing him to violate the prohibition against hezek re'iyah.

Yet when this question came before the Ralbach, zt"l, he ruled that no prohibition had been violated at all. "It is true that one must be careful not to violate the severe prohibition of hezek rei'yah, but there is no source that one may not obstruct another's view, since he never owned the view in the first place!"² ■

1. מובא בסידור הגר"א בביאור הוידוי
2. כ"כ הכנה"ג בשם הרלני"ח, מובא בפת"ש בחו"מ, סי' קנ"ד, ס"ק ח' ■