



Volume 10. Issue 14

Good fences means...

In the time of the *Mishnah* it was common for houses to open onto a shared courtyard (*chatzer*) as apposed to the public domain. The first *Mishnah* addresses the case where the occupants wish to subdivide the courtyard and construct an appropriate partition.

The *Mishnah* describes the case as where the parties agree to subdivide the *chatzer*. The *Gemara* notes that this would only be the case regarding a small *chatzer*. If however the *chatzer* was large enough to have a “*din chaluka*”, then one party could force the other to comply. This would be a *chatzer* that has at least four square *amot* for each party (aside from the four *amot* allocated for each doorway).

The *Gemara* (3a) deals with the case of our *Mishnah*. If the *chatzer* is so small that it does not have a *din chaluka* then each party should be able to change their mind, the verbal agreement does not hold much weight. *Rav Ashi* explains that this is where “one went to his section and was *machzik*, and the other to his and was *machzik*”. *Rashi* explains that the occupant dug part of his section thereby constituting a *kinyan chazaka* – an acquisition through the demonstration of control/ownership of the land.

The *Bartenura* explains that each party must be *machzik* his section as verbally agreed for the division to be finalised. The would follow the straightforward understanding of *Rav Ashi*’s statement as cited above. The *Tosfot Yom Tov* however explains that the *Bartenura* should not be taken literally. Citing a *Tosefta*, he explains that when swapping properties, only one party needs to *machzik* the property for the *kinyan chalipin* (acquisition via exchange) to

complete. Consequently in this case it should be enough for one of the residents to be *machzik*.

The *Tosfot Yom Tov* continues by citing the *Haghot Maimoni* who finds it difficult to fit this suggestion with the simple wording of the *Gemara*. The *Haghot Maimoni* therefore suggests that the *chazaka* required in this case of a division of a partnership is not of the same level as required normally for a *kinyan chazaka*. Whereas normally locking the field, building or destroying a fence is required, here it is enough for them simply walk the length and breadth of their section. Since this is a “weaker” a *chazaka*, both parties must perform it.¹

The *Chidushei Mahariach* however defends the *Bartenura* explaining that this case is different to a *kinyan chalipin*. In that case, from the outset the ownership of each of the properties is recognized as being distinct. After one of the parties performs a *chazika* it is immediately clear that ownership has changed hands. In this case however, both parties shared the *chatzer*. The only change is that they are now able to erect a dividing fence. Consequently, both parties must perform a *chazaka* to formalize the *kinyan*.

In a similar manner, the *Even HaEzel* (*Shcheinim* 2:10) explains that the subdivision of a partnership is not equivalent to a sale or acquisition. The acts required here are simply a clarification of which section belongs to each of the parties. Consequently, for the clarification to complete, a demonstration is required by all parties.

Yisrael Yitzchak Bankier

¹ The *Beit Yosef* (157) notes that according to the *Haghot Maimoni*, if a proper *chazaka* was performed then only one party would be required to perform it.

Revision Questions

בבא מציעא ט"ז:י"ב י"ג:י"א

- What are the two *p'sukim* that are the basis for the requirement to pay wages on time? (ט"ז:י"ב)
- Other than wages, to what two other payments do these *p'sukim* apply? (ט"ז:י"ב)
- What are the two circumstances when one does not transgress the prohibition despite delaying the payment? (ט"ז:י"ב)
- When can a worker make a *shevuah* and collect his wages? (ט"ז:י"ב)
- To whom does only one of the *p'sukim* apply? (ט"ז:י"ב)
- How must a lender go about retrieving a collateral? (ט"ז:י"ג)
- What would he have transgressed if he forced his way into the borrower's house to retrieve it? (ט"ז:י"ג)
- From who is one not allowed to take a collateral? (ט"ז:י"ג)
- What objects are not allowed to be taken as a collateral? (ט"ז:י"ג)
- What is done with the rubble from a collapsed building with two owners, one of which lived on the second floor? (י"א:י)
- Regarding the dwelling arrangement described in the previous question what is the law if the second floor collapses? (י"ב:י)
- What is the law if the building collapses and the ground floor owner does not want to rebuild? (Include both opinions.) (י"ג:י)
- What other case is similar to the one just described? (י"ד:י)
- If a tree in a private property collapses in to the public domain, when is the owner liable for the damage it causes? (י"ד:י)
- If someone's fence collapses into another's property, can he tell his neighbour to keep the stones instead of removing them? (י"ה:י)
- If the neighbour accepts, can the original owner pay him the removal costs and demand the stones? (י"ה:י)
- What other case brought has the same ruling as the previous two questions? (י"ה:י)
- Can one use the public domain when engaged in construction? (י"ה:י)
- What are the three opinions regarding the ownership of vegetables that grow out of a steep incline in between two properties? (י"ו:י)

בבא בתרא א' א' ו'

- Explain how a fence is to be constructed when dividing a property that had joint ownership. (א' א')
- How do they determine which material should be used for the fence work? (א' א')
- Regarding which property is one not able to force his partner to construct a fence? (א' ב')
- According to *R' Yosi*, if one neighbour constructed a fence, what would the other neighbour have done such that we can now obligate him to share in the construction cost? (א' ג')
- What is the maximum height of the fence that members of a shared-courtyard are obligated to contribute to the construction cost? (א' ד')
- What other feature of a courtyard is debated as to whether the cost can be placed on all members? (א' ה')
- What qualifies a person to be a citizen of a city? (א' ה')
- How large must a shared courtyard be before it can be subdivided? (א' ו')
- How large must a shared field be before it can be subdivided? (א' ו')
- How large must a shared garden be before it can be subdivided? (א' ו')

Local Shiurim

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel
Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
19 th May י"ט סיון	20 th May י"א סיון	21 st May י"ב סיון	22 nd May י"ג סיון	23 rd May י"ד סיון	24 th May ט"ו סיון	25 th May ט"ז סיון
Bava Batra 2:1-2	Bava Batra 2:3-4	Bava Batra 2:5-6	Bava Batra 2:7-8	Bava Batra 2:9-10	Bava Batra 2:11-12	Bava Batra 2:13-14

