

22.1.03; 4a (וכן בגינה) → 5a (לצלא ארבעה לצלא ארבעה לצלא)

I משנה ב' dividing a garden or field

- a Similarly: same rule applies in a garden, in a place where the custom is to build a fence
- b However: in a field, where the custom is not to build a fence, we do not obligate him
 - i *implicit conundrum*: the default of a garden is not to build; the default of a field is to build ('tho less likely)
 - 1 Resolution 1 (אביי): similarly the default of a garden, and a field where the custom is to build
 - (a) Rejection (רבא): then the disjunctive אבל (before the clause about the field) doesn't follow, rather
 - 2 Resolution 2 (רבא): the default of a garden is to build, the default of a field is not to build
 - ii Therefore: if one wants to divide, he must give up the space of his own property and makes a marker on the outside
 - 1 Therefore: if the wall falls, it and the space belong to him
 - 2 אביי's explanation
 - (a) Version 1: stick a stone facing the outside (towards the other's property)
 - (i) Challenge: why not face it inside?
 - (ii) Answer: then the other fellow will do the same
 - 1. Challenge: with this solution, the other fellow may cut down the חזית
 - 2. Answer: the place where he cut it off will be visible
 - (b) Version 2: רב הונא: stick a stone facing the inside
 - (i) Challenge: why not face it away
 - (ii) Answer: then the other fellow will take it down and claim joint property
 - 1. Challenge: this way, the other will add his own stone and claim joint property
 - 2. Answer: the spot where he adds (recently) will be visible
 - a. Challenge: the text reads מבחוץ (implying the first approach) – קשיא
 - 3 אביי's explanation
 - (a) He should plaster one אמה on top, facing the outside
 - (i) Challenge: why not plaster on the inside
 - (ii) Answer: the other fellow will do the same, claiming joint property
 - 1. Challenge: in this case, the other fellow will wipe out his plastering, and make the same claim
 - 2. Answer: that spot can be seen
 - 4 Solving the חזית problem for a palm-branch fence:
 - (a) אביי: stick the fronds facing away
 - (i) Challenge: why not face them inside
 - (ii) Answer: the other fellow will do the same
 - 1. Challenge: in our case, the other fellow will cut down the protruding fronds
 - 2. Answer: he can cement them into place
 - a. Challenge: the other fellow may cut it down and scrape the cement off
 - b. Answer: the spot where he scrapes it off can be readily seen
 - (b) Dissent (אביי): a palm-branch fence has no solution (for identifying owner) without a שטר
 - iii However: if they agreed to divide, they equally contribute space & materials and make markers on each side
 - iv Therefore: if the wall falls, the space and materials are divided equally
 - 1 Challenge: why not leave it unmarked and they'll split?
 - 2 Answer: case where one already put up a חזית
 - 3 Question (on entire discussion): does the תנא present a rule just to quash the deceptive neighbor?
 - (a) Answer (אביי): isn't the earlier clause (one חזית) also provided to prevent רמאות?
 - (i) Response: in that case, the ruling was needed, and the תקנה mentioned incidentally unlike here
 - (b) Answer (רבא): this case is in re: a הוצא, contra אביי – there is a solution without a שטר (double חזית)

II משנה ג' the surrounded neighbor

- a If: A surrounds B on 3 sides and then, of his own volition, built a wall on all sides, B is not compelled to contribute
 - i אביי: if B, of his own volition, fenced in the fourth side, he is now liable to share in all expenses (הלכה)
 - 1 Contribution: implication is that if B built 4th fence; ר' הונא – as per real expenses; ר' אבהו – as per cheapest sticks
 - (a) Challenge: implication is that ת"ק agrees that if 4th side fenced in, B has to contribute –
 - (i) If: we accept הונא, that's the difference between יוסי (full payment or cheap materials)
 - (ii) Answer: point of disagreement is payment for a guard (less) OR paying for first 3 fences
 - (iii) OR: if A built 4th fence; ת"ק – only pay for #4, ר"י – pay for all 4
 - (iv) Alternatively: ר"י – only if B built fence is he liable at all; ת"ק – even if A built fence, B is liable
 - ii Stories: of ר' הונא who was surrounded by רבא on 4 sides (and case with them in re: דינא דבר מצרא)