



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Basra Daf Beis

MESECHTA BABA BASRA

PEREK HASHUTFIN -- PEREK RISHON

MISHNA

- Partners who want to make a division in their chatzer (that they own in partnership), they must place the wall in middle of the chatzer (leaving each partner equal space). In a place where the custom is to build such walls using rough stones, or smoothed stones, or half bricks, or whole bricks, the custom should be followed. All should follow the local custom.
 - If rough stones are used, each person must give 3 tefachim of space for the wall, from his side. If smooth stones are used, each must give 2.5 tefachim. If half bricks are used, each must give 2 tefachim. If full bricks are used, each must give 1.5 tefachim. Therefore, if the wall falls down, the area underneath the wall and the stones belong equally to both partners.
- Similarly, with regard to a garden (where the partners have agreed to divide it), in a place where the custom is to put up a divider, they can force the second partner to pay his share of building this divider.
- However, in a valley (in a grain field), in a place where the custom is not to put up a divider, we cannot force the other partner to pay for the building of a divider. Rather, if one partner is insistent on building a wall, he must build it entirely on his property, and he makes an indication on the outside to show that it is his own wall. Therefore, if the wall falls down, the area underneath the wall and the stones belong only to him. However, if they both agreed to put up a wall, they put the wall in middle of the field and make an indication on both sides of the wall, to show that it belongs to them both. Therefore, if the wall falls down, the area underneath the wall and the stones belong equally to both of them.

GEMARA

- The Mishna's term for "division" in the first case was "mechitza". The talmidim felt that "mechitza" means a full wall. As we see in a Braisa regarding klayim, that mechitza refers to a proper wall. Still, the Mishna seems that a proper wall is built only because they both have agreed to it, but if only one wanted it, he could not force the other to pay for half the wall. We see from here that "hezek re'iya" (loss of privacy) is not considered to be true damage (because if it was, the other partner could be forced to pay for the wall).
 - The Gemara says, it may be that the word mechitza refers to a division of the chatzer (not any type of physical wall), as we find this word to be used with this meaning in a pasuk, and the Mishna can be saying that once they have agreed to this division, the other partner can be forced to pay his share of erecting a wall, because hezek re'iyah is considered to be a true damage.
 - **Q:** This can't be what the Mishna meant, because then it should have said "Partners who want to divide", not "Partners who want to make a mechitza"!?
 - **Q:** Even according to the first understanding, if mechitza means a wall, why does the Mishna then say "they place a wall..."? It should say "they place it"!? **A:** The Mishna didn't want to say "they place it", because that may have suggested that a simple marker would be enough. The Mishna therefore says "wall" to teach that a proper wall must be built.

- **Q:** Since they both agreed to this, it seems obvious that they are to build the wall in the middle!? **A:** The case is where one partner convinced the other to divide the chatzer. We would think that the second partner can then claim that he agreed to divide for purposes of privacy, and therefore only agreed to a thin partition being put up, or for a wall to be put up, but only a small piece of the wall to be put on his property. The Mishna therefore teaches that he cannot claim that, and must give land for half the wall.
- **Q:** Can there be a view that hezek re'iyah is not a true damage? Our Mishna says that a wall must even be built in a garden, which shows that hezek re'iyah is true damage!? **A:** A garden is different than a chatzer, based on the statement of **R' Abba in the name of R' Huna in the name of Rav**, who said that one may not stand in a field of grown produce, because it makes it subject to ayin harah. It may be that that is the reason a wall can be forced to be built there, but in a chatzer it could not be, because hezek re'iyah is not true damage.
 - **Q:** The Mishna begins the part with the garden by saying "similarly", which seems to make the reason for a wall in a garden and in a chatzer to be one and the same!? **A:** The "similarly" was meant to refer to the statement that the building material used for the wall should follow local custom.
 - **Q:** A Mishna says, if a wall between chatzeiros collapsed, we force the owner of each chatzer to rebuild the wall to a height of 4 amos. Since this is forced upon them, it must be because hezek re'iyah is considered to be a true damage!? **A:** This case may be different, because given that there was previously a wall there, it shows that they had already agreed to have a wall.
 - **Q:** What was the thought of the one who asked the question? This difference seems obvious!? **A:** He held that the Mishna's reason for giving the case of a wall that collapsed was for the next case of the Mishna, which says that they cannot be forced to build the wall higher than 4 amos, even if the wall was originally higher than 4 amos.
 - **Q:** A Mishna says that we force all the residents of a chatzer to chip in for the cost of a gatehouse and door for the chatzer. Now, this was done for hezek re'iyah, and we therefore see that hezek re'iyah is considered to be a true damage!? **A:** This would be loss of privacy to the public, which is definitely considered to be a true damage.
 - **Q:** A Mishna says, we cannot force the dividing of a chatzer unless each partner will be left with a minimum of 4 amos. Now, this suggests that if there will be 4 amos for each, we could force a division, which would presumably have to be done with a wall, which shows that hezek re'iyah even of one individual is considered to be a true damage!? **A:** The division is done with boundary markers, and not a wall, which therefore doesn't prove that hezek re'iyah is a real damage.
 - **Q:** A Mishna says, if someone builds a wall opposite his neighbor's window, he must make it 4 amos higher than the window (so that he not crouch down from the top of the wall and look into the window), or 4 amos lower than the window (so that he not stand on it and look into the window), and 4 amos away from the window (so that it not block the light coming into the window). From the first two cases we see that hezek re'iyah is a true damage!? **A:** With regard to loss of privacy in a house, it is clear that hezek re'iyah is a true damage. The question we have is regarding hezek re'iyah in a chatzer.
 - **Q:** **R' Nachman in the name of Shmuel** said, if a person's roof borders his neighbor's chatzer, he must make a fence 4 amos high around the roof. Now, the purpose of this would be to prevent hezek re'iyah, and this shows that it is a true damage!? **A:** That case is different, because the owner of the chatzer will say "a chatzer is used at set times, whereas a roof is not, and I therefore do not know when to expect you and to try and hide from you if I don't want to be seen". That is why a fence is needed in that case.