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Bava Basra Daf 59

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Chazakah of a Drainspout

The *Gemora* had asked: What does the *Mishna* mean when it states that a drainspout has no *chazakah*, but its place has a *chazakah*.

The *Gemora* presents three explanations:

1. Rav Yehudah says in the name of Shmuel that the *Mishna* means that a drainspout does not have a *chazakah* on a particular side (*of the gutter*), but it does have a *chazakah* to remain on one of the two sides.
2. Rabbi Chanina says that when the *Mishna* said that a drainspout does not have a *chazakah*, it meant that if it was long, the neighbor is permitted to shorten it, but he has no right to remove it, for its place has a *chazakah*.
3. Rav Yirmiyah bar Abba says that when the *Mishna* said that a drainspout does not have a *chazakah*, it meant that the neighbor has a right to build underneath it (*for the drainspout owner has no rights in the land itself*), but he has no right to remove it, for its place has a *chazakah*.

The *Mishna* had stated that a gutter has a *chazakah*.

The *Gemora* asks: This is understandable according to the first two of these opinions (*it cannot be moved to another place and he cannot make it shorter*). However, according to the opinion that the *Mishna* means that if the owner of the courtyard wants to build under the small piece extending from the drainspout he can, but if he wants to build under the gutter itself, he cannot, why should it make a difference to the owner of the gutter whether or not the owner of the yard builds there?

The *Gemora* answers: The case is where the gutter is made out of stone, and the owner of the gutter claims that building directly under his gutter might cause his gutter to collapse (*from the vibrations of the construction*).

Rav Yehudah says in the name of Shmuel: If a person’s spillage (*from his roof*) was spilling into his friend’s yard (*on the bottom floor*), and the owner of the roof now wants to close up the pipe, his friend downstairs can prevent him from doing so. His friend can claim that just as the owner of the roof had acquired the right to have his water go into his yard, he had acquired the rights to this water. [*He wants it, for example, to give to his animals.*]

It was taught: Rabbi Oshaya says that he can prevent the owner of the roof from closing it up. Rabbi



Chama says: He cannot. He went to ask Rabbi Bisa.
Rabbi Bisa says: He can prevent him.

Rami bar Chama said about them: *“And the three strand string will not quickly be cut.”* This refers to Rabbi Oshaya, the son of Rabbi Chama, the son of Rabbi Bisa. [If a family has three generations of Torah scholars, they have a guarantee that Torah study will not cease from their family.] (58b – 59a)

Chazakah on Ladders and Windows

The *Mishna* states: An Egyptian ladder does not have a *chazakah*.

The *Gemora* asks: What is an Egyptian ladder?

The Academy of Rabbi Yannai answered: Any ladder that does not have four rungs.

The *Mishna* states: An Egyptian window does not have a *chazakah*.

The *Gemora* asks: Why doesn't the *Mishna* itself explain the definition of an Egyptian ladder just like it explains the definition of an Egyptian window?

The *Gemora* answers: Being that the *Mishna* wanted to quote the opinion of Rabbi Yehudah, who argues in the second part of the *Mishna* regarding this Egyptian window, it had to first define an Egyptian window.

Rabbi Zeira says: A window that is less than four cubits from the floor of the house can be said to have a *chazakah*, and at the same time the neighbor can

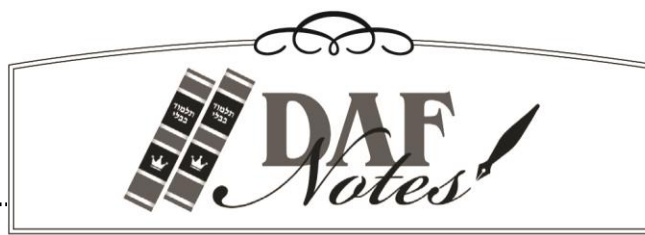
protest its being there (*before a chazakah is established*). [This is because one can see straight into a neighbor's yard from there.] A window that is higher than four cubits from the floor of the house cannot be said to have a *chazakah*, and the neighbor cannot protest its being there. [This is because he cannot see from there into his neighbor's yard anyway, as it is high up on his wall.] Rabbi Ila says: A window that is higher than four cubits off the ground cannot be said to have a *chazakah*, and the neighbor can protest its being there.

The *Gemora* asks: Let us say that they argue regarding whether or not we say that we force one to not engage in an attribute of Sodom. [In other words, we force a person not to protest another person's rights that he will not derive benefit from, even if his protest is ruled to be legal.] Rabbi Zeira says we force this, and Rabbi Ila says we do not.

The *Gemora* answers: No. Everybody agrees that we force a person not to engage in an attribute of Sodom. Rabbi Ila merely holds that the neighbor can claim that sometimes his neighbor might have a bench next to the window, and he can climb up and see his yard from the window.

There was a person who came to Rabbi Ami with this question. Rabbi Ami sent him to Rabbi Aba bar Mamal. Rabbi Aba said: Do to him like the opinion of Rabbi Ila.

Shmuel says: If the window is for the purpose of letting light into a dark place, even for a little bit one is considered to have a *chazakah*. [The *Rashbam* explains that Shmuel understands the *Mishna* as



referring to windows being opened up for the purpose of watching his fields, not for light.] (59a)

Mishna

If a person has a beam protruding out of his wall one *tefach* (into someone's courtyard), it has a *chazakah*. However, the owner of the yard below may protest its being there (when the owner initially wishes to build it there; this is because he will damage the courtyard owner by peering inside the courtyard as he is using this beam). If it is less than a *tefach*, it does not have a *chazakah* and he cannot protest. [The *Gemora* quotes different opinions regarding the exact definition of the *Mishna* (see below).] (59a – 59b)

Beam Protrusions

Rabbi Asi says in the name of Rabbi Ami, and some say Rabbi Yaakov says in the name of Rabbi Mani: If he took one *tefach*, he took four.

The *Gemora* asks: What does this mean?

Abaye says: He means the following: If he extended one *tefach* by four *tefachim*, he has the right to a space of four by four *tefachim*. [In other words, he has the right extend his beam widthwise up to four *tefachim* that would total four by four square *tefachim* in one area. The *Rashbam* explains that being that he let him have four *tefachim*, it must be that he allowed him to have an "important" area, which is a minimum of four by four *tefachim*.]

The *Mishna* says: If it is less than a *tefach*, it does not have a *chazakah* and he cannot protest.

Rav Huna says: The *Mishna* only means that the owner of the top floor, who extended a beam of a *tefach*, cannot prevent the owner of the courtyard below from using the beam (for the courtyard owner cannot see onto the roof above him). However, the owner of the courtyard can indeed prevent the owner of the roof from extending a beam (even if he extends it less than a *tefach*, or he can prevent him from using it, for then, he will look into the courtyard). Rav Yehudah says: The owner of the yard cannot prevent the owner of the top floor from extending a *tefach*.

The *Gemora* asks: Let us say that they argue regarding damage done by being able to see into another's domain. One says this is considered damage, and another says it is not. [The *Rashbam* explains that if the owner of the top floor will want to hang things on the beam, he will end up looking down into his neighbor's yard. The *Gemora* therefore suggests that the argument hinges on whether or not this is considered damage.]

The *Gemora* answers: No. Everyone agrees that this seeing into another's domain is considered damaging. However, the owner of the roof can explain that he is certainly not going to stand on it and look down into his neighbor's yard (as it is only a few inches wide). When he hangs things, he will turn his head away and not look into the neighbor's yard. If he is looking into his neighbor's yard, it will be apparent and he will be clearly guilty of such conduct. The other opinion holds that being that he

can claim he would be scared to look away, as he might lose his balance, he will have an excuse to look into his yard. (59b)

Mishna

A person should not open his windows towards a yard owned by partners. If he bought a house in a different yard, he should not make an opening towards a yard of partners. If he built a second floor onto his house, he should not make another opening to a yard owned by partners. Rather, if he wants, he can build a room in his house, build his second floor, and the people who will live on the second floor can go through the entrance of his house (*to the yard*). (59b)

Windows in a Courtyard

The *Gemora* asks: Why does the *Mishna* say this is forbidden to be done towards a yard owned by partners? It should be forbidden even towards a yard owned by a single person!

The *Gemora* answers: The *Mishna* means that not only is it forbidden to do so towards a yard owned by a single person, but it is even forbidden to do so towards a yard that is jointly owned. One might think he could claim that the partners anyway must act privately, as they must protect their privacy from each other. He therefore is not causing any damage by adding another line of sight or people in the yard. The *Mishna* therefore teaches that the people in the yard can claim that being that they can now be seen in their houses as well, as they previously did not have a line of sight or doorway opposite their

doorway, they can protest this new development.

The *Gemora* cites a *braisa*: A certain man made windows opening on to a courtyard which he shared with others. They summoned him to appear before Rabbi Yishmael son of Rabbi Yosi, who said to him: You have established your right (*immediately*), my son (*for since they remained silent when you opened the window, they certainly gave you the right*). He was then brought before Rabbi Chiya, who said: As you have taken the trouble to open them, so you must take the trouble to close them (*for you cannot establish a chazakah until three years*).

Rav Nachman said: If someone builds a wall next to another's window (where the window was there for three years), and the window owner remains silent, he (the builder of the wall) has established a *chazakah* immediately, for a person will not remain silent, even for a moment, when someone blocks his light. (59b – 60a)