

Introduction to בבא בתרא

בבא בתרא is the final stage in **מסכת נזיקין** – focusing on zoning laws and neighbors, various proofs of land ownership, commerce and, finally issues dealing with estates, inheritance, wills etc.. The first chapter will pick up right where we left off at the end of **בבא** **מציעא**; partners who want to separate their joined property.

22.1.01

2a (משנה א') → 3a (חזה בתוך שלו החזיק)

Note: our משנה makes reference to 4 types of building stones used for walls: גויל (6 טפחים wide); גזית (5); כפיסין (4 wide) and לבינות (3 wide)

1. ותהי מקצת העדה מן הצאן שלש מאות אֶלף ושלשים אֶלף שבעת אֶלפים וְחֲמֵשׁ מאות: במדבר פרק לא פסוק מג

- I 'א משנה: dividing common property with a wall and following the local custom of wall-width and material
- a If: partners (in a courtyard) want to make a מחיצה
- i Possibility #1: שרצו לעשות מחיצה means wall (based on גג: תוספתא כלאים)
- 1 Implication: only if they agreed to put up a wall is there any obligation
 - (a) Implication: היזק ראייה is not considered היזק
 - (b) Challenge: should say בונין אותו, not את הכותל
 - (i) Defense: had it said אותו וסד"א, any physical division (even a string of reeds) is enough – קמ"ל
- b Then: they build the wall in the middle (equally giving up space), following local custom of wall-width (see note)
- i Objection: this is obvious (that they would share expense and space)
- 1 Answer: case where A convinced B to build a wall; B סד"א could respond that he only agreed to a simple wall of reeds (e.g.) – קמ"ל once he agreed to build a wall, he can be forced to follow local norms (גויל etc.)
- ii Challenge (to possibility #1): היזק ראייה is, indeed, considered היזק
- 1 Proof #1: from later clause, equating חצר to גינה
 - (a) Rejection: גינה has a unique reason as per רב – due to consideration of עין הרע
 - (i) Challenge: גינה::חצר equates וכן
 - (ii) Answer: וכן refers to wall-widths, not the reason
 - 2 Proof #2: משנה א:ד – if a wall in a חצר falls, they are obligated to rebuild up to ד"א
 - (a) Answer: a case where the wall was there and fell is different
 - (i) Note: only needed to teach that he needn't build higher than ד"א
 - 3 Proof #3: משנה א:ה – each member of the חצר has to build a guard-house etc.
 - (a) Answer: public היזק ראייה (i.e. being protected from eyes of the public) is different
 - 4 Proof #4: משנה א:ו → if there is ד"א for each, one can force a split – i.e. with a strong wall
 - (a) Rejection: in such a case, he may only force a reed wall
 - 5 Proof #5: משנה ב:ד (and תוספתא א:ה) – windows must not face neighbor's windows directly
 - (a) Rejection: היזק ראייה of the house (i.e. lack of privacy indoors) is different
 - 6 Proof #6: שמואל's ruling that a roof abutting a חצר must have a ד"א-high parapet
 - (a) Rejection: that is unique, as בעל החצר doesn't know when בעל הגג will be there that he may have privacy
- iii Possibility #2: מחיצה means division as per v. 1 → היזק ראייה שמיה היזק,
- 1 Challenge: language should be שרצו לחצות
 - 2 Defense: as per common colloquy – "let's make a מחיצה"
 - (a) Challenge: if היזק ראייה שמיה היזק, one should be able to force the other to split and build
 - (b) Answer (ר' יוחנן): our משנה is in re: a case of a "small חצר" (less than ד"א for each one)
 - (i) Challenge: what is it teaching? משנה א:ו already states that if it is smaller but they both want to split, they may do so
 1. Answer: that משנה would only imply a minimal fence; קמ"ל – כותל – קמ"ל (etc.)
 2. Challenge: א:ו is now superfluous
 - a. Answer: א:ו סיפא (about not splitting הקדש) is necessary
 - (ii) Challenge: if it is smaller than ד"א, why can't they back out
 1. Answer (ר' יוחנן): if they made a קנין (to formalize the agreement)
 2. Challenge: this is only קנין דברים (must be קנין on a specific item, not just an agreement)
 - a. Answer: if they divided sides of the חצר via the קנין
 - b. Answer2 (ר' אשי): if each walked on his side, generating חזקה for himself
- c Therefore: if the wall falls, the space and materials are divided equally